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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 920

[Docket No. FV97–920–1 FR]

Kiwifruit Grown in California; Revision of Administrative Rules Pertaining to Delinquent Assessments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the time periods specified for timely payment of assessments owed by handlers under the Federal marketing order for kiwifruit grown in California. This rule reduces the time periods specified for timely payments of assessments from 60 days of invoice for in-line inspection and from 45 days of invoice for block inspection, to 30 days of invoice for both types of inspection. It also allows the Kiwifruit Administrative Committee (committee) to further revise this time period to a later time period, in the future, if deemed necessary and approved by the committee. This rule will contribute to the efficient operation of the program, and will reduce the administrative and accounting burden for handlers and the committee staff.

EFFECTIVE DATE: August 28, 1997.

FOR FURTHER INFORMATION CONTACT: Rose Aguayo, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey St., Suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906 or George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order No. 920 (7 CFR part 920), as amended, regulating the handling of kiwifruit grown in California, hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later that 20 days after date of the entry of the ruling.

This final rule revises the time periods specified for timely payment of assessments owed by handlers under the Federal marketing order for kiwifruit grown in California. Under § 920.41(a) of the order, each person who first handles kiwifruit is required to pay a pro-rata share of the costs of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's shipments. Section 920.41(a) also provides that if a handler does not pay an assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both. Section 920.112 of the order's administrative rules specifies that a simple interest rate of 1.5 percent per month will be charged to assessments which are not received within 60 days of invoice for in-line inspected kiwifruit or within 45 days of invoice for block inspected kiwifruit. It further specifies that a 10 percent late charge will be assessed handlers when payment becomes 30 days late.

The committee, the agency responsible for local administration of the marketing order, met on April 16, 1997, and unanimously recommended revising the administrative rules in effect under the order pertaining to the time period specified for timely payment of assessments owed by handlers. The committee recommended reducing the time period for timely payment of assessments owed by handlers from 60 days of invoice for in-line inspection and from 45 days of invoice for block inspection, to 30 days of invoice for both types of inspection. The committee also requested that § 920.112 of the rules and regulations be revised to allow the committee to further revise this time period in the future, if deemed necessary.

Kiwifruit grown in California is harvested in late September or early October. The fruit is packed shortly after harvest and much of it is placed into storage until shipment. The primary shipping season extends through the following May, although some fruit is marketed during the summer months.

Whenever grade, size, quality, or maturity requirements are in effect for California kiwifruit, handlers are required to have their fruit inspected and certified as meeting those requirements. Handlers have a choice of two different inspection methods, referred to as ''in-line'' and ''block'' inspection. With in-line inspection, kiwifruit is inspected during the packing process, prior to storage. With block inspection, the kiwifruit is inspected after it has been packed. Block inspections are typically performed just prior to shipment.

Pursuant to § 920.160, each shipper who ships kiwifruit shall furnish a

report of shipment and inventory data to the committee not later than the fifth day of the month following such shipment. This Monthly Shipment Report is also required under the State kiwifruit program administered by the California Kiwifruit Commission (commission). The Federal and State programs are both administered by the same staff.

The committee staff calculates assessments from the Monthly Shipment Report for all inspected kiwifruit and bills handlers for committee and commission assessments. The billing period runs from the first to the last day of the month for all handlers. Invoices are typically prepared and mailed at the end of the month of receipt of the Monthly Shipment Report, with payment due 60 days from date of invoice for in-line inspected kiwifruit and 45 days from date of invoice for block inspected kiwifruit.

Approximately a month before the start of the 1996–1997 season, the commission reduced its time period to specify that assessments were considered late if not received within 30 days of invoice. The committee did not recommend a change in its requirements at that time because there was not adequate time to implement such a change for the 1996–1997 crop year. Operating under two different time periods for timely payment of assessments requires the committee staff to process and mail two invoices each month and requires the handlers to review two invoices and make two payments. Thus, this final rule will reduce costs for handlers and the committee by making the procedure under both programs the same.

The committee met on April 16, 1997, and recommended reducing the time periods for timely payment of assessments owed by handlers to 30 days of invoice so that the committee's time period will be consistent with the commission's time period and further recommended that this rule be effective in September for the 1997–1998 season.

The committee also recommended including authority to revise this time period in the future, if deemed necessary and approved by the committee. The committee wants to ensure that consistent accounting and administrative procedures can be implemented simultaneously in the future. The Department believes the committee should be granted authority to increase the time period; however, a reduction in the time period should be subject to the informal rulemaking process. The committee's recommendation is modified accordingly.

This action revises § 920.112 to provide that assessments on all kiwifruit be considered delinquent if not received within 30 days of invoice, or such other later time as specified by the committee.

There is unanimous committee support to reduce the time periods specified for timely payment of assessments owed by handlers to within 30 days of invoice for both types of inspections.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of California kiwifruit subject to regulation under the marketing order and 450 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $5,000,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. One of the 60 handlers subject to regulation has annual kiwifruit sales of at least $5,000,000, and the remaining 59 handlers have sales less than $5,000,000, excluding receipts from any other sources. Ten of the 450 producers subject to regulation have annual sales of at least $500,000, and the remaining 440 producers have sales less than $500,000, excluding receipts from any other sources. Therefore, a majority of handlers and producers of California kiwifruit may be classified as small entities.

Under § 920.41(a) of the marketing order for kiwifruit grown in California, each person who first handles kiwifruit is required to pay a pro-rata share of the costs of administering the program. This cost is in the form of a uniform assessment rate applied to each handler's shipments. Section 920.41(a) also provides that if a handler does not pay an assessment within the time prescribed by the committee, the assessment may be subject to an interest or late payment charge, or both. Section 920.112 of the order's administrative rules specifies that a simple interest rate of 1.5 percent per month will be charged to assessments which are not received within 60 days of invoice for in-line inspected kiwifruit or within 45 days of invoice for block inspected kiwifruit. It further specifies that a 10 percent late charge will be assessed handlers when payment becomes 30 days late.

Pursuant to § 920.160, each shipper who ships kiwifruit shall furnish a report of shipment and inventory data to the committee not later than the fifth day of the month following such shipment. This Monthly Shipment Report is also required under the State kiwifruit program administered by the California Kiwifruit Commission. The Federal and State programs are both administered by the same staff.

The committee staff calculates assessments from the Monthly Shipment Report for all inspected kiwifruit and bills handlers for committee and commission assessments. The billing period runs from the first to the last day of the month for all handlers. Invoices are typically prepared and mailed at the end of the month of receipt of the Monthly Shipping Report, with payment due 60 days from date of invoice for in-line inspected kiwifruit and 45 days from date of invoice for block inspected kiwifruit.

Approximately a month before the start of the 1996–1997 season, the commission reduced its time period to specify that assessments will be considered late if not received within 30 days of invoice. The committee did not recommend a change in its requirements at that time because there was not adequate time to implement such a change for the 1996–1997 crop year. Two different time periods for timely payment of assessments requires the committee staff to process and mail two invoices each month and require the handlers to review two invoices and make two payments. Thus, this final rule will reduce costs for handlers and the committee by making the procedures under both programs the same.

The committee met on April 16, 1997, and recommended revising § 920.112 to provide that the time periods for timely payment of assessments owed by handlers be reduced to 30 days of invoice so that the committee's time period will be consistent with the commission's time period and further recommended that this rule be effective in September for the 1997–1998 season. The committee also recommended including authority to revise this time

period in the future, if deemed necessary. The committee wants to ensure that consistent accounting and administrative procedures can be implemented simultaneously in the future.

There is unanimous committee support to reduce the time periods specified for timely payment of assessments owed by handlers to 30 days of invoice for both types of inspections.

Currently, the time lapse between the date the fruit is shipped and the date assessments are due is between 60–90 days. Handlers normally receive payment for shipments within 30 days of shipment. Therefore, the impact of this action will not be significant as payments for shipments are normally received 30–60 days before assessments are due.

For the 1997–98 season, handlers will pay assessments of $.0225 per tray or tray equivalent and have 60 days from date of invoice for in-line inspected kiwifruit and have 45 days from date of invoice for block inspected kiwifruit to pay their assessments before their assessments are considered delinquent. If handlers pay their assessments in a timely manner, they are not charged the simple interest rate of 1.5 percent per month nor the 10 percent late charge.

Under this rule, handlers will have 30 days from the invoice date before their assessments will be considered delinquent. This 30-day reduction in the time period for handlers receiving in-line inspection and 15-day reduction in the time period for handlers receiving block inspection will have no impact on handlers who pay their assessments in a timely manner. Even for those who do not pay in a timely manner, the impact will not be significant. For example, if a handler is delinquent in paying assessments, a simple interest rate of 1.5 percent interest per month and an assessment of $.0225 per tray or tray equivalent will apply. During the peak month of March 1996, less than 1.6 million trays or tray equivalents were shipped. This equates to an approximate average of 26,667 trays for each of the 60 handlers, which when assessed at $.0225 per tray generates a $600 assessment per handler. If an account is 30 days delinquent, the handler is charged a 1.5 percent interest charge in the amount of $9.00 and a 10 percent late charge in the amount of $60.00 over the assessment. This action does not change the interest rate nor the late charge percentage, but reduces the time period specified for timely payment to 30 days. If amounts are paid in a timely manner, no additional charges are incurred. The majority of assessments owed by handlers are paid within the specified time periods.

This change will reduce the administrative and accounting burden for handlers and for the committee staff by making the committee's and the commission's time periods consistent. While no specific alternatives were suggested during the public meeting, the committee's recommendation and the rule finalized herein do provide for built-in alternatives and flexibility. Allowing the committee to further revise this time period to a later time period in the future, if deemed necessary, will ensure that consistent accounting and administrative procedures can be implemented simultaneously in the future. This rule will be applied uniformly to all handlers and was viewed by the committee as the best solution.

This action will not impose any additional reporting or recordkeeping requirements on either small or large kiwifruit handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this final rule.

In addition, the committee's meeting was widely publicized throughout the kiwifruit industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the April 16, 1997, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was issued by the Department on June 30, 1997, and published in the **Federal Register** on Monday, July 7, 1997 (62 FR 36231). Copies of the rule were mailed to all Committee members and kiwifruit handlers. The rule was also made available through the Internet by the Office of the Federal Register. No comments were received.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because this change should apply to all kiwifruit shipped during the season. Such shipments can begin as early as September. Further, handlers are aware of this rule, which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 920

Kiwifruit, Marketing agreements.

For the reasons set forth in the preamble, 7 CFR part 920 is amended as follows:

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 920 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 920.112 is revised to read as follows:

§ 920.112 Late payments.

Pursuant to § 920.41(a), interest will be charged at a 1.5 percent monthly simple interest rate. Assessments for kiwifruit shall be deemed late if not received within 30 days of invoice, or such other later time period as specified by the committee. A 10 percent late charge will be assessed when payment becomes 30 days late. Interest and late payment charges shall be applied only to the overdue assessment.

Dated: August 21, 1997.

Robert C. Keeney,

Director, Fruit and Vegetable Division.

[FR Doc. 97–22710 Filed 8–26–97; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0958]

Bank Holding Companies and Change in Bank Control (Regulation Y); Amendments to Restrictions in the Board's Section 20 Orders

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final Conditions to Board Orders.

SUMMARY: The Board is modifying the prudential limitations established in its decisions under the Bank Holding Company Act and section 20 of the Glass-Steagall Act permitting a nonbank subsidiary of a bank holding company to underwrite and deal in securities. The Board is eliminating those restrictions that have proven to be unduly burdensome or unnecessary in light of other laws or regulations, and

consolidating the remaining restrictions in a series of eight operating standards. The Board has concluded that the narrower set of restrictions will be fully consistent with safety and soundness and should improve operating efficiencies at section 20 subsidiaries and increase options for their customers.

EFFECTIVE DATE: October 27, 1997.

FOR FURTHER INFORMATION CONTACT: Gregory Baer, Managing Senior Counsel (202) 452–3236, Thomas Corsi, Senior Attorney (202) 452–3275, Legal Division; Michael J. Schoenfeld, Senior Supervisory Financial Analyst (202) 452–2781, Division of Banking Supervision and Regulation; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Diane Jenkins (202) 452–3544.

SUPPLEMENTARY INFORMATION:

I. Background

Section 20 of the Glass-Steagall Act prohibits a member bank of the Federal Reserve System from being affiliated with a company that is ''engaged principally'' in underwriting and dealing in securities not eligible for underwriting and dealing by a member bank.[1] Beginning in 1987, the Board has issued a series of orders authorizing bank holding companies to establish ''section 20 subsidiaries'' to engage in underwriting and dealing within the limits of the Act.[2]

In those orders, the Board has established a series of prudential restrictions as conditions for approval under the Bank Holding Company Act. Most of the firewalls were adopted in the Board's initial 1987 Order authorizing bank holding companies to underwrite and deal in commercial paper, municipal revenue bonds, mortgage-backed securities, and consumer-receivable-related securities. Others were added in 1989 when the Board authorized underwriting and dealing in all types of debt and equity securities. The restrictions are designed to prevent securities underwriting and dealing risks from being passed from a section 20 subsidiary to an affiliated insured depository institution, and thus to the federal safety net, and to mitigate the potential for conflicts of interest, unfair competition, and other adverse effects that may arise from the affiliation of commercial and investment banks.

On January 8, 1997, the Board proposed to rescind many of the firewalls and consolidate the remainder in a series of operating standards to be published in the Code of Federal Regulations. The proposal was developed through the Board's comprehensive review of its regulations and written policies that was required by section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994.[3] That statute directs the Board and other banking agencies to streamline their regulations to improve efficiency, reduce unnecessary costs, and eliminate unwarranted constraints on credit availability. In the proposal, the Board stated that in its experience the risks of securities underwriting and dealing had proven to be manageable in a bank holding company framework, and that bank holding companies and banks had successfully undertaken and managed activities posing similar risks for which no firewalls were erected. The Board noted that the purposes of the firewalls are often duplicated by other statutes or regulations that are more narrowly tailored to addressing the perceived risk or conflict.

II. Summary of Comments

The Board received twenty-nine public comments on its proposal, and comments were overwhelmingly favorable. Only two commenters opposed the Board's proposed elimination of firewalls. The remaining commenters supported the Board's proposal, though almost all of those commenters urged the Board to go further to rescind all or at least more of the firewalls.

The comments generally expressed support for the proposal in a summary fashion, reserving specific comment for the four firewalls on which the Board sought comment and two others that proved controversial. Those comments are discussed below in the context of each relevant firewall.

One trade association representing community banks expressed concerns about the proposal.[4] The commenter stated that the Board may be acting too quickly in eliminating some of the firewalls and urged a careful approach. The commenter urged the Board to retain the requirement that a bank holding company deduct from its regulatory capital any investment in a section 20 subsidiary, arguing that elimination would allow a bank holding company to lodge all of its capital (other than bank capital) at its section 20 subsidiary, which would mean that no capital would be available at the holding company level if the holding company were called upon to serve as a source of strength to its insured depository institution subsidiaries. The commenter also urged the Board to maintain capital requirements for a section 20 subsidiary that mirror the net capital rule of the Securities and Exchange Commission (SEC), as the SEC could revise or eliminate its regulation.

The same commenter urged the Board to retain restrictions on a bank extending credit to customers of a section 20 affiliate or offering credit enhancements for securities underwritten by the section 20 affiliate. The commenter urged the Board to delay final action on the proposal because one bill pending in Congress would continue to impose such restrictions. The commenter also expressed concern that conflicts of interest would be present when a bank lent to customers of a section 20 affiliate, and that customers needed the firewall for protection.[5]

III. Final Notice

The Board is adopting the proposed operating standards, and the corresponding rescission of the existing firewalls, substantially as proposed. Based on its experience supervising section 20 subsidiaries and the comments received on the proposal, the Board has concluded that the great majority of risks of affiliation of commercial and investment banks are addressed by general bank and bank holding company regulations, and by the securities laws and regulations of the SEC, National Association of Securities Dealers (NASD) and securities exchanges that apply to a section 20 subsidiary just like any other broker-dealer. However, in certain areas—for example, the potential for a customer to confuse the financial products of a commercial and investment bank—the Board has determined that there are unique risks of affiliation not addressed by other

[1] 12 U.S.C. 377.

[2] See, *e.g., J.P. Morgan & Co. Inc., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.*, 75 Federal Reserve Bulletin 192 (1989) (hereafter, *1989 Order*); *Citicorp, J.P. Morgan & Co., and Bankers Trust New York Corp.*, 73 Federal Reserve Bulletin 473 (1987) (hereafter, *1987 Order*); *see also Canadian Imperial Bank of Commerce, The Royal Bank of Canada, Barclays PLC and Barclays Bank PLC*, 76 Federal Reserve Bulletin 158 (1990) (applying earlier orders to section 20 subsidiaries of foreign banks) (hereafter, 1990 Order).

[3] 12 U.S.C. 4803.

[4] The other adverse commenter did not address the proposal but generally opposed the affiliation of commercial and investment banking.

[5] The commenter noted that five other restrictions were being rescinded because they were largely duplicated by sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) or other statutes. The commenter stressed that it supported elimination so long as eliminating the firewalls did not change the substance of how transactions could occur.

laws. The operating standards being adopted by the Board address those risks.

Compliance with the operating standards will be a condition of the continued operation of any existing section 20 subsidiary and, unless modified in the authorizing order, a condition of the operation of any section 20 subsidiary approved in the future. For purposes of existing section 20 subsidiaries, the operating standards replace the Board's existing section 20 firewalls.[6]

Set forth below are: (1) A summary of each of the firewalls established in the Board's orders;[7] (2) the Board's proposal with respect to the firewall; and (3) the Board's final action and the reasons for that action, including a discussion of any comments received. Each of the proposed operating standards is discussed in the context of the firewall from the 1989 Order on which it is based:

Operating standard	Firewall
1. Capital requirement for bank holding company and section 20 subsidiary.	1, 3 and 4.
2. Internal controls	11.
3. Interlocks restriction	13.
4. Customer disclosure	14.
5. Credit for clearing purposes	21(a) & (b).
6. Funding of securities purchases from a section 20 affiliate.	6.
7. Reporting requirement	24.
8. Application of sections 23A and 23B to foreign banks.	21(a).

Those wishing a more detailed description of the firewalls should refer to the request for comment on the Board's proposal, where each of the firewalls was set forth verbatim.[8]

[6] The only exception is Firewall #1 of the Board's 1987 Order, which set forth the types of securities to which companies operating under that order must limit their underwriting and dealing. 1987 Order at 502–03. That restriction will continue to apply.

[7] Footnotes to the orders are omitted. Description of the firewalls conforms to the 1989 Order. The Board's request for comment describes the differences among the firewalls in the 1989 Order (allowing debt and equity underwriting), the 1987 Order (allowing underwriting and dealing in only four types of debt securities), and the 1990 Order (applicable to foreign banks).

[8] 62 FR 2622 (Jan. 17, 1997). As with the earlier notice, references to banks include thrifts. In addition, to the extent that the operating standards apply to banks and thrifts, they also apply to the U.S. branches and agencies of foreign banks.

IV. Analysis of Each Firewall

A. Capital Adequacy Conditions

Firewall 1(a) (Deduction of Investment in Subsidiary From Bank Holding Company Capital)

Firewall 1(b) (Deduction of Extensions of Credit From Bank Holding Company Capital)

Existing firewalls. Requires a bank holding company to maintain adequate capital after deducting (1) any investment in a section 20 subsidiary that is treated as capital in the subsidiary (Firewall 1(a)), and (2) any credit that it or a nonbank subsidiary extends to a section 20 subsidiary, unless the credit is fully secured by U.S. Treasury securities or other marketable securities and is collateralized in the same manner and to the same extent as would be required under section 23A(c) of the Federal Reserve Act (Firewall 1(b)).

Proposal. The Board proposed to rescind the capital deduction required by this firewall, but retain the requirement that a bank holding company maintain adequate capital on a fully consolidated basis as a condition for operating a section 20 subsidiary.

Final action. The Board is retaining the requirement that any bank holding company operating a section 20 subsidiary be adequately capitalized. Although bank holding companies are also subject to the Board's risk-based capital guidelines, Operating Standard #1 will condition the operation of a section 20 subsidiary on a bank holding company's maintaining adequate capital.

The Board is eliminating the required capital deductions. The capital deductions (and resulting deconsolidation for regulatory capital purposes) are inconsistent with generally accepted accounting principles (GAAP) and have therefore created confusion and imposed costs by requiring bank holding companies to prepare financial statements on two bases.

However, as one commenter noted, elimination of the capital deductions would allow a bank holding company to lodge its capital (other than bank capital) at the section 20 subsidiary, leaving less capital available at the holding company level if the holding company were called upon to serve as a source of strength to its insured depository institution subsidiaries.[9] Reflecting this concern, the Board in its section 20 orders has consistently required bank holding companies to maintain their ability to serve as a source of strength to their subsidiary banks, and has satisfied itself that the subsidiary banks of applicants, and any foreign bank applicants, were strongly capitalized before granting approval. Moreover, with the elimination of many of the firewalls, particularly the funding and credit enhancement firewalls, a bank's potential exposure to its section 20 affiliate will increase, thereby increasing the importance of maintaining strong bank capital levels.

As a protection for the bank, the Board proposed to retain the discretion to restrict funding and credit enhancements by a bank in the event the bank failed to qualify as well capitalized, as defined in section 38 of the Federal Deposit Insurance Act.[10] Thus, if a bank's capital ratios fell to the adequately capitalized level (where prompt corrective action did not yet engage), and the drop in capital ratios were attributable to poor credit decisions relating to its section 20 affiliate, the Board could act immediately to limit the damage.[11] The Board is adopting this proposal but also conditioning its approval of relief from the existing firewalls on a requirement that a bank holding company maintain the capital of its subsidiary banks at the well-capitalized level. Thus, in the event that a subsidiary bank fell below the well-capitalized level and the bank holding company failed to recapitalize it, the Board could order the bank holding company to divest its section 20 subsidiary. The Board would expect to do so only if the subsidiary were causing harm to the bank (and other steps such as restricting bank funding of the section 20 affiliate were ineffective), or if the divestiture of the section 20 affiliate was the only available source of funds within the organization to recapitalize the bank. The Board notes that Glass-Steagall reform legislation pending in the Congress also requires a bank holding company to maintain its subsidiary banks at the well-capitalized level as a condition of conducting securities activities.

In applying this condition to foreign banks, the Board has decided that a foreign bank should maintain capital at a level that is comparable to that of a

[9] 12 CFR 225.4(a)(1).

[10] 12 U.S.C. 1831o.

[11] Two commenters opposed this change because it could lead to a substantial disruption of the business of a section 20 subsidiary when affiliated banks experience capital difficulty. However, the Board would expect to reimpose these restrictions only if they addressed problems in the organization or diminished resulting risks to its insured depository institutions.

U.S. banking organization, for which different capital requirements apply to the bank and the bank holding company. As noted in the 1990 Order, foreign banks operate in the United States as both banks and bank holding companies, and the capital requirement for a foreign bank should take account of this fact. As noted above, in acting on applications by foreign banks to establish section 20 subsidiaries, the Board relied on the fact that each foreign bank was capitalized at levels well above the applicable minimums. Consequently, and in the interests of national treatment, the Board has decided that foreign banks should maintain a strong capital position, above the minimum levels of the Basle Capital Accord. The Board believes that this standard will provide substantial equivalence in the maintenance of capital by both domestic and foreign banking organizations that operate section 20 subsidiaries.

Firewall 2 (Prior Approval Requirement for Investments in Subsidiary)

This firewall was repealed by the Board at the time it published its request for comment. The firewall had required Board approval for any bank holding company investments in a section 20 subsidiary subsequent to its formation.

Firewall 3 (Requirement of Capital Plan)

Existing firewall. Requires that, before establishing a section 20 subsidiary, a bank holding company submit to the Board a plan to raise additional capital or demonstrate that it is strongly capitalized and will remain so after making authorized capital adjustments.

Proposal. The Board proposed to rescind this firewall, which was applied in the *1989 Order* granting authority to engage in underwriting and dealing in all types of debt and equity securities, but not in the 1987 Order.

Final action. The Board is retaining this firewall in modified form. The Board analyzes the capital adequacy, financial condition, and business plan of each applicant before approving its application to engage in underwriting and dealing pursuant to section 20. The Board expects that any bank holding company filing a notice with the Board to acquire and/or operate a section 20 subsidiary should have a strong capital position. Therefore, the Board has concluded that an operating standard setting forth the contents of a capital plan is unnecessary. The firewall also provides, however, that applicants seeking authority to engage in underwriting and dealing in all types of debt and equity securities shall also remain strongly capitalized, and the Board has not permitted applicants to commence underwriting and dealing in all types of debt and equity securities until they have demonstrated that they can meet this standard. Accordingly, the Board is retaining this requirement in Operating Standard # 1. Consistent with the discussion above, the Board will require that the bank holding company be strongly capitalized on a fully consolidated basis, and thus will not deduct from its capital the bank holding company's investment in, or extensions of credit to, its section 20 subsidiary.

Firewall 4 (Capital Adequacy Requirement)

Existing firewall. Requires a section 20 subsidiary to maintain capital adequate to support its activities and cover reasonably expected expenses and losses in accordance with industry norms.

Proposal. The Board sought comment on whether to retain this firewall.

Final action. The Board is rescinding this firewall, but modifying the operating standards to require the section 20 subsidiary to notify the Board as well as the SEC of any failure to maintain capital above ''early warning'' levels contained in SEC capital rules.

The purpose of this capital requirement was to prevent a section 20 subsidiary from operating below industry capital standards by trading on the reputation and resources of its affiliated bank, thereby gaining a competitive advantage over other broker-dealers. The Board has concluded, however, that the firewall is not an effective tool for addressing this concern, primarily because there is no defined ''industry norm.''

Although the SEC imposes ''haircut'' and capital requirements on all broker-dealers (including section 20 subsidiaries), these minimum capital levels cannot be considered ''industry norms.'' Because broker-dealers that fail to meet SEC minimum capital requirements are liquidated, and broker-dealers that fall below somewhat higher ''early warning'' levels are required to notify the SEC, broker-dealers ordinarily do not operate near these minimums. One commenter also explained that significant underwriters must maintain capital greatly in excess of SEC minimums so that they can draw down on their excess capital when a significant underwriting arises.

Commenters also stated that any attempt to determine the ''average'' capital actually held by the industry (as opposed to the minimum capital required by the SEC) and specify it as the industry norm would be unwise. Capital varies significantly depending on the activities and risk profile of the individual firm. Furthermore, commenters noted that whereas SEC capital requirements allow all capital to be concentrated in the broker-dealer and dedicated to meeting capital requirements, a bank holding company must meet capital requirements at the bank and holding company levels as well.

Finally, the Board already measures bank holding company capital on a consolidated basis, including the capital and assets of the section 20 subsidiary. Therefore, even in the absence of a special capital requirement for section 20 subsidiaries, their ability to leverage themselves will be constrained.

The Board has decided to require a section 20 subsidiary to notify the Board as well as the SEC of any failure to maintain capital above ''early warning'' levels contained in SEC capital rules.[12] If a section 20 subsidiary is required to file a warning notice advising the SEC that the section 20 subsidiary is experiencing financial distress, a copy of the notice will be required to be filed concurrently with the relevant Federal Reserve Bank. The Board would then have the authority to take appropriate action to maintain safety and soundness.

B. Credit Extensions to Customers of the Underwriting Subsidiary

Firewall 5 (Restriction on Credit Enhancement)

Existing firewall. Prohibits a section 20 affiliate from extending credit or issuing or entering into a stand-by letter of credit, asset purchase agreement, indemnity, guarantee, insurance or other facility that might be viewed as enhancing the creditworthiness or marketability of a bank-ineligible securities issue underwritten or distributed by the underwriting subsidiary.[13]

Proposal. The Board proposed to rescind this firewall.

Final action. The Board is rescinding this firewall because other protections adequately serve its purposes, and its burden on section 20 subsidiaries and their customers therefore is not warranted. Commenters stressed that by prohibiting banks from providing routine credit enhancements in tandem with a section 20 affiliate, the firewall hampers the ability of bank holding companies to serve as full-service

[12] See 17 CFR 240.17a–11.

[13] A bank-ineligible security is one that a member bank is prohibited from underwriting or dealing in by section 16 of the Glass-Steagall Act. 12 U.S.C. 24(Seventh); 12 U.S.C. 335.

financial services providers and reduces options for their customers. For example, existing corporate customers of a bank may wish to issue commercial paper or issue debt in some other form. Although the bank may refer the customer to its section 20 affiliate, the bank is prohibited from providing credit enhancements even though it is the institution best suited to perform a credit analysis—and, with smaller customers, perhaps the only institution willing to perform a credit analysis. The bank is precluded from providing a credit enhancement even if it reached an independent credit decision prior to referring the customer to its section 20 affiliate.

Moreover, significant safety and soundness protections will remain in the absence of the firewall. First, a bank will be required to hold capital against all credit enhancements extended to customers of its section 20 affiliate—something that was not the case at the time the firewall was adopted. Second, the amount of credit that a bank may extend to an issuer of securities underwritten by an affiliated section 20 will be limited by loan-to-one borrower rules.[14] Third, section 23B of the Federal Reserve Act will require that all credit enhancements of securities being underwritten by a section 20 affiliate be on market terms—that is, the same terms that would be offered to a third party of equal creditworthiness.[15] Thus, for example, a bank could not offer such credit enhancements at less than market terms, or to customers who were poor credit risks, in order to generate underwriting business for a section 20 affiliate. Similarly, section 106 of the Bank Holding Company Act Amendments of 1970 would prohibit a bank from offering discounted credit enhancements on the condition that an issuer obtain investment banking services from a section 20 affiliate.[16]

Finally, Operating Standard #2, discussed below, will require that the bank conduct an independent and thorough credit evaluation before offering any credit enhancement in tandem with a section 20 affiliate, and maintain documentation of that evaluation sufficient to allow examiners to assess compliance with its credit policies.

Firewall 6 (Restriction on Funding Purchases of Securities)

Existing firewall. This firewall prohibits a bank holding company or its subsidiary from knowingly extending credit to a customer to fund the purchase of a bank-ineligible security that is being underwritten by a section 20 subsidiary during the period of the underwriting or for 30 days thereafter, or to purchase from the underwriting subsidiary any bank-ineligible security in which the underwriting subsidiary makes a market. The limitation does not include lending to a broker-dealer for the purchase of securities where an affiliated bank is the clearing bank for such broker-dealer.

Proposal. The Board sought comment on whether existing protections were sufficient to address the primary concern of Firewall 6: the possibility that a bank would extend credit below market rates in order to induce customers to purchase securities underwritten by its section 20 affiliate or to facilitate its market making activities. The primary risks of such action are threefold: that such extensions of credit may not be repaid, thereby harming the bank; that customers will be induced by easy credit into purchasing risky securities, thereby harming the customer; and that a section 20 affiliate could reap a competitive advantage over competitors that do not have a federally subsidized affiliate to provide credit to their customers.

Final action. The Board is retaining this firewall as Operating Standard #6 with respect to any extension of credit during the underwriting period or for 30 days thereafter, subject to an exception for preexisting lines of credit.[17] The Board is removing the restriction on lending for purchases of securities in which a section 20 affiliate makes a market.

Commenters supported elimination of the firewall. Commenters stressed that it would make little sense for a bank to expose itself to the losses associated with unsound loans so that its section 20 affiliate could earn a fraction of those potential losses on the sale of securities. One commenter explained that a bank may have a pre-existing line of credit for a customer for the purchase of securities on margin. Such a line would have been entered into based on the customer's creditworthiness and the value of the security, not the identity of the underwriter of any potential securities purchases, and could also be subject to the margin requirements imposed by the Board's Regulation U. Commenters also stressed that a section 20 subsidiary, as a registered broker-dealer, is responsible under NASD, NYSE, and SEC ''know your customer'' and suitability rules for ensuring that the securities purchased by a customer are suitable investments for that particular customer.[18]

Commenters noted that section 11(d) of the Securities Exchange Act of 1934 addresses some of the same concerns as Firewall 6. Section 11(d) prohibits a broker-dealer (including a section 20 subsidiary) that is acting as an underwriter from extending or arranging for credit to customers purchasing the newly issued securities during the underwriting period and for 30 days after the underwriting period. Thus, a section 20 subsidiary acting as underwriter would be prohibited from arranging for an affiliated bank to make loans to customers for purchases during an underwriting period.

Commenters also noted that section 23B of the Federal Reserve Act would apply to loans to fund purchases by customers of securities from a section 20 affiliate during the existence of the underwriting or selling syndicate, and to any loan to purchase a security from the inventory of the section 20 affiliate, including securities in which the section 20 affiliate makes a market.[19] Section 23B would require the loan to be on market terms.

The Board has concluded, however, that these protections do not address all the concerns behind the firewall. Section 11(d) does not apply to a bank loan unless the loan is arranged by an affiliated broker-dealer, and although section 23B requires the loan to be on market terms, the Board has some concern that during an underwriting period, when the market value of the securities is uncertain, section 23B may not be an adequate protection. In sum, the Board has concluded that existing law is not a complete protection against the conflicts of interest that arise when a bank lends during the underwriting period or for 30 days thereafter.

However, the Board will revise the restriction to allow an extension of credit to be made pursuant to a preexisting line of credit, provided that (1) the line of credit was not entered into in contemplation of the purchase of

[14] 12 U.S.C. 84; 12 CFR 32.2.

[15] 12 U.S.C. 371c–1(a)(2)(E)(ii).

[16] 12 U.S.C. 1972(1).

[17] This operating standard does not apply when a section 20 subsidiary is acting only as a selling group member. Although a selling group member may be engaged in the public sale or distribution of securities for purposes of the Glass-Steagall Act, a selling group member is not considered an underwriter.

[18] Rule 2110 of the NASD's Conduct Rules (Standards of Commercial Honor and Principles of Trade); Rule 2310 of the NASD's Conduct Rules (Recommendations to Customers (suitability)); NYSE Rule 405 (''know your customer''); SEC Rule 15g–9 (sales practice rules for certain low-price securities).

[19] Section 23B applies to ''any transaction or series of transactions with a third party * * * if an affiliate is a participant in such transaction or series of transactions.'' 12 U.S.C. 371c–1(a)(2)(E).

affiliate-underwritten securities,[20] and (2) either the line of credit is unrestricted or the extension of credit is clearly consistent with any restrictions imposed. (For example, if a customer had a preexisting line of credit limited to purchases of rated securities, then the bank would continue to be prohibited from lending to purchase unrated securities underwritten by an affiliate.)

The Board has concluded that these transactions do not present the same risks as other loans made during an underwriting. Such lines of credit are routinely used by institutional and other sophisticated customers, and are based on the customer's overall creditworthiness as well as margin required for any purchase; although any security purchased using the line of credit is taken as collateral, there are other assurances of repayment. In such cases, the customer is not being induced by an offer of bank credit to purchase an affiliate-underwritten security, as the customer is free to use the line of credit to purchase other securities of the same type. Finally, for purposes of section 23B, the pricing of the line of credit can be compared to other, similar lines that are not used to purchase affiliate-underwritten securities.

The Board has also concluded that the potential conflicts of interest associated with extending securities credit are lessened, and the protections more effective, when the section 20 affiliate is making a secondary market in the securities. First, the section 20 affiliate's potential exposure as market maker should be substantially less and more manageable than its exposure as underwriter. Second, especially because there is generally more than one firm making a market in a given security, compliance with the market terms requirement of section 23B should be easier to determine than in the underwriting context, where there may be no secondary market. Third, because section 11(d) does not apply to loans for the purpose of purchasing securities in which a broker-dealer makes a market, broker-dealers (including section 20 subsidiaries) are already permitted to lend in this context, and lending by banks does not appear to present any greater conflict of interest that would justify excluding them from this credit market. Fourth, as described more fully below, existing ''Chinese Wall'' procedures should help to ensure that a bank lending officer is unaware of the section 20 affiliate's market making role.

The Board recognizes that section 23A of the Federal Reserve Act would apply to both types of transactions being exempted from the firewall to the extent that the proceeds of the transaction would be ''used for the benefit of, or transferred to'' the affiliate.[21] Section 23A limits transactions with any one affiliate to 10 percent of the bank's capital, and transactions with all affiliates to 20 percent of capital, and also requires that collateral be pledged to a bank for any extension of credit. As several commenters noted, application of section 23A could not only restrict the amount of such credit but raise interpretive and compliance questions concerning how a bank should monitor compliance with the statute. However, for the same reasons that the Board has decided to exempt these transactions from the firewall, the Board is considering whether an exemption from section 23A may also be appropriate. The Board expects to seek comment on this and other issues arising under sections 23A and 23B in the near future.

Firewall 7 (Restriction on Extensions of Credit for Repayment of Underwritten Securities)

Existing firewall. Prohibits a bank holding company or any of its subsidiaries from extending credit to an issuer of bank-ineligible securities previously underwritten by a section 20 affiliate for the purpose of the payment of principal, interest or dividends on such securities.

Proposal. The Board proposed to rescind this firewall.

Final action. The Board is rescinding this firewall. The Board stated in 1987 that it was adopting this firewall in order to prevent a bank from making unwise loans to improve the financial condition of companies whose securities were underwritten by the section 20 affiliate, either to assist in the marketing of the securities or to prevent the customers of the section 20 affiliate from incurring losses on securities sold by the subsidiary. However, this conflict of interest is more attenuated than those present when credit is extended during the underwriting period, as the financial and reputational risks to the section 20 affiliate are lessened once the underwriting is successfully completed.

The firewall also has proven burdensome and has had unintended effects. For example, banks face compliance problems renewing a company's revolving line of credit if a section 20 subsidiary has underwritten an offering by that company since the credit was first extended; the bank must either recruit other lenders to participate in the renewal or amend the line of credit in order to specify its purpose.

Finally, in the absence of this firewall, section 23B of the Federal Reserve Act will require that extensions of credit for the purpose of payment of principal, interest or dividends be made on market terms if the section 20 affiliate is a participant in the transaction.[22]

Firewall 8 (Procedures for Extensions of Credit)

Existing firewall. Requires a bank holding company to adopt procedures, including maintenance of necessary documentary records, to ensure that any extension of credit by it or any of its subsidiaries to issuers of bank-ineligible securities underwritten or dealt in by a section 20 subsidiary are on an arm's-length basis for purposes other than payment of principal, interest, or dividends on the issuer's bank-ineligible securities being underwritten or dealt in by the underwriting subsidiary.

Proposal. The Board proposed to rescind this firewall.

Final action. The Board is rescinding this firewall as superfluous. Section 23B, enacted since this firewall was initially adopted, requires extensions of credit by a bank in conjunction with an issuance of securities underwritten by a section 20 affiliate to be on market terms. Although the firewall also includes extensions of credit by *nonbank* subsidiaries, those extensions of credit do not directly implicate the federal safety net. In amending section 23A in 1982 and adopting section 23B in 1987, Congress chose not to apply them to the parent bank holding company or any other nonbank lender, and the Board sees no reason to reverse that judgment in this context.

Firewall 9 (Restriction on Thrifts)

Existing firewall. Requires thrifts to observe the limitations of sections 23A and 23B of the Federal Reserve Act in any dealings with a section 20 affiliate.

Proposal. The Board proposed to rescind this provision.

Final action. The Board is rescinding this firewall as superfluous, given that the Home Owners' Loan Act has since been amended to apply sections 23A and 23B of the Federal Reserve Act to a thrift as if it were a member bank.[23]

[20] In determining whether the line of credit is truly preexisting, examiners will consider the timing of the line of credit and the underwriting, the conditions imposed on the line of credit, and whether the line of credit has been used for purposes other than the purchase of affiliate-underwritten securities.

[21] 12 U.S.C. 371c(a)(2).

[22] 12 U.S.C. 371c–1(a)(3).

[23] 12 U.S.C. 1468(a)(1).

Firewall 10 (Restriction on Industrial Revenue Bonds)

Existing firewall. Applies the requirements relating to credit extensions to issuers noted in paragraphs 5–9 above to extensions of credit to parties that are major users of projects that are financed by industrial revenue bonds.

Proposal. As the Board proposed to rescind the incorporated restrictions, the Board proposed to rescind this restriction as well.

Final action. As the Board is rescinding all of the incorporated restrictions relating to credit extensions to issuers, the Board is rescinding this restriction as well.

Firewall 11 (Loan Documentation and Exposure Limits)

Existing firewall. Requires bank holding companies to cause their subsidiary banks to adopt policies and procedures, including appropriate limits on exposure, to govern their participation in financing transactions underwritten or arranged by a section 20 affiliate. They shall also ensure that loan documentation is available for review by the Reserve Banks to ensure that an independent and thorough credit evaluation has been undertaken in connection with bank or thrift participation in such financing packages and that such lending complies with the firewalls and section 23B of the Federal Reserve Act.

Proposal. The Board proposed to include this firewall in slightly amended form in its operating standards for all section 20 subsidiaries.

Final action. The Board is retaining this restriction as part of Operating Standard 2. The Board will thereby be imposing this restriction for the first time on section 20 subsidiaries operating under the *1987 Order.*

Several commenters objected to retention of this requirement as redundant in view of the current federal banking agency examination standards for risk management. These commenters noted that this restriction was initially adopted in the context of highly leveraged transactions, and that additional internal control restrictions are not placed on bank activities with respect to other nonbank subsidiaries. However, the Board has concluded that this operating standard remains important in light of the risks of affiliation between a section 20 subsidiary and a depository institution, particularly in view of the Board's removal of other restrictions on such affiliation.

Firewall 12 (Procedures for Limiting Exposure to One Customer)

Existing firewall. Mandates that bank holding companies establish appropriate policies, procedures, and limitations regarding exposure of the holding company on a consolidated basis to any single customer whose securities are underwritten or dealt in by the section 20 subsidiary.

Proposal. The Board sought comment on whether to include this restriction in its operating standards for section 20 subsidiaries.

Final action. The Board is rescinding this firewall. The firewall mandates consolidated exposure limits for a bank holding company with respect to any one issuer whose securities are underwritten or dealt in by a section 20 subsidiary. The Board has the authority to review bank holding company policies on exposure through the examination process and believes that an examination is adequate to ensure that a bank holding company is not exposed unduly to any single issuer. Bank holding companies have successfully operated section 20 subsidiaries under the Board's 1987 Order without being subject to this requirement. Finally, unlike the banks for whom exposure limits are required by Operating Standard #2, bank holding companies are not federally insured.

C. Limitations to Maintain Separateness of an Underwriting Affiliate's Activity

Firewall 13 (Interlocks Restriction)

Existing firewall. Prohibits directors, officers or employees of a bank from serving as a majority of the board of directors or the chief executive officer of an affiliated section 20 subsidiary, and directors, officers or employees of a section 20 subsidiary from serving as a majority of the board of directors or the chief executive officer of an affiliated bank.[24] Requires the underwriting subsidiary to have offices separate from any affiliated bank.

Proposal. The Board proposed no changes to the interlocks restrictions, which it recently amended. The Board proposed to rescind the separate office requirement.

Final action. The Board is rescinding the separate office requirement. First, in the Board's experience, maintaining separate offices for functions that do not involve retail customers—for example, back-office functions—serves no purpose and represents a needless expense. Second, for sales to retail customers, the Board intends to rely on the Interagency Statement on Retail Sales of Nondeposit Investment Products, which largely duplicates this restriction.[25] According to the Interagency Statement, sales or recommendations of non-deposit investment products on the premises of a depository institution—including sales by a section 20 affiliate—should be conducted in a physical location distinct from the area where retail deposits are taken.

Several commenters suggested elimination of or modifications to the interlocks restriction, on which the Board did not seek comment. The Board continues to view the interlocks restriction as helping to ensure the corporate separateness of a bank and a section 20 affiliate, and thereby as helping to prevent a piercing of the bank's corporate veil by creditors of the section 20 affiliate.

D. Disclosure by the Underwriting Subsidiary

Firewall 14 (Customer Disclosures)

Existing firewall. Requires a section 20 affiliate to provide each of its customers with a special disclosure statement describing the difference between itself and its bank affiliates, pointing out that an affiliated bank could be a lender to an issuer, and referring the customer to the disclosure documents for details. The statement must also state that securities sold, offered, or recommended by the underwriting subsidiary are not deposits, are not insured by the Federal Deposit Insurance Corporation, are not guaranteed by an affiliated bank or thrift, and are not otherwise an obligation or responsibility of such a bank or thrift (unless such is the case). The section 20 affiliate should also disclose any material lending relationship between the issuer and a bank or lending affiliate of the section 20 affiliate as required under the securities laws and in every case where the proceeds of the issue will be used to repay outstanding indebtedness to affiliates.

Proposal. The Board proposed to amend this firewall to follow the Interagency Statement on Retail Sales of Nondeposit Investment Products that applies to sales by bank employees or on bank premises.

Final action. The Board has decided to adopt this operating standard as proposed. A section 20 subsidiary will be required to provide each of its retail

[24] As the Board noted in a recent order, this limitation does not apply to interlocks between a section 20 subsidiary and a subsidiary of an affiliated bank. *See Bankers Trust New York,* 83 Federal Reserve Bulletin ____ (July 21, 1997).

[25] Federal Reserve Regulatory Service 3–1579.51.

customers the same disclosures that the Interagency Statement mandates for retail customers of banks, even when it is operating off bank premises.[26] The disclosures of the Interagency Statement are only slightly different from those required by the existing firewall, however, and the amendment will allow the same form to be used for both. The operating standard is narrower than the firewall it replaces because it no longer requires disclosures to institutional customers (who should be aware of whether a product is federally insured or bank guaranteed) but broader than the existing firewall because it requires an acknowledgment of the disclosure by retail customers.

While commenters favored limiting customer disclosure requirements to retail customers, they objected to extending the reach of the Interagency Statement to activities conducted off bank premises, and thereby to requiring retail customers to sign and return an acknowledgment in those circumstances. Commenters contended that requiring the disclosures to be made off bank premises does not further the purpose of the requirement, which is to prevent customer confusion regarding whether products offered by a section 20 subsidiary are federally insured or guaranteed by an affiliated bank. One commenter noted that the NASD has sought SEC approval of a new rule that is designed to require disclosures consistent with those required by the Interagency Statement.[27]

The Board continues to believe that it is appropriate for a section 20 subsidiary to provide the disclosures required by the Interagency Statement to all of its retail customers. As set forth in the Interagency Statement, customer acknowledgment of these disclosures will be required only at the time that a customer opens an account with the section 20 subsidiary, and therefore should not be unduly burdensome to obtain. Thus, this disclosure provides some benefit at minimal cost. The Board notes that when it rejected a suggestion that a section 20 subsidiary be required to have a different name or logo from a banking affiliate, it relied in part on the disclosures that would be given to customers.[28]

E. Marketing Activities on Behalf of an Underwriting Subsidiary

Firewall 15 (Restriction on Advertising Bank Connection)

Existing firewall. Prohibits a section 20 affiliate and any affiliated bank from engaging in advertising or entering into an agreement stating or suggesting that the bank is responsible for the section 20 affiliate's obligations.

Proposal. The Board proposed to rescind this firewall as superfluous.

Final action. This firewall is now duplicated by section 23B(c) of the Federal Reserve Act,[29] and therefore the Board is rescinding it.

Firewall 16 (Cross-Marketing and Agency Activities by Banks)

This firewall was rescinded in 1996.[30]

F. Investment Advice by Bank/Thrift Affiliates

Firewall 17 (Expressing an Opinion on Securities)

Existing firewall. Prohibits a bank from expressing an opinion on the value or the advisability of the purchase or the sale of bank-ineligible securities underwritten or dealt in by a section 20 affiliate unless the bank notifies the customer that the section 20 affiliate is underwriting, making a market, distributing or dealing in the security.

Proposal. The Board proposed to retain this restriction but sought comment on whether it should only prohibit expressing an opinion when the employee has knowledge of the affiliate's role.

Final action. The Board is retaining this restriction, with a knowledge requirement added, as Operating Standard # 4. SEC Rule 10b–10 and NASD Rule 2250 already require a *broker-dealer* to provide written disclosure to a customer that it is a market maker in a security at or before completion of a transaction in the security. These restrictions are based on the conflict of interest between the broker-dealer's duty to advise its customers and its financial interest in selling its security. The operating standard extends these restrictions to an affiliated bank because it would have a similar financial incentive to give advice that would benefit its affiliate.

Commenters argued for either elimination of the firewall or addition of a knowledge standard. Several commenters stressed that the existing firewall essentially requires routine, widespread disclosure of securities-related information throughout a bank holding company system in order to ensure that employees provide the required disclosure whenever a section 20 affiliate has a role in the transaction. This approach is fundamentally inconsistent with the ''Chinese Wall'' procedures prevalent throughout the investment banking industry, which address the same conflict-of-interest problem by narrowly restricting the flow of information to those whose possession of such information could not create a conflict of interest. One commenter also noted that the existing firewall is difficult to enforce for large, diversified bank holding companies because it requires that information on all securities ''dealt in'' by the company be disseminated to every area in the holding company system where ''an opinion on the value or the advisability'' of a securities transaction might be expressed.

The Board has concluded that these concerns can be abated, and the potential conflict of interest raised by such advice still addressed, by retaining the requirement with a knowledge standard added. Thus, when the bank employee providing the investment advice knows of a section 20 affiliate's role in an underwriting—as might be the case with a dual employee—the employee must give the required disclosure. Regardless of the employee's knowledge, the Board notes that any potential for a conflict of interest is diminished because any dual employee is generally prohibited from receiving compensation for recommending an affiliate's securities.[31]

One commenter asked the Board to clarify that an opinion on the value of a security provided by the custodial department of the bank is not covered. Rather, the operating standard should be limited to expressing an opinion on the advisability of purchasing or selling a security. The Board agrees.

Firewall 18 (Restriction on Fiduciary Purchases During Underwriting Period or From Market Maker)

Existing firewall. Prohibits a bank holding company and any of its bank, thrift, trust or investment advisory

[26] For purposes of this operating standard, a retail customer is any customer that is not an ''accredited investor'' as defined in 17 CFR 230.501(a).

[27] NASD Notice to Members 96–3, *NASD Files with the SEC Proposed Rule Governing Members Operating on Bank Premises,* (January 1996) and NASD Notice to Members 97–26, *NASD Regulation Files Amendment to Bank Broker-Dealer Rule* (May 1997).

[28] 1989 Order at 209–210.

[29] 12 U.S.C. 371c–1(c).

[30] 61 FR 57679, 57683 (1996).

[31] Any dual employee engaged in the investment banking or securities business of an NASD member must be registered as a representative with the NASD and comply with its rules. NASD Rule 1031(a), 0115(a). The NASD consistently has taken the position in published interpretations that it is improper for a member or a person associated with a member to make payments of ''finders'' or referral fees to third parties who introduce or refer prospective brokerage customers to the firm, unless the recipient is registered as a representative of an NASD member firm. Although the NASD has a limited exception for ''one-time fees,'' the exception does not include fees tied to the completion of a transaction or the opening of an account.

subsidiaries from purchasing, as a trustee or in any other fiduciary capacity, for accounts over which they have investment discretion, bank-ineligible securities (a) underwritten by a section 20 affiliate as lead underwriter or syndicate member during the period of any underwriting or selling syndicate, and for a period of 60 days after the termination thereof, and (b) from the section 20 affiliate if it makes a market in that security, unless such purchase is specifically authorized under the instrument creating the fiduciary relationship, by court order, or by the law of the jurisdiction under which the trust is administered.

Proposal. The Board proposed to rescind this firewall.

Final notice. The Board is rescinding this firewall as superfluous. Section 23B(b)(1)(B) of the Federal Reserve Act duplicates the restrictions of Firewall 18 when a bank or thrift is making the purchase.[32] Indeed, in its 1987 order first imposing this firewall, the Board noted that section 23B was pending as proposed legislation. Section 23B explicitly prohibits a bank from purchasing, as principal or fiduciary, any security for which a section 20 is a principal underwriter during the existence of the underwriting or selling syndicate, unless such a purchase has been approved by a majority of the bank's board of directors who are not officers of any bank or any affiliate. If the purchase is as fiduciary, the purchase must be permitted by the instrument creating the fiduciary relationship, court order, or state law.

Firewall 18 is broader than section 23B in that it applies for 60 days after the underwriting period. However, the Board is not aware of any evidence to justify imposing a restriction that Congress apparently decided was unnecessary in the same context, and commenters did not urge it to do so.

Firewall 18 is also broader than section 23B in that the firewall also applies when a bank holding company or its nonbank subsidiary (and not just a bank) purchases the securities as fiduciary. However, nonbank affiliates of broker-dealers outside of a bank holding company are not subject to such a firewall.

Rather, potential conflicts of interest are addressed by other statutes or regulations. If the purchase is on behalf of a pension plan, then the fiduciary is subject to the standard of care imposed by ERISA.[33] If the purchase is on behalf of a mutual fund, then sections 10 and 17 of the Investment Company Act of 1940 restrict the ability of the mutual fund to purchase securities from an affiliate of the investment advisor.[34] The Board has concluded that these protections, in addition to state laws, are sufficient in the bank holding company context as well.

G. Extensions of Credit and Purchases and Sales of Assets

Firewall 19 (Restrictions on Purchases as Principal During Underwriting Period or From Market Maker)

Existing firewall. Generally prohibits a bank holding company and any of its subsidiaries from purchasing, as principal, bank-ineligible securities that are underwritten by a section 20 subsidiary during the period of the underwriting and for 60 days after the close of the underwriting period, or purchasing from the section 20 subsidiary any bank-ineligible security in which the section 20 subsidiary makes a market.

Proposal. The Board proposed to rescind this firewall.

Final action. The Board is rescinding this firewall, which was intended to prevent a section 20 affiliate from selling unattractive issues to its affiliates. In practice, the firewall has prevented bank and nonbank subsidiaries of a bank holding company subsidiary from obtaining attractive issues underwritten or dealt in by a section 20 affiliate. Other restrictions provide sufficient protection to the bank. As noted above with respect to Firewall 18, section 23B prohibits a bank from purchasing any security for which a section 20 affiliate is a principal underwriter during the existence of the underwriting or selling syndicate, unless such a purchase has been approved by a majority of the bank's board of directors who are not officers of the bank or any affiliate. Section 23B also requires purchases to be on market terms, and section 23A will apply if the bank purchases the security as principal directly from the section 20 affiliate. The bank would also be required to hold capital against these exposures. Moreover, member banks are limited to purchasing only investment securities, generally investment grade debt where compliance with section 23B will be readily determinable.[35]

Finally, since 1989, the Board has authorized bank holding companies engaged in private placement activities to place up to 50 percent of an issue of securities with their nonbank affiliates and no supervisory concerns have arisen from this practice.[36] The SEC has recently permitted investment companies to purchase limited amounts of securities for which an affiliate is acting as a principal underwriter.[37]

Firewall 20 (Restriction on underwriting and dealing in affiliates' securities)

Existing firewall (as amended). Generally prohibits a section 20 affiliate from underwriting or dealing in any bank-ineligible securities issued by its affiliates or representing an interest in, or secured by, obligations originated or sponsored by its affiliates, unless they are (1) rated by an unaffiliated, nationally recognized statistical rating organization, or (2) issued or guaranteed by FNMA, FHLMC or GNMA (or represent interests in securities issued or guaranteed by FNMA, FHLMC, or GNMA).

Proposal. The Board proposed to rescind this firewall.

Final action. The Board is rescinding this firewall. NASD Rule 2720 already imposes substantially the same restriction. Rule 2720, to which section 20 subsidiaries are subject, provides that if a member of the NASD proposes to underwrite, participate as a member of the underwriting syndicate or selling group, or otherwise assist in the distribution of a public offering of its own or an affiliate's securities, then either (1) the securities must be rated by a qualified, independent rating agency, (2) the price or yield of the issue must be set by a qualified independent underwriter who shall also participate in the preparation of the registration statement and prospectus, offering circular, or similar document, exercising due diligence, or (3) in the case of equity securities only, there must be an independent market in the security. The Board has concluded that this protection is sufficient in the bank holding company context.

Firewall 21(a) (Prohibition on Extensions of Credit to Section 20 Subsidiary)

Existing firewall. Requires a bank holding company to ensure that no bank subsidiary extends credit in any manner

[32] 12 U.S.C. 371c–1(b)(1)(B).

[33] 29 U.S.C. 1002(21), 1104.

[34] 15 U.S.C. 80a–10, 80a–17.

[35] 12 U.S.C. 24 (Seventh), 335.

[36] *J.P. Morgan & Co.*, 76 Federal Reserve Bulletin 26, 28 (1990).

[37] *Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate*, SEC Investment Company Act Release No. 22775 (July 31, 1997). In addition to limiting the amount of such purchases, the SEC requires that the securities be purchased ''prior to the end of the first day on which any sales are made, at a price that is not more than the price paid by each other purchaser of securities in that offering or in any concurrent offering of the securities.'' This standard is akin to the market-terms requirement of section 23B of the Federal Reserve Act.

to an affiliated underwriting subsidiary or a subsidiary thereof, or issues a guarantee, acceptance, or letter of credit for the benefit of a section 20 affiliate or a subsidiary thereof.

Proposal. The Board proposed to rescind this restriction except insofar as it applies to intra-day extensions of credit for clearing purposes, requiring that such intra-day extensions of credit be: (1) on market terms consistent with section 23B of the Federal Reserve Act, and (2) fully secured, even if the bank's general policy (and section 23B) does not require the bank to be fully secured in clearing.

Final action. The Board is rescinding the blanket prohibition on funding, imposed by this firewall but retaining as Operating Standard #5 the restriction on intra-day funding in modified form. Because the operating standards apply to all section 20 subsidiaries, the Board will thereby be imposing this restriction for the first time on section 20 subsidiaries operating under the *1987 Order.*

Commenters strongly supported elimination of the funding restriction. As for the remaining restriction on intra-day credit, several commenters opposed requiring that intra-day credit be fully secured even when market practice is less stringent. One commenter stressed that such loans are intended to be intra-day transactions to finance the purchase of securities, and historically have been extremely low-risk. The commenter argued that the proposed operating standard would continue to put section 20 companies at a competitive disadvantage to dealers outside of bank holding companies. Finally, the commenter noted that although the Board has previously encouraged clearing banks to obtain collateral to secure daylight overdrafts, it has not required them to obtain collateral.

Another commenter asked the Board to clarify that any limit on intra-day credit for clearing purposes would apply only to intra-day overdrafts related to the bank's clearing of securities trades for the affiliated section 20 company, and not to daylight overdrafts in demand deposit accounts that an affiliated bank may maintain as a settlement bank for a section 20 company that is a clearing member on an exchange (whether the product being cleared is a security or a commodity.) The commenter also asked the Board to clarify that the proposed standard would not apply to intra-day overdrafts in deposit accounts maintained at an affiliated bank as a settlement bank for a section 20 company that is engaged in clearing futures, options on futures, options traded on a nationally recognized securities exchange as a futures commission merchant or as a broker-dealer. Lastly, the commenter asked the Board to clarify whether removal of the funding firewall would allow a bank lending securities to a section 20 affiliate to issue a guarantee or indemnity to protect its customers against losses in the event of the section 20 company's nonperformance.

The Board is rescinding the general prohibition on funding.[38] A bank's funding of an affiliate will continue to be limited by sections 23A and 23B of the Federal Reserve Act. Thus, a bank will be subject to the quantitative limitations of section 23A, will have to deal with the section 20 affiliate on market terms, will be prohibited from purchasing low-quality assets from the affiliate, and will be prohibited from purchasing securities underwritten by a section 20 affiliate during the existence of the underwriting or selling syndicate unless a majority of the bank's outside board of directors approves. These restrictions have been sufficient with respect to the fourteen companies operating under the 1987 Order that have not been subject to this firewall.

The Board will continue to prohibit intra-day extensions of credit for clearing or other purposes unless they are on market terms consistent with section 23B of the Federal Reserve Act. In effect, the Board is requiring that the bank apply to a section 20 affiliate the same internal exposure limits and collateral requirements for intra-day credit that it applies to third parties. The Board believes that the application of section 23B to all intra-day extensions of credit to a section 20 affiliate is appropriate to ensure that such credit is not subsidizing the activities of the section 20 affiliate to the detriment of the bank and the section 20 affiliate's competitors. However, the Board will not require that intra-day extensions of credit be fully secured when market practice does not.

Finally, the operating standard being adopted by the Board applies sections 23A and 23B of the Federal Reserve Act to U.S. branches and agencies of foreign banks for purposes of extensions of credit to a section 20 affiliate. Under the current firewall, lending to a section 20 affiliate by a U.S. branch and agency of a foreign bank is prohibited, as is lending by a U.S. bank.[39] Elimination of the firewall and adoption of this operating standard will liberalize the funding restriction for U.S. branches and agencies of foreign banks to the same extent that the restriction is liberalized for U.S. banking organizations.

Commenters sought clarification on how certain provisions of sections 23A and 23B would apply to U.S. branches and agencies of foreign banks. In applying the quantitative limitations of sections 23A and 23B, a U.S. branch or agency of a foreign bank shall refer to the capital of its foreign bank parent as calculated under its home country capital standards if the home country supervisor of the foreign bank has adopted capital standards consistent in all respects with the Capital Accord of the Basle Committee on Banking Supervision (Basle Accord). If the home country supervisor has not adopted capital standards consistent in all respects with the Basle Accord, the branch or agency shall refer to the capital of its foreign bank parent as calculated under standards applicable to U.S. banking organizations. Furthermore, in applying the provisions of section 23B that require outside director approval for certain transactions, a foreign bank may, at its option, seek approval for a transaction from a majority of the senior executive officers of the foreign bank who are both located outside the U.S. and are not officers or employees of any U.S. branch or agency of the foreign bank.

Firewall 21(b)

Existing firewall. Established an exception to Firewall 21(a) for clearing purposes.

Proposal. If Firewall 21(a) were rescinded, the Board proposed to rescind Firewall 21(b) as moot.

Final action. The Board is rescinding this firewall.

Firewall 22 (Financial Assets Restriction).

Existing firewall (as amended).[40] Prohibits a bank (or U.S. branch or agency of a foreign bank) from purchasing for its own account any financial assets of a section 20 affiliate or a subsidiary thereof, or selling from its own account such assets to the section 20 affiliate or a subsidiary thereof. The limitation does not apply to

[38] Although the funding firewall will permit a bank lending securities to issue a guarantee or indemnification in case of a section 20 affiliate's non-performance, any such transaction will be subject to sections 23A and 23B of the Federal Reserve Act.

[39] With respect to foreign banks operating under the 1990 Order, the proposal represents relief from a restriction. Although this proposal would impose new requirements on foreign banks operating under the 1987 Order, the Board specifically reserved its right to impose new restrictions should circumstances change to make such requirements appropriate. See Sanwa Bank, Ltd., 76 Federal Reserve Bulletin 568, 570 (1990).

[40] 61 FR 57679, 57683.

the purchase and sale of assets having a readily identifiable and publicly available market quotation and purchased at that market quotation (and therefore exempt from section 23A of the Federal Reserve Act), provided that those assets are not subject to a repurchase or reverse repurchase agreement.

Proposal. The Board proposed to rescind this firewall.

Final action. The Board is rescinding this firewall, which was designed to prevent a bank from using purchases and sales as a means of evading Firewall 21 and indirectly funding a section 20 affiliate. The same protections on which the Board has relied in permitting direct funding will still require that all such purchases be made on market terms, and section 23A of the Federal Reserve Act will impose quantitative limits. Section 23A also generally prohibits a bank from purchasing a low-quality asset from an affiliate.[41] Moreover, the National Bank Act limits the type of investment securities that a national bank may hold, generally to investment grade debt securities.

Elimination of this restriction will allow repurchase and reverse repurchase agreements as a funding vehicle between a section 20 subsidiary and its affiliated banks. Such agreements would have to be consistent with sections 23A and 23B, however, and market terms generally require over-collateralization with government securities. The Board notes that as a safety and soundness matter, it generally emphasizes that section 20 subsidiaries should develop diverse funding sources. Thus, a section 20 company should not rely on repurchase agreements with an affiliated bank as its sole funding source.

H. Limitations on Transfers of Information

Firewall 23 (Disclosure of Nonpublic Information)

Existing firewall. Prohibits a bank from disclosing to a section 20 affiliate or a section 20 affiliate from disclosing to an affiliated bank, any nonpublic customer information (including an evaluation of the creditworthiness of an issuer or other customer of that bank, or underwriting subsidiary) without the consent of that customer.

Proposal. The Board proposed to include this firewall as an operating standard.

Final action. The Board is rescinding this firewall and not adopting the proposed operating standard. Many commenters objected to retention of this restriction. These commenters argued that although the restriction was initially implemented to prevent a section 20 subsidiary from gaining an unfair competitive advantage through access to its affiliated bank's credit files, it now places section 20 subsidiaries at a competitive disadvantage. Investment banks not affiliated with bank holding companies increasingly have access to financial information of issuers through participation in syndicated and other commercial lending transactions, yet they may share that information with their affiliates.

These commenters also noted that the restriction is at odds with, and impracticable in light of, the Board's recent removal of the cross-marketing and dual employee restrictions, which will entail sharing of nonpublic information. Commenters also contended that existing statutory and regulatory provisions such as the Fair Credit Reporting Act and state consumer privacy statutes are adequate to protect retail customers, and that retention of the restriction would impede customer convenience. Commenters noted that the Board has recently removed restrictions on the sharing of customer information between a bank and an affiliate engaged in providing investment advice or full-service brokerage.[42] Finally, one commenter noted that many customers, particularly large institutional customers, simply assume the sharing of information will occur consistent with applicable law.

After considering these comments, the Board has decided not to adopt this operating standard, as the chances for a bank holding company to gain a competitive advantage or harm a customer through the sharing of information appear to be remote. The Board will continue to monitor this area to determine if abuses do occur.

I. Reports

Firewall 24 (Reports to Federal Reserve)

Existing firewall. Requires bank holding companies to submit quarterly to the appropriate Federal Reserve Bank copies of FOCUS reports filed with the NASD or other self-regulatory organizations, and detailed information breaking down the section 20 subsidiary's business with respect to eligible and bank-ineligible securities.

Proposal. The Board proposed to retain this requirement in modified form as one of the operating standards.

Final action. The Board is retaining this requirement as Operating Standard #7, as it wishes the filing of these reports to be a condition of section 20 approval and enforceable as such.

J. Transfer of Activities and Formation of Subsidiaries of an Underwriting Subsidiary to Engage in Underwriting and Dealing

Firewall 25 (Scope of Order)

Existing firewall. Clarifies that approval of a section 20 application extends only to the subsidiaries for which approval has been sought in the instant application. Also prohibits any corporate reorganization without prior Board approval.

Proposal. The Board proposed to rescind this firewall.

Final action. The Board is rescinding this information, as each order approving section 20 activities makes plain the scope and organizational structure of the activities approved.

K. Limitations on Reciprocal Arrangements and Discriminatory Treatment

Firewall 26 (Prohibition on Reciprocity Arrangements)

Existing firewall. Prohibits a bank holding company or any subsidiary from entering into any reciprocity arrangement. A reciprocity arrangement means any agreement, understanding, or other arrangement under which one bank holding company (or subsidiary thereof) agrees to engage in a transaction with, or on behalf of, another bank holding company (or subsidiary thereof), in exchange for the agreement of the second bank holding company (or any subsidiary thereof) to engage in a transaction with, or on behalf of, the first bank holding company (or any subsidiary thereof) for the purpose of evading the firewalls or any prohibition on transactions between, or for the benefit of, affiliates of banks established pursuant to federal banking law or regulation.

Proposal. The Board proposed to rescind this firewall.

Final action. The Board is rescinding this firewall. Anti-competitive reciprocity arrangements are prohibited by the antitrust laws, and reciprocity arrangements involving a bank are subject to a special per se prohibition in section 106 of the Bank Holding Company Act Amendments of 1970.[43] The Board will rely on the examination process to identify any evasions of the proposed operating standards.

[41] 12 U.S.C. 371c(a)(3), (b)(10).

[42] 62 FR 9336 (1997) (amending 12 CFR 225.28(b)(7)(i)).

[43] 12 U.S.C. 1972(1).

Firewall 27 (Prohibition on Discriminatory Treatment)

Existing firewall. Prohibits a bank from:

(a) Extending or denying credit or services (including clearing services), or varying the terms or conditions thereof, if the effect of such action would be to treat an unaffiliated securities firm less favorably than its section 20 affiliate; or

(b) Extending or denying credit or services or varying the terms or conditions thereof with the intent of creating a competitive advantage for a section 20 affiliate.

Proposal. The Board proposed to rescind this firewall.

Final action. The Board is rescinding this firewall. This firewall addresses a potential conflict of interest that arises when a bank is dealing with competitors of its section 20 affiliate. However, other laws adequately address or diminish the potential for conflict of interest. First, the Board notes that whereas securities firms had been restricted by section 8(a) of the Securities Exchange Act of 1934 in the types of lenders from which they could obtain loans secured by securities collateral—generally, to banks and other broker-dealers—section 8(a) was recently repealed, and such restriction thereby eliminated.[44] Thus, the possibility that a bank would be able to enforce unfavorable credit terms on a competitor of a section 20 affiliate is remote. Second, section 106 of the Bank Holding Company Act Amendments of 1970 prohibits a bank from, among other things, restricting the availability of, or offering discounts on, its products on the condition that the customer not obtain products from any competitor of the bank or its affiliates.

L. Requirement for Supervisory Review Before Commencement of Activities

Firewall 28 (Infrastructure Review)

Existing firewall. Requires a review of a bank holding company's policies and procedures—including computer, audit and accounting systems, internal risk management controls and the necessary operational and managerial infrastructure—before approval to commence corporate debt and equity underwriting and dealing activities.

Proposal. The Board proposed to require an infrastructure review in the context of each application rather than including it as an operating standard for section 20 subsidiaries.

Final action. The Board is rescinding the firewall. The Board generally will continue to conduct an inspection prior to allowing commencement of underwriting and dealing in corporate debt or equity securities pursuant to the *1989 Order.* Such inspections now frequently begin shortly after the filing of an application, and may be completed before the application is considered by the Board. Thus, the pre-commencement examination generally does not create a substantial delay beyond the application processing period. In special cases, such as an acquisition of a going concern, the inspection will occur as soon as possible after consummation.

For the foregoing reasons, the Board is (1) rescinding conditions 2–20 in its 1987 Order (and any other order incorporating those conditions), conditions 1–28 in its 1989 Order (and any other order incorporating those conditions), and conditions 1–28 in its 1990 Order (and any other order incorporating those conditions).

List of Subjects 12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR Part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for Part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, 3908, and 3909.

2. An undesignated center heading and § 225.200 would be added to read as follows:

Conditions to Orders

§ 225.200 Conditions to Board's section 20 orders.

(a) *Introduction.* Under section 20 of the Glass-Steagall Act (12 U.S.C. 377) and section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)), a nonbank subsidiary of a bank holding company may to a limited extent underwrite and deal in securities for which underwriting and dealing by a member bank is prohibited. Pursuant to the Securities Act of 1933 and the Securities Exchange Act of 1934, these so-called section 20 subsidiaries are required to register with the SEC as broker-dealers and are subject to all the financial reporting, anti-fraud and financial responsibility rules applicable to broker-dealers. In addition, transactions between insured depository institutions and their section 20 affiliates are restricted by sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1). The Board expects a section 20 subsidiary, like any other subsidiary of a bank holding company, to be operated prudently. Doing so would include observing corporate formalities (such as the maintenance of separate accounting and corporate records), and instituting appropriate risk management, including independent trading and exposure limits consistent with parent company guidelines.

(b) *Conditions.* As a condition of each order approving establishment of a section 20 subsidiary, a bank holding company shall comply with the following conditions.

(1) *Capital.* (i) A bank holding company shall maintain adequate capital on a fully consolidated basis. If operating a section 20 authorized to underwrite and deal in all types of debt and equity securities, a bank holding company shall maintain strong capital on a fully consolidated basis.

(ii) In the event that a bank or thrift affiliate of a section 20 subsidiary shall become less than well capitalized (as defined in section 38 of the Federal Deposit Insurance Act, 12 U.S.C. 1831o), and the bank holding company shall fail to restore it promptly to the well capitalized level, the Board may, in its discretion, reimpose the funding, credit extension and credit enhancement firewalls contained in its 1989 order allowing underwriting and dealing in bank-ineligible securities,[1] or order the bank holding company to divest the section 20 subsidiary.

(iii) A foreign bank that operates a branch or agency in the United States shall maintain strong capital on a fully consolidated basis at levels above the minimum levels required by the Basle Capital Accord. In the event that the Board determines that the foreign bank's capital has fallen below these levels and the foreign bank fails to restore its capital position promptly, the Board may, in its discretion, reimpose the funding, credit extension and credit enhancement firewalls contained in its 1990 order allowing foreign banks to underwrite and deal in bank-ineligible securities,[2] or order the foreign bank to divest the section 20 subsidiary.

[44] National Securities Markets Improvement Act of 1996, Pub. L. 104–290 (1996) (amending 15 U.S.C. 78h(a)(1995)) .

[1] Firewalls 5–8, 19, 21 and 22 of *J.P. Morgan & Co., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.*, 75 Federal Reserve Bulletin 192, 214–16 (1989).

[2] Firewalls 5–8, 19, 21 and 22 of *Canadian Imperial Bank of Commerce, The Royal Bank of*

(2) *Internal controls.* (i) Each bank holding company or foreign bank shall cause its subsidiary banks, thrifts, branches or agencies[3] to adopt policies and procedures, including appropriate limits on exposure, to govern their participation in transactions underwritten or arranged by a section 20 affiliate.

(ii) Each bank holding company or foreign bank shall ensure that an independent and thorough credit evaluation has been undertaken in connection with participation by a bank, thrift, or branch or agency in such transactions, and that adequate documentation of that evaluation is maintained for review by examiners of the appropriate federal banking agency and the Federal Reserve.

(3) *Interlocks restriction.* (i) Directors, officers or employees of a bank or thrift subsidiary of a bank holding company, or a bank or thrift subsidiary or branch or agency of a foreign bank, shall not serve as a majority of the board of directors or the chief executive officer of an affiliated section 20 subsidiary.

(ii) Directors, officers or employees of a section 20 subsidiary shall not serve as a majority of the board of directors or the chief executive officer of an affiliated bank or thrift subsidiary or branch or agency, except that the manager of a branch or agency may act as a director of the underwriting subsidiary.

(iii) For purposes of this standard, the manager of a branch or agency of a foreign bank generally will be considered to be the chief executive officer of the branch or agency.

(4) *Customer disclosure*—(i) *Disclosure to section 20 customers.* A section 20 subsidiary shall provide each of its retail customers[4] the same written and oral disclosures, and obtain the same customer acknowledgment, required by the Interagency Statement on Retail Sales of Nondeposit Investment Products as if it were a depository institution.

(ii) *Disclosures accompanying investment advice.* A director, officer, or employee of a bank, thrift, branch or agency may not express an opinion on the value or the advisability of the purchase or the sale of a bank-ineligible security that he or she knows is being underwritten or dealt in by a section 20 affiliate unless he or she notifies the customer of the affiliate's role.

(5) *Intra-day credit.* Any intra-day extension of credit to a section 20 subsidiary by an affiliated bank, thrift, branch or agency shall be on market terms consistent with section 23B of the Federal Reserve Act.

(6) *Restriction on funding purchases of securities during underwriting period.* No bank, thrift, branch or agency shall knowingly extend credit to a customer secured by, or for the purpose of purchasing, any bank-ineligible security that a section 20 affiliate is underwriting or has underwritten within the past 30 days, unless:

(i) The extension of credit is made pursuant to, and consistent with any conditions imposed in a preexisting line of credit that was not established in contemplation of the underwriting; or

(ii) The extension of credit is made in connection with clearing transactions for the section 20 affiliate.

(7) *Reporting requirement.* (i) Each bank holding company or foreign bank shall submit quarterly to the appropriate Federal Reserve Bank any FOCUS report filed with the NASD or other self-regulatory organizations, and any information required by the Board to monitor compliance with these operating standards and section 20 of the Glass-Steagall Act, on forms provided by the Board.

(ii) In the event that a section 20 subsidiary is required to furnish notice concerning its capitalization to the Securities and Exchange Commission pursuant to 17 CFR 240.17a–11, a copy of the notice shall be filed concurrently with the appropriate Federal Reserve Bank.

(8) *Foreign banks.* A foreign bank shall ensure that any extension of credit by its branch or agency to a section 20 affiliate, and any purchase by such branch or agency, as principal or fiduciary, of securities for which a section 20 affiliate is a principal underwriter, conforms to sections 23A and 23B of the Federal Reserve Act, and that its branches and agencies not advertise or suggest that they are responsible for the obligations of a section 20 affiliate, consistent with section 23B(c) of the Federal Reserve Act.

By order of the Board of Governors of the Federal Reserve System, August 22, 1997.

William W. Wiles,

Secretary of the Board.

[FR Doc. 97–22840 Filed 8–26–97; 8:45 am]

BILLING CODE 6210–01–P

Canada, Barclays PLC and Barclays Bank PLC, 76 Federal Reserve Bulletin 158, (1990).

[3] The terms ''branch'' and ''agency'' refer to a U.S. branch and agency of a foreign bank.

[4] For purposes of this operating standard, a retail customer is any customer that is not an ''accredited investor'' as defined in 17 CFR 230.501(a).

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 543

[No. 97–83]

RIN 1550–AB06

Incorporation, Organization, and Conversion of Federal Mutual Associations

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is issuing a final rule amending its regulations governing conversions to federal mutual savings associations. The final rule permits the direct conversion of all types of mutual depository institutions into federal mutual savings associations. This final rule simplifies the conversion process.

EFFECTIVE DATE: August 27, 1997.

FOR FURTHER INFORMATION CONTACT: David A. Permut, Counsel (Banking and Finance) Business Transactions Division (202/906–7505); Scott Ciardi, Senior Analyst, Corporate Activities Division (202/906–6960); or Kevin A. Corcoran, Assistant Chief Counsel for Business Transactions (202/906–6962), Business Transactions Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION:

I. Background

The OTS is issuing a final regulation that permits all types of mutual depository institutions to convert directly to a federal mutual savings association charter.[1] The regulation is consistent with OTS's long-standing position that depository institutions should be free to operate under whatever charter best suits their business needs, consistent with safety and soundness. The OTS previously has granted federal savings associations explicit authority to convert directly to a bank charter,[2] and has promulgated regulations enabling stock depository institutions to convert directly to a federal stock savings association charter.[3]

The OTS published a notice of proposed rulemaking regarding direct

[1] Section 2(5) of the Home Owners' Loan Act defines ''federal savings associations'' to include federal savings associations and federal savings banks. Accordingly, references herein to federal savings associations include federal savings banks.

[2] 12 CFR 552.2–7.

[3] 12 CFR 552.2–6.

conversions of mutual depository institutions to federal mutual charters in the **Federal Register** on April 2, 1997.[4] The public comment period closed on June 9, 1997. The OTS received two comments regarding the proposal, both from trade associations. Both commenters supported the proposal generally, without commenting on specific aspects of the proposed regulation. In light of the commenters' support and the OTS's continuing belief that this approach will promote efficiency and reduce regulatory burden, today's final regulation adopts the proposed regulation without changes.

II. Description of the Final Rule

Pursuant to its authority under section 5(a) of the Home Owners' Loan Act (''HOLA''), the OTS is amending §§ 543.8 and 543.9 as proposed, to permit any type of mutual depository institution to convert directly to a federal mutual savings association.[5] Previously, mutual depository institutions could convert to a federal mutual charter indirectly, by chartering a federal mutual association, and combining the other depository institution with the new federal association in a merger or purchase and assumption transaction. The final regulation eliminates unnecessary regulatory burdens associated with indirect conversions. The rule applies all existing regulatory requirements currently applicable to direct conversions by state mutual associations and savings banks to this expanded class of applicants and revises §§ 543.8 and 543.9 as described below.

Section 543.8 permits conversions of mutual depository institutions to federal mutual associations, subject to three requirements. First, the institution must, upon consummation of the conversion, have its deposits insured by the Federal Deposit Insurance Corporation (''FDIC''). See also § 543.9(c)(3).

Second, the depository institution, in accomplishing the conversion, must comply with all applicable state and federal statutes and regulations, and OTS policies, and must obtain all necessary regulatory and member approvals. This provision requires, among other things, that the converting depository institution have the authority to convert to a federal association under the statutes and regulations applicable to the converting institution and that the conversion be approved by a vote of its members pursuant to the laws applicable to the converting institution.

Third, a depository institution converting to a federal mutual association charter must conform with the investment limitations of Section 5(c) of the HOLA[6] within a time frame prescribed by the OTS. Section 552.2–6 of the OTS regulations already contains this requirement for federal stock associations.

The rule also revises Section 543.9(a) to set forth the filing requirements. Section 543.9(c) is revised to eliminate the statement that the OTS will not consider the application of a converting institution not insured by the FDIC until the FDIC completes an eligibility examination. The OTS does not believe it is necessary to delay consideration of an application until the eligibility examination has been completed. Moreover, the OTS has the ability to deem a conversion application incomplete, if processing of the application hinges on the final results of the eligibility examination, under the application processing procedures at Section 516.2.

In addition, Section 543.9(c) now explicitly provides that the OTS will consider applications to convert to a federal mutual charter under the standards set forth at section 5(e) of the HOLA, as well as Section 543.2(g). The revised regulation explicitly states that converting institutions that have been in existence as depository institutions for less than three years will be subject to all approval criteria and other requirements applicable to *de novo* federal associations.[7]

The OTS notes that applicants utilizing the provisions of the new direct conversion regulation should file their applications on OTS Form number 1582.

IV. Executive Order 12866

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

V. Regulatory Flexibility Act Analysis

Pursuant to Section 605(b) of the Regulatory Flexibility Act, the OTS certifies that this rule, which will reduce regulatory burdens, will not have a significant economic impact on a substantial number of small entities. The final regulation merely reduces regulatory burden for all institutions, including small entities that convert from a mutual charter to a federal mutual charter. Accordingly, a Regulatory Flexibility Analysis is not required.

VI. Unfunded Mandates Act of 1995

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

VII. Effective Date

The OTS finds good cause for dispensing with the 30-day delayed effective date ordinarily prescribed by the Administrative Procedure Act (5 U.S.C. 553(d)). This rule confers a benefit on any institution wishing to convert to a federal mutual charter by reducing the number of steps required for conversion.

In addition, section 302 of the Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4802(b)(1)) (CDRIA) delays the effective date of regulations promulgated by the Federal banking agencies that impose additional reporting, disclosure, or new requirements, to the first day of the first calendar quarter following publication of the final rule. OTS believes that CDRIA does not apply to this final rule because it imposes no new burden.

List of Subjects in 12 CFR Part 543

Conversions, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations, as set forth below.

[4] 62 FR 17115 (April 9, 1997).

[5] As discussed in the proposal, section 5(a) of the HOLA gives the OTS plenary authority to provide for the organization and regulation of federal savings associations, consistent with the ''best practices'' of thrift institutions in the United States and for the purpose of encouraging such institutions to provide credit for housing safely and soundly.

[6] 12 U.S.C. 1464(c).

[7] See 12 CFR 543.3, added by 62 FR 27177, May 19, 1997.

PART 543—INCORPORATION, ORGANIZATION, AND CONVERSION OF FEDERAL MUTUAL ASSOCIATIONS

1. The authority citation for part 543 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 2901 *et seq.*

2. Section 543.8 is amended by revising the heading and paragraph (a) to read as follows:

§ 543.8 Conversion of depository institutions to Federal mutual charter.

(a) With the approval of the OTS, any depository institution, as defined in § 552.13 of this chapter, that is in mutual form, may convert into a Federal mutual savings association, provided that:

(1) The depository institution, upon conversion, will have its deposits insured by the Federal Deposit Insurance Corporation;

(2) The depository institution, in accomplishing the conversion, complies with all applicable state and federal statutes and regulations, and OTS policies, and obtains all necessary regulatory and member approvals; and

(3) The resulting Federal mutual association conforms, within the time prescribed by the OTS, to the requirements of section 5(c) of the Home Owners' Loan Act.

* * * * *

3. Section 543.9 is amended by revising paragraph (a) and the introductory text of paragraph (c) to read as follows:

§ 543.9 Application for conversion to Federal mutual charter.

(a) *Filing.* Any depository institution that proposes to convert to a Federal mutual association as provided in § 543.8 shall, after approval by its board of directors, file in accordance with § 516.1 of this chapter an application on forms obtained from the OTS. The applicant shall submit any financial statements or other information the OTS may require.

* * * * *

(c) *Action on application.* The OTS will consider such application and any information submitted with the application, and may approve the application in accordance with section 5(e) of the Home Owners' Loan Act and § 543.2(g)(1). Converting depository institutions that have been in existence less than three years will be subject to all approval criteria and other requirements applicable to *de novo* Federal associations. Approval of an application and issuance by the OTS of a charter will be subject to:

* * * * *

Dated: August 19, 1997.

By the Office of Thrift Supervision.

Nicolas P. Retsinas,

Director.

[FR Doc. 97–22798 Filed 8–26–97; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–40; Amendment 39–10112; AD 97–18–02]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) Series and HA–A2V20–1B Series Propellers With Aluminum Blades

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes four existing airworthiness directives (ADs), applicable to Hartzell Propeller Inc. ( )HC–( )(2,3)(X,V)( )–( ) series propellers with aluminum blades, that currently require inspections for cracks in blade shanks and clamps. This amendment requires initial and repetitive dye penetrant and eddy current inspections of the blade and an optical comparator inspection of the blade retention area, and, if necessary, replacement with serviceable parts. In addition, this AD requires initial and repetitive visual and magnetic particle inspection of the blade clamp, dye penetrant inspection of the blade internal bearing bore, and, if necessary, replacement with serviceable parts. Also, for all HC–(1,4,5,8)(2,3)(X,V)( )–( ) steel hub propellers, this AD requires an additional initial and repetitive visual and magnetic particle inspection of the hub and, if necessary, replacement with serviceable parts. This amendment is prompted by reports of cracked blades, blade clamps, and hubs and reports of blade separations. The actions specified by this AD are intended to prevent blade separation due to cracked blades, hubs, or blade clamps, which can result in loss of control of the airplane.

DATES: Effective September 11, 1997.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 11, 1997.

Comments for inclusion in the Rules Docket must be received on or before October 27, 1997.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 96–ANE–40, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: ''9-ad-engineprop@faa.dot.gov''. Comments sent via the Internet must contain the docket number in the subject line.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634, ATTN: Product Support; telephone (937) 778–4200, fax (937) 778–4321. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7031, fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) issued airworthiness directive (AD) 68–13–02, Amendment 39–614 (33 FR 9252, June 22, 1968), applicable to Hartzell Propeller Inc. Model PHC–A3VF–4/V8433–2R and –4R propellers, to require repetitive inspections for cracks in blade shanks at intervals not to exceed 400 hours Time in Service (TIS). That action was prompted by reports of cracks in blade shanks. That condition, if not corrected, could result in loss of a blade due to blade shank cracks, which could result in loss of aircraft control.

The FAA issued AD 68–19–04, Amendment 39–868 (34 FR 18296, November 15, 1969), applicable to Hartzell Propeller Inc. Model HC–A2XF, HC–12X20, HC–82VF, BHC–A2XF, HC–13X20, HC–82VK, HC–A2XK, HC–D3X20, HC–82VL, HC–A2XL, HC–82X20, HC–83XF, HC–A3XK, HC–82XF, HC–83XK, HC–A3VK, HC–82XG, HC–83X20, HC–82XK, and HC–82KL propellers, with 8433, V8433, 8833, and V8833 blades, to require repetitive inspections for cracks in blade shanks at intervals not to exceed 1,000 hours TIS. That action was prompted by reports of cracks in blade shanks. That condition, if not corrected, could result in loss of a blade due to blade shank cracks,

which could result in loss of aircraft control.

The FAA issued AD 75–17–34, Amendment 39–2337 (40 FR 33433, August 8, 1975), applicable to Hartzell Propeller Inc. Model EHC–A3VF–2B/V7636D propellers installed on Teledyne Continental Motors Model IO–520–E series engines and on the deHavilland Heron D.H. 114 Series aircraft in accordance with STC SA1685WE, to require repetitive inspections for cracks in blade shanks and clamps at intervals not to exceed 1,000 hours TIS. That action was prompted by reports of cracks in blade shanks and clamps. That condition, if not corrected, could result in loss of a blade due to blade shank and clamp cracks, which could result in loss of aircraft control.

The FAA issued AD 77–14–07, Amendment 39–2955 (42 FR 35638, July 11, 1977), applicable to Hartzell Propeller Inc. Model EHC–A3VF–2B/V7636N propellers installed on Teledyne Continental Motors Model IO–520–E series engines and on the deHavilland Heron D.H. 114 Series aircraft in accordance with STC SA1685WE, to require repetitive inspections for cracks in certain blade clamps at intervals not to exceed 32 hours TIS, repetitive inspections for cracks in blade shanks at intervals not to exceed 400 hours TIS, and, as necessary, rework or replace blades at intervals not to exceed 1,200 hours TIS. That action was prompted by reports of cracks in blade shanks and clamps. That condition, if not corrected, could result in loss of a blade due to blade shank and clamp cracks, which could result in loss of aircraft control.

Since the issuance of those ADs, the FAA has received reports of:

(1) 37 cracked blades in the past three years, including two blade separations with one resulting in a fatal accident;

(2) 4 cracked blade clamps, including one blade separation;

(3) 5 blade separations from hub fatigue cracks (only found in HC–8( )( ) series hubs).

The investigations into these occurrences revealed fatigue cracks in the following parts/areas:

(1) blade internal bearing bore (corrosion at origin) and blade retention radius;

(2) steel hub blade clamps; and

(3) steel hub blade retention radius (only found in HC–8( )( ) series hubs).

Additionally, the FAA has determined that the HC–(1,4,5,8)(2,3)(X,V)( )–( ) Series steel hub propellers have similar loading and load paths to the failed HC–8( )( ) series propellers and may develop fatigue cracks.

The FAA has reviewed and approved the technical contents of Hartzell Propeller Inc. Service Bulletin (SB) No. HC–SB–61–217, Revision 1, dated July 11, 1997, that describes procedures for fluorescent dye penetrant and eddy current inspections of the blade and an optical comparator inspection of the blade retention area, and, if necessary, replacement with serviceable parts. In addition, this SB describes procedures for visual and magnetic particle inspection of the blade clamp, dye penetrant inspection of the blade internal bearing bore and, if necessary, replacement with serviceable parts. For all HC–(1,4,5,8)(2,3)(X,V)( )–( ) steel hub propellers, this SB describes an additional visual and magnetic particle inspection of the hub, and, if necessary, replacement with serviceable parts.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of this same type design, this AD supersedes ADs 68–13–02, 68–19–04, 75–17–34, and 77–14–07 to require initial and repetitive fluorescent dye penetrant and eddy current inspections of the blade and an optical comparator inspection of the blade retention area, and, if necessary, replacement with serviceable parts. In addition, this AD requires an initial and repetitive visual and magnetic particle inspection of the blade clamp, dye penetrant inspection of the blade internal bearing bore and, if necessary, replacement with serviceable parts. Also, for all HC–(1,4,5,8)(2,3)(X,V)( )–( ) steel hub propellers, this AD requires an additional initial and repetitive visual and magnetic particle inspection of the hub and, if necessary, replacement with serviceable parts. Finally, this AD adds a reporting requirement to obtain additional data and determine if adjustment can be made to the repetitive inspection intervals, with possible relief. The actions are required to be accomplished in accordance with the SB described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this 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 under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the 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 AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 96–ANE–40.'' The postcard will be date stamped and returned to the commenter.

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.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a ''significant regulatory action'' under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from 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 USC 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–614 (33 FR 9252, June 22, 1968), 39–868 (33 FR 12961, September 13, 1968), 39–868 (34 FR 18296, November 15, 1969), 39–2337 (40 FR 33433, August 8, 1975), and 39–2955 (42 FR 35638, July 11, 1977), and by adding a new airworthiness directive, Amendment 39–10112, to read as follows:

97–18–02 Hartzell Propeller Inc.: Amendment 39–10112. Docket 96–ANE–40. Supersedes AD 68–13–02, Amendment 39–614; AD 68–19–04, Amendment 39–868; AD 75–17–34, Amendment 39–2337; AD 77–14–07, Amendment 39–2955.

Applicability: Hartzell Propeller Inc. ()HC–()(2,3)(X,V)()–() series and HA-A2V20–1B series propellers with aluminum blades. These propellers are installed on but not limited to the following aircraft:

Manufacturer Aircraft Model
Aero Commander (Twin Commander)
500 AERO COMMANDER
500A AERO COMMANDER
500B, 500S, 500U AERO COMMANDER
520 AERO COMMANDER
560 AERO COMMANDER
560A, 560E AERO COMM.
680, 680E, 720 AERO COMM.
680F, FP, FL, FLR AERO COMMANDER
B1 (CALLAIR)
Aeromere
FALCO F.8.L
Aeronautica Macchi
AL60–F5
AM–3
Bauger
SAIL PLANE
Beech
35 SERIES BONANZA
35–C33 DEBONAIR
35–C33A, E33A, F33A
50 SERIES TWIN BONANZA
58P, 58TC BARON
95–55, 95–A55, 95–B55 BARON
65, A65, 65–(B)80, 65–A80, 70
A65–8200, 70
Bellanca
14–13
14–19
14–19–2
14–19–3
7GCA, 7GCB, 7GCC
DW–1 EAGLE
Camair
480
Cessna
170
170A
172 SKYHAWK
175
180, A, B, C, D, E, F, G, H
182, A, B, C, D, E
182F, G, H, J, K, L, M
210, A, B, C, 5, 5A
310, 310A
310B, 310C
310D, E, F, G, H, E310H
320, 320–1 SKYKNIGHT
320A, 320B
402 BUSINESSLINER
411
WREN 460
WREN 460H, J, K, L, M
deHavilland
DH104 DOVE
DH114 HERON
Dornier
DO27Q–6
DO28A–1
DO28B–1
Fuji
T–3, LM–2
GAF—Gov't. Aircraft Factories
N22B, N24A, N22S, N22C
Goodyear (Loral)
GA22A GOODYEAR BLIMP
GZ19, 19A GOODYEAR BLIMP
Great Lakes
2T–1A–2
Grumman
G44, G44A WIDGEON
G21C, D GOOSE
Helio
H–391 COURIER
H–391B COURIER
H–395A COURIER
Luscombe
11
11A
Mooney
M20
Multitech (Temco)
D16 TWIN NAVION
D16A TWIN NAVION
Nardi
FN–333
Navion
NAVION B
NAVION, NAVION A
Pacific Aerospace (Fletcher)
FU–24, FU–24A
Piaggio
P–149D
P136–L1 ROYAL GULL
P136–L2 ROYAL GULL
P149D
P166 ROYAL GULL
Pilatus
PC–3
PC–6; PC–6–H1, –H2 PORTER
Piper
PA–E23–250 AZTEC
PA14 FAMILY CRUISER
PA18(A)(S)–150 SUPER CUB
PA18A–150 SUPER CUB
PA22–150, PA22S–150
TRIPACER
PA23 SERIES APACHE
PA23–160 APACHE
PA23–235 AZTEC
PA23–250 AZTEC
PA24–250 COMANCHE
PA24–400 COMANCHE
PA24S COMANCHE
PA28 CHEROKEE
PA28–140 CHEROKEE
Prop Jets Inc.
200
200A,B,C
Republic (STOL Amphibian)
RC3 SEABEE
Scottish Aviation (BAE)
B.206 SERIES 2 BEAGLE
Stinson
L–5
108, –1, –2, –3
108–2–3
Sud Aviation (SOCATA)
GY.80–150 GARDAN
GY.80–160 GARDAN HORIZON
Swift
GC–1B
Taylorcraft
20
Texas Bullet
205
Windecker
EAGLE

Note 1: The above is not a complete list of aircraft which may contain the affected Hartzell Propeller Inc. ()HC–()(2,3)(X,V)()–() series and HA–A2V20–1B series propellers with aluminum blades because of installation approvals made by, for example, Supplemental Type Certificate or field approval under FAA Form 337 ''Major Repair and Alteration.'' It is the responsibility of the owner, operator, and person returning the aircraft to service to determine if an aircraft has an affected propeller.

Note 2: The parenthesis that appear in the propeller models indicate the presence or absence of additional letter(s) which vary the basic propeller hub model designation. This airworthiness directive is applicable regardless of whether these letters are present or absent on the propeller hub model designation.

Note 3: This AD applies to each propeller 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 propellers 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 (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent blade separation due to cracked blades, hubs, or blade clamps, which can result in loss of control of the airplane, accomplish the following:

(a) On Hartzell propeller models with hub models ()HC–(1,4,5,8)(2,3)(X,V)()–() perform initial and repetitive inspections and, if necessary, replace with serviceable parts in accordance with Hartzell Propeller Inc. Service Bulletin (SB) No. HC–SB–61–217, Revision 1, dated July 11, 1997, as follows:

(1) Initially perform a fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, a dye penetrant inspection of the blade internal bearing bore, and a visual and magnetic particle inspection of the blade clamp and of the hub. The initial inspection is required within the following:

(i) 1,000 hours time since new (TSN) for propellers with less than 900 hours TSN on the effective date of this AD, provided that the initial inspections are performed within 60 calendar months TSN or 24 calendar months after the effective date of this AD, whichever calendar time occurs later, or

(ii) 100 hours time in service (TIS) for propellers with 900 or more hours TSN, or unknown TSN, on the effective date of this AD, provided that the initial inspections are performed within 24 calendar months after the effective date of this AD.

(2) Thereafter, perform repetitive fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, and a visual and magnetic particle inspection of the blade clamp. The repetitive inspection is required at intervals not to exceed 500 hours TIS or 60 calendar months, whichever occurs first, since last inspection.

(3) Thereafter, perform a repetitive visual and magnetic particle inspection of the hub. This repetitive hub inspection is required at intervals not to exceed 250 hours TIS or 60 calendar months, whichever occurs first, since last inspection.

(4) Thereafter, perform a repetitive dye penetrant inspection of the blade internal bearing bore. This repetitive blade internal bearing bore inspection is required at intervals not to exceed 60 calendar months since last inspection.

(b) On Hartzell propeller models with hub models ( )HC–(A,D)(2,3)(X,V) ( )–( ), and HA–A2V20–1B, except HC–A3VF–7( ), perform initial and repetitive inspections and, if necessary, replace with serviceable parts in accordance with Hartzell SB No. HC–SB–61–217, Revision 1, dated July 11, 1997, as follows:

(1) Initially perform a fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, a visual and magnetic particle inspection of the blade clamp, and a dye penetrant inspection of the blade internal bearing bore. The initial inspection is required within the following:

(i) 1,000 hours TSN for propellers with less than 800 hours TSN on the effective date of this AD, provided that the initial inspections are performed within 60 calendar months TSN or 24 calendar months after the effective date of this AD, whichever calendar time occurs later, or

(ii) 200 hours TIS for propellers with 800 or more hours TSN, or unknown TSN, on the effective date of this AD, provided that the initial inspections are performed within 24 calendar months after the effective date of this AD.

(2) Thereafter, perform repetitive fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, and a visual and magnetic particle inspection of the blade clamp. The repetitive inspection is required at intervals not to exceed 500 hours TIS or 60 calendar months, whichever occurs first, since last inspection.

(3) Thereafter, perform repetitive dye penetrant inspections of the blade internal bearing bore. This repetitive blade internal bearing bore inspection is required at intervals not to exceed 60 calendar months since last inspection.

(c) On Hartzell propeller models with hub models HC–A3VF–7( ) perform initial and repetitive inspections and, if necessary, replace with serviceable parts in accordance with Hartzell SB No. HC–SB–61–217, revision 1, dated July 11, 1997, as follows:

(1) Initially perform a fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, a visual and magnetic particle inspection of the blade clamp, and a dye penetrant inspection of the blade internal bearing bore. The initial inspection is required within the following:

(i) 3,000 hours TSN for propellers that have never been overhauled and have less than 2,500 hours TSN on the effective date of this AD, provided that the initial inspections are performed within 60 calendar months TSN or 24 calendar months after the effective date of this AD, whichever calendar time occurs later, or

(ii) 3,000 hours TIS since last overhaul for propellers that have been overhauled but have less than 2,500 hours TIS since last overhaul on the effective date of this AD, provided that the initial inspections are performed within 60 calendar months TIS since last overhaul or 24 calendar months after the effective date of this AD, whichever calendar time occurs later, or

(iii) 500 hours TIS, for propellers that have never been overhauled and have 2,500 or more hours TSN on the effective date of this AD, or propellers which have been overhauled and have 2,500 or more hours TIS since last overhaul on the effective date of this AD, or propellers with unknown TSN, provided that the initial inspections are performed within 24 calendar months after the effective date of this AD.

(2) Thereafter, perform repetitive fluorescent dye penetrant and eddy current inspection of the blade, an optical comparator inspection of the blade retention area, and a visual and magnetic particle inspection of the blade clamp. The repetitive inspection is required at intervals not to exceed 3000 hours TIS or 60 calendar months, whichever occurs first, since last inspection.

(3) Thereafter, perform repetitive dye penetrant inspections of the blade internal bearing bore. This repetitive blade internal bearing bore inspection is required at intervals not to exceed 60 calendar months since last inspection.

(d) The initial inspection of the internal blade bearing bore required by paragraphs (a)(1), (b)(1), or (c)(1) of this AD need not be accomplished again if previously accomplished in accordance with page 4 of Hartzell SB No. HC–SB–61–217, Revision 1, dated July 11, 1997.

(e) If not previously accomplished, shot peen the propeller blade shank area during the initial inspection required by paragraphs (a)(1), (b)(1), or (c)(1), as appropriate, and perform the shot peening in accordance with Hartzell SB No. HC–SB–61–217, Revision 1, dated July 11, 1997. Re-shot peening of the propeller blade shank area during the repetitive inspections required by paragraphs (a)(2), (b)(2), or (c)(2), as appropriate, is required only if the propeller blade shank area has been repaired or has excessive wear or damage in accordance with Hartzell SB No. HC–SB–61–217, Revision 1, dated July 11, 1997.

(f) Report inspection results to the Manager, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 East Devon Ave., Des Plaines, IL 60018, within 15 working days of the inspection. Reporting requirements have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 2120–0056.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

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

(i) The actions required by this AD shall be done in accordance with the following Hartzell Propeller Inc. SB:

Document No.	Revision	Pages	Date
HC–SB–61–217 ..... Total pages: 16.	1	1–16	July 11, 1997.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, OH 45356–2634, ATTN: Product Support; telephone (937) 778–4200, fax (937) 778–4321. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on September 11, 1997.

Issued in Burlington, Massachusetts, on August 15, 1997.

James C. Jones,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 97–22677 Filed 8–26–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 201

[Docket No. 89N–0474]

RIN 0910–AA25

Specific Requirements on Content and Format of Labeling for Human Prescription Drugs; Addition of ''Geriatric Use'' Subsection in the Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations governing the content and format of labeling for human prescription drug products, including biological products, to include information pertinent to the appropriate use of drugs in the elderly (persons aged 65 years and over) and to facilitate access to this information by establishing a ''Geriatric use'' subsection in the labeling. The final rule is one of several measures FDA has taken in response to the special concerns associated with prescription drug use in elderly patients. FDA believes that improving access to information that is important to the elderly will facilitate the safe and effective use of prescription drugs in older populations.

DATES: This final rule becomes effective on August 27, 1998. Submit written comments on the collection of information provisions by October 27, 1997. See section IV of this document for the implementation dates of this final rule for drug classes and drug products.

ADDRESSES: Submit written comments on the information collection requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas C. Kuchenberg, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5621.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 1, 1990 (55 FR 46134), FDA proposed to amend its prescription drug labeling regulations (§ 201.57) to establish in the ''Precautions'' section a subsection on the use of drugs in elderly or geriatric patients (aged 65 years and over). The final rule requires, in a new ''Geriatric use'' subsection of prescription drug labeling, that sponsors describe available information pertinent to the appropriate use of drugs in elderly patients. In cases where none of the provisions of the ''Geriatric use'' subsection are applicable, FDA may permit omission of the subsection or approve an accurate and appropriate alternate statement.

The final rule recognizes the special concerns associated with the geriatric use of prescription drugs and acknowledges the need to communicate important information so that drugs can be used safely and effectively in older patients. The medical community has become increasingly aware that prescription drugs can produce effects in elderly patients that are significantly different from those produced in younger patients. Although both young and old patients can exhibit a range of responses to drug therapy, factors contributing to different responses are comparatively more common among the elderly. For example, elderly patients are more likely to have impaired mechanisms of drug excretion (e.g., decreased kidney function), to be on other medications that can interact with a newly prescribed drug, or to have another medical condition that can affect drug therapy.

Geriatric labeling information is of increasing importance because of the growing proportion of the population that is over 65 years of age, and the significant use of medications by this age group. People over age 65 constitute only 12 percent of the U.S. population, but they consume over 30 percent of the prescription drug products sold in this country. The elderly are expected to constitute 22 percent of the U.S. population by the year 2030.

The final rule is one of several actions taken by FDA to promote safe and effective prescription drug use in the elderly. FDA has encouraged sponsors to include more elderly subjects, especially those over 75 years of age, in clinical studies. In the **Federal Register** of March 5, 1990 (55 FR 7777), FDA announced the availability of a guideline entitled ''Guideline for the Study of Drugs Likely to be Used in the Elderly.'' The guideline emphasizes FDA's recommendation that drugs should be studied in the full range of patients who will receive them, including the elderly, and that efforts should be made to discover differences in pharmacokinetics related to age, or to conditions associated with age (e.g., decreased renal function, concomitant drugs, concomitant illness), and that clinical data should be analyzed to see whether the drug has different effects, favorable or unfavorable, in the old and young. The guideline provides detailed advice on how to evaluate new drugs in older patients and is intended to encourage routine and thorough evaluation of the effects of drugs in elderly populations so that sufficient information can be provided to physicians. The guideline did not call for, or anticipate, an increase in the number of patients or the number of clinical studies needed to evaluate a new therapy. Patients over 65 years of age already represented a significant portion of study subjects in most cases, based on several FDA surveys. The principal new steps called for were to not exclude the very old, to analyze the data already collected, and to obtain modest additional pharmacokinetic data. Only in special cases (e.g., drugs especially targeted for older patients or where age-related differences or problems are anticipated) were separate studies in the elderly recommended.

In the **Federal Register** of August 2, 1994 (59 FR 39398), FDA published a guideline regarding the use of drugs in geriatric populations entitled ''Studies in Support of Special Populations: Geriatrics.'' The guideline was prepared by the Efficacy Expert Working Group of the International Conference on Harmonisation (ICH) of Technical Requirements for Registration of Pharmaceuticals for Human Use, which is concerned with the harmonization of technical requirements among the European Union, Japan, and the United States. The guideline reflects sound scientific principles for testing drugs in geriatric populations and for submitting

marketing applications to regulatory authorities worldwide. The guideline is consistent with FDA's existing geriatric guideline discussed previously.

II. Highlights of the Final Rule

This final rule furthers FDA efforts to promote safe and effective prescription drug use in the elderly by requiring that information on the safe and effective use of drugs in the elderly be included in labeling, and by specifying a location and format for presenting this information.

A. General Provisions

The final rule establishes, in new § 201.57(f)(10), a ''Geriatric use'' subsection that provides information on the safe and effective use of drugs in patients aged 65 and older. This subsection of the ''Precautions'' section of the labeling describes what is known about the effects of a drug in the elderly and lists any limitations, hazards, or monitoring needs associated with geriatric use.

Although FDA encourages further study of drug effects in the elderly, this labeling change is not intended to require additional clinical studies. The ''Geriatric use'' subsection is intended to establish a place in prescription drug labeling where practitioners can find pertinent information that is already available from clinical experience and investigations. FDA believes that providing this information in a clear and accessible way should promote the safe and effective use of prescription drugs in the elderly.

Section 201.57(f)(10) also states that specific geriatric indications, if any, are to be described in the ''Indications and Usage'' section, and specific geriatric dosing instructions are to be described in the ''Dosage and Administration'' section. Additional details about information summarized in the ''Geriatric use'' subsection may be found in other sections of the labeling, as appropriate.

B. Sources of Information on Geriatric Use

Under § 201.57(f)(10)(ii), the ''Geriatric use'' subsection is based on all information available to sponsors that is relevant to the use of the drug in elderly patients. The information includes results from controlled studies, both those that are part of a marketing application and those available to the sponsor but not submitted, information gathered from other studies and experience (e.g., adverse drug reaction reports), and pertinent information from well-documented studies obtained from a literature search.

C. Statements on Geriatric Use

Section 201.57(f)(10)(ii) calls for appropriate labeling statements that are based on the information available regarding use of the drug in geriatric populations:

(1) If there have not been sufficient numbers of geriatric subjects involved in clinical studies to determine whether those over age 65 differ from younger subjects in their responses to the drug, and other reported clinical experience has not identified such differences, § 201.57(f)(10)(ii)(A) requires that the labeling state this fact and note that generally the selection of dosage levels for the elderly should proceed with caution, usually starting at the low end of the dosing range.

(2) If sufficient numbers of geriatric subjects have been included in studies (both those in marketing applications and other relevant studies available to the sponsor) to make it likely that a difference in safety and effectiveness between older and younger subjects would have been detected, but no such differences in safety or effectiveness were apparent and no other reported clinical experience identified such differences, § 201.57(f)(10)(ii)(B) requires that the labeling state this fact. The statement must also indicate the percentage of the total number of subjects, or the total number of subjects, in a defined group of clinical studies who were 65 and over and 75 and over.

(3) If evidence from clinical studies and other reported clinical experience available to the sponsor indicates that use of the drug in elderly patients is associated with differences in safety or effectiveness in the geriatric population, or if administration of the drug to the elderly requires specific dosage adjustment or monitoring, § 201.57(f)(10)(ii)(C) requires that the labeling briefly describe these special geriatric conditions and, when appropriate, refer to other labeling sections for more detailed discussions.

D. ''Geriatric Use'' and Other Labeling Sections

Section 201.57(f)(10)(iii)(A) requires that if specific pharmacokinetic or pharmacodynamic studies of the drug's action were carried out in the elderly, they must be described briefly in the ''Geriatric use'' subsection and in detail in the ''Clinical Pharmacology'' section.

The potential for problems stemming from the use of drugs in patients with certain diseases or from interactions between drugs is higher among the elderly because they are more likely to have multiple illnesses requiring multiple drug treatments. Section 201.57(f)(10)(iii)(A) notes that the ''Clinical Pharmacology'' and ''Drug Interactions'' sections of the labeling ordinarily contain information on drug-drug and drug-disease interactions. For example, § 201.57(b) requires, in part, that the Clinical Pharmacology section of the labeling contain a concise factual summary of the clinical pharmacology and actions of the drug in humans.

Section 201.57(f)(4)(i), the ''Drug Interactions'' subsection of the ''Precautions'' section, includes a requirement that the labeling shall contain specific practical guidance on preventing clinically significant drug/drug and drug/food interactions that may occur in vivo in patients taking the drug, including identification of specific drugs or classes of drugs with which the drug may interact in vivo in patients and a brief description of the mechanism(s) of the interaction.

If the use of a drug in the elderly appears to cause a specific hazard, the hazard must be described in the ''Geriatric use'' subsection as required under § 201.57(f)(10)(iv), or information about the hazard would be placed appropriately under the ''Contraindications,'' ''Warnings,'' or ''Precautions'' sections of the labeling, and the ''Geriatric use'' subsection would refer to those sections. Geriatric labeling, under § 201.57(f)(10)(v), may also include statements reflecting good clinical practice or experience with a particular situation if they would be useful in enhancing the safe use of the drug. As an example, the final rule provides a possible statement for a sedating drug.

E. Renal Function

Geriatric patients are more likely than younger patients to have impaired renal function. Therefore, when it is known that a drug is substantially excreted by the kidney, § 201.57(f)(10)(iii)(B) requires a statement to that effect in the ''Geriatric use'' subsection, as well as a statement noting that care should be taken in dose selection and that it may be useful to monitor renal function. Renal function may be monitored by calculating creatinine clearance.

F. Alteration or Omission of Geriatric Statements

Although the geriatric statements provided in the final rule will be appropriate for most drug products, there are certain drugs that are not indicated for geriatric use or for which the specified geriatric statements are not needed. In this situation, the sponsor, under § 201.57(f)(10)(vi), must provide reasons for omitting the specific geriatric use information and statements

in § 201.57 and, if appropriate, may propose alternative geriatric language.

FDA may permit omission of a geriatric use statement and permit the use of an alternate statement if FDA determines that the statements described in § 201.57(f)(10)(i) through (f)(10)(v) are inappropriate or not relevant to the drug's labeling and that the alternate statement is accurate and appropriate.

III. Comments on the Proposed Rule

The agency received approximately 60 comments on the proposed rule. The comments came from Congress, prescription drug manufacturers, physicians, professional societies, organizations with special interests in the elderly, the lay public, and others. Most comments agreed with the proposed labeling change, calling it ''long overdue,'' ''timely and important,'' and a ''major step'' in promoting the safe and effective use of prescription drugs in the elderly.

Many comments expressed the belief that a ''Geriatric use'' statement in the labeling would result in increased awareness among practitioners and patients and thus enhance the physician's ability to provide quality health care to older patients.

1. While expressing support, some comments reflected confusion about the practical effect of the regulation, recommending such steps as the use of large print, bright ink, and ''simple language'' to make the labeling more easily read and understood by older patients.

The agency believes these comments misinterpret the intent of this rulemaking. The regulation does not describe information that would be distributed directly to the patient. Rather, the rule amends the ''professional'' labeling requirements for prescription drugs, commonly referred to as the physician package insert, to require that a ''Geriatric use'' subsection appear in the ''Precautions'' section of the package insert. Professional labeling is designed for and directed to physicians and other health care professionals and is required to provide information ''under which practitioners licensed by law to administer the drug can use the drug safely and for the purposes for which it is intended * * *'' (§ 201.100(c)(1) (21 CFR 201.100(c)(1)).

Although this final rule does not require that written information on geriatric use be distributed directly to elderly patients or establish any print size requirements, the agency expects that it will result in more and better information reaching these patients. The final rule amends the labeling requirements to give physicians and other health care professionals easier access to more information about geriatric use. A health care community so informed will be better able to deliver superior care and to provide more information on the safe and effective use of prescription drugs to elderly patients.

Because some confusion exists regarding the purpose of this regulation, and as a result of the changes made in response to comments received, FDA has reformatted and redesignated some provisions in proposed § 201.57(f)(10) for this final rule. These changes were made to clarify obligations and options provided in the regulation. Except where specific substantive changes or additions are indicated and were made in response to comments, these changes do not involve changes in the obligations imposed on sponsors by the regulation. FDA has also replaced the word patient with the more appropriate ''subject'' when referring to individuals participating in clinical studies.

2. Some comments opposed establishing a ''Geriatric use'' subsection in prescription drug labeling. The comments stated that in communicating drug information to patients, the role of pharmacists and other health care practitioners should be adequate to reduce problems in the elderly, making this labeling change unnecessary.

The agency disagrees. FDA recognizes that pharmacists and other health care practitioners play important roles in communicating information about prescription drug use to elderly patients. However, surveys show that a substantial number of elderly patients fail, in some way, to comply with their prescription drug regimen; and the elderly population is greatly in need of medication counseling and information. Pharmacists and others cannot transmit information they do not have, and information on how younger and older patients respond differently to a drug is difficult to find.

The final rule does not diminish the role that health care professionals play in communicating information to the elderly about their prescription drugs. Rather, it facilitates that role by providing health care professionals with more information about how drugs affect older patients.

3. One comment claimed that the proposed ''Geriatric use'' subsection is redundant because existing FDA guidelines and labeling regulations already provide that important information should be included in the labeling.

FDA acknowledges that some prescription drug labeling consistent with existing FDA guidelines and regulations contains information on use in the elderly. This reflects growing recognition of the need to provide patient information on individualizing drug therapy and, specifically, of the need to provide information on use in the elderly.

The final rule is intended to make geriatric labeling format and content more consistent by requiring that there be a ''Geriatric use'' statement in prescription drug labeling, that the statement reflect all information available to the sponsor that is relevant to the appropriate use of the drug in elderly patients, that the information, or direct reference to it, be found in a particular location in the labeling, and that the statement follow a standard format. The ''Geriatric use'' statement will give practitioners and others easier access to more information about prescription drug use in elderly patients.

4. Other comments objected to a ''Geriatric use'' subsection on economic grounds, saying that the costs of producing and compiling the information necessary to comply with this labeling change will be significant, adding to the already high cost of drug development. The comments were concerned that these costs would be passed along to the elderly consumer, who may not be able to afford them.

The agency's review of the cost issues posed by the comments is contained in section VI of this document. The agency agrees that manufacturers will incur some costs as a result of this final rule. The agency believes, however, that the costs associated with the final rule will not be significant, especially in light of the potential benefits of the labeling change. This rule does not require any new clinical studies, but the preparation of the ''Geriatric use'' subsection should include analyses of previously collected data and available literature.

The cost of preparing the ''Geriatric use'' subsection may be offset by lower health care costs resulting from fewer adverse reactions to prescription drugs. Because older people take about three times as many prescription drugs as younger individuals and because taking several drugs together substantially increases the risk of drug interactions, unwanted effects, and adverse reactions (Ref. 1), labeling addressing this information should result in fewer adverse reactions. A number of studies have indicated that adverse drug reactions and patient noncompliance contribute to costly emergency room and hospital visits (Ref. 2). If the information required by the rule prevents only a modest fraction of these

adverse reactions, the health care savings will be sizeable.

Costs will also be lessened by the manner in which the rule is to be implemented. The extended period allotted for implementation is designed to reduce burdens for both industry and the agency. Implementation will take place over 6 years (in accordance with the plan described in section IV of this document). The implementation schedule divides drug products subject to this regulation into four multiyear groups based on the date of approval of the products' new molecular entities (NME's). FDA recognizes that it will be more difficult to develop geriatric labeling for older NME's, due to the probable need to manually examine data and the likelihood that a more extensive literature search will be needed. In contrast, the information available for recently approved drugs is more likely to be readily available to sponsors and more likely to be computer accessible. As a result, implementation will proceed in reverse chronological order.

In addition, the agency will not require prior approval of labeling changes for drug products under § 201.57(f)(10)(ii)(A) (i.e., where insufficient data exist to determine whether the responses of geriatric patients to a drug are different from responses of younger patients).

5. Some comments found the proposed regulation ''confusing'' and suggested that FDA provide ''model labeling'' for each drug or drug class.

The regulation does provide specific ''model'' language for several possible labeling statements. The agency has revised proposed § 201.57(f)(10) to make the ''Geriatric use'' labeling requirements clearer and to make several organizational and other general changes. The agency does not agree, however, that it should draft model geriatric labeling for each drug or drug class. The agency does not believe that a small number of ''models'' could be developed that would be helpful in formulating the labeling of all drug products, nor does the agency have the resources necessary to draft such labeling.

6. Several comments objected to the agency's designation of 65 years and older as the age range to which this rule would apply. Some comments called the choice ''arbitrary,'' noting that, while 65 years old has become widely used as a sociological marker of the beginning of senior citizen status, there is no physiological basis for identifying 65 years old as the age at which differences in drug effects begin to occur.

One comment suggested that the age be lowered to include persons in their fifties; others suggested that the appropriate age should be 60 years old; another thought 80 years and older would be the most meaningful age category with regard to differences in drug response. Several comments complained that the proposed rule treated all persons over 65 years old as a homogeneous group, and suggested that it be changed to categorize 65 to 74, 75 to 84, and 85 years and older as three distinct age categories for purposes of assessing drug response.

Other comments suggested that age not be used at all to define the geriatric population, but that other factors, such as changes in body composition or organ function, be used as criteria for categorizing appropriate labeling statements.

The agency recognizes that attempts to define populations to which clinical or regulatory requirements apply are subject to certain limitations and are difficult to achieve. This is evidenced by the number and variety of suggestions for alternative age designations posed by the comments. Nonetheless, for ease of implementation, it is necessary to specifically and simply define the population to which this final rule applies.

Defining the geriatric population based on age (persons 65 years of age and older) lends an important element of uniformity in the development of the ''Geriatric use'' subsection and establishes boundaries for the application of the final rule. These boundaries are necessary to enable manufacturers to determine how to gather, evaluate, and communicate geriatric use information. Defining the scope of the final rule in this way also will aid practitioners who consult the ''Geriatric use'' subsection, allowing them to presume that, unless otherwise stated, the population being addressed is 65 years of age and older and that this standard remains constant in all prescription drug labeling. The agency notes that age 65 is a widely used marker for the beginning of elderly status and believes that 65 years of age is a reasonable starting place for a discussion of differences in drug response that are related to advancing age. However, the agency does not consider 65 years of age to be an absolute boundary for this rulemaking. For some drugs, it may be more appropriate for the labeling to reflect evaluation of another elderly age group, or, where there are important differences in response, to address specific subgroups within the geriatric population. In some cases, changes might be expressed as a continuous function of age. FDA would expect the manufacturer to advise the agency of these cases, and to submit, as appropriate, ''Geriatric use'' labeling that reflects and communicates these special concerns.

FDA agrees with the comments that note that the interaction of drug responses and the aging process can vary widely among individuals. As with labeling for any age group, ''Geriatric use'' labeling is no substitute for the sound medical judgment of the prescriber, who must keep in mind individual responses to drug therapy.

7. Several comments questioned the scope of the review a manufacturer would have to undertake to obtain all ''available information,'' as described in the preamble to the proposed rule. The comments claimed that the required review would be too broad in scope, impossible to complete, and would yield irrelevant or useless information. In particular, the comments objected to the use of information obtained from FDA's Spontaneous Reporting System (now the Medical Products Reporting Program or MedWatch) for adverse drug events as the basis of labeling statements, and suggested excluding it from the scope of review. Specifically, these comments requested that the evaluation reflect information from the following: (1) All controlled, clinical trials contained in the new drug application; (2) other controlled, clinical trials in the applicant's possession that are reasonably relevant to the use of the drug in older patients; (3) postmarketing studies or published literature that specifically concern the use of the drug in older patients; and (4) pharmacokinetic and pharmacodynamic studies that have been conducted in the elderly.

The agency has considered the scope of ''available information'' in light of the recommendations made in these comments. Aside from the suggestion that MedWatch information not be required, the comments support the same review of information as set forth in the proposal. In order for ''Geriatric use'' labeling to be a meaningful prescribing tool, it must reflect a comprehensive review of a broad range of information sources. The agency believes that the scope of the review appropriately includes information both in the applicant's possession and available through a search of professional literature or published studies that are relevant to an evaluation of the geriatric use of the drug.

Concerning the inclusion of MedWatch information, FDA regards a

review of information from this system or from the Vaccine Adverse Events Reporting System (VAERS) for vaccines as potentially important in developing comprehensive labeling for the safe and effective use of the drug in the elderly. The agency fully appreciates the limitations associated with MedWatch and VAERS data, but believes that this information when placed in its proper context can in some cases yield data on the age-relatedness of adverse effects that are interpretable and valuable. In submitting ''Geriatric use'' information, a manufacturer should evaluate the merit of particular MedWatch reports and utilize them appropriately.

8. Several comments argued that the proposed ''Geriatric use'' labeling subsection does not adequately address problems that are frequently associated with prescription drug use in the elderly. The comments contended that the labeling statements should discuss the issue of polypharmacy in the elderly and include specific information on drug-drug interactions. Another comment asserted that the rule overlooks the development of ''drug allergies'' and the ''psychological effects'' of prescription drugs in older patients.

The agency believes that the final rule adequately addresses the problems most commonly associated with prescription drug use in the elderly, including those areas cited in the comments. Section 201.57(f)(10)(ii)(C) directs that differences in safety or effectiveness of a drug in the elderly, or specific monitoring or dosage adjustment requirements, shall be described briefly in the ''Geriatric use'' subsection and, as appropriate, be discussed in more detail in the appropriate section of the labeling. In addition, as stated in § 201.57(f)(10)(iii)(A), data about drug-disease and drug-drug interactions are ordinarily included in the ''Clinical Pharmacology'' section (§ 201.57(b)) and ''Drug interactions'' subsection of the ''Precautions'' section (§ 201.57(f)(4)(i)), and this information is often particularly relevant to the elderly.

9. Other comments expressed concern that the overall approach of the prescribed ''Geriatric use'' statements is too general and overly cautious. In particular, these comments objected to language in proposed § 201.57(f)(10)(ii)(A), advising that '' * * * [i]n general, dose selection for an elderly patient should be cautious, usually starting at the low end of the dosing range * * * '' and to the caveat in proposed § 201.57(f)(10)(ii)(B) that, although no differences between older and younger patient responses had been observed, '' * * * greater sensitivity of some older individuals cannot be ruled out.'' The comments found these generalizations to be less than helpful and were concerned that they might cause undue caution by health professionals, possibly resulting in suboptimal or even subtherapeutic dosing of elderly patients.

The final rule is intended to provide information to health professionals about a subgroup of the population that may have a different response to certain drug products than the population as a whole. Section 201.57(f)(10)(ii)(A) and (f)(10)(ii)(B) include some words of caution but are phrased carefully to avoid any implication of universal application. FDA does not intend that ''Geriatric use'' statements substitute for medical judgment, but FDA intends that geriatric labeling information be used, along with professional judgment, as a tool for achieving optimum prescribing practices. The information on prescription drug use in elderly patients required by this final rule will assist health professionals in tailoring drug therapy to the individual needs of patients.

The cautionary tone of § 201.57(f)(10)(ii)(A) and (f)(10)(ii)(B) reflects the agency's opinion that, in general, the greater likelihood of impaired excretory function or impaired homeostatic mechanisms in the elderly does suggest a cautious approach. That caution should not result in a failure to attain therapeutic goals, even if a period of adjustment is necessary to determine the optimum dose for individual patients. If a sponsor believes that particular statements presented in this provision are not appropriate or relevant, the sponsor, under § 201.57(f)(10)(vi), may seek permission to omit these statements or propose an alternative statement.

10. Several comments questioned other specific aspects of the proposed labeling statements and requirements. The comments questioned the terms ''sufficient numbers of patients'' and ''enough elderly patients'' as used in proposed § 201.57(f)(10)(ii)(A) and (f)(10)(ii)(B), respectively. The comments asked how many patients would be ''sufficient'' or ''enough'' to determine if a particular labeling statement applied. One comment asked if ''enough elderly patients'' meant enough to reveal differences that are clinically significant or statistically significant.

The question of a sufficient number of subjects arises when analysis shows no difference between younger and older subjects but the small number of subjects available for analysis precludes any real conclusions about the population as a whole. In such cases, as stated in § 201.57(f)(10)(ii)(A), a labeling statement would, in part, state that clinical studies did not include sufficient numbers of subjects aged 65 and over to determine whether they respond differently from younger subjects. Adequacy of subject numbers depends on the specific comparisons being made and the number of ''events'' (therapeutic effects, adverse events) observed, and there is no number that will always constitute ''adequate.'' Thus, smaller numbers could be informative about high-rate events when no difference is found, and a positive finding (a difference) could arise in any size population (and be described under § 201.57(f)(10)(ii)(C)).

FDA advises that, with regard to the phrases ''sufficient numbers of subjects aged 65 and over'' in § 201.57(f)(10)(ii)(A) and ''enough elderly subjects'' in § 201.57(f)(10)(ii)(B), participation of at least 100 subjects age 65 and older in clinical studies would allow detection of clinically important differences. This is the number of elderly subjects recommended in the ICH guideline entitled ''Studies in Support of Special Populations: Geriatrics.'' Results in elderly subjects would be compared with those in the (usually) larger number of younger subjects. The information gathered from available sources, as described in § 201.57(f)(10)(ii), would ordinarily be descriptive and not necessarily subject to intense statistical analysis. The primary purpose of examining the information is to detect substantial and consistent (across studies) differences in drug response in the elderly as compared to the overall population. There are problems in interpretation wherever subsets of the overall trial population are examined, but these difficulties do not mean the effort should not be made. Within the limitations of these analyses, however, a finding of ''no difference'' in a population with less than 100 elderly usually would lead to the statement described in § 201.57(f)(10)(ii)(A), while a finding of no difference in a larger population could lead to the statement in § 201.57(f)(10)(ii)(B). A finding of difference, whatever the population, would lead to labeling as in § 201.57(f)(10)(ii)(C).

FDA's ''Guideline for the Format and Content of the Clinical and Statistical Sections of New Drug Applications,'' which refers to subset analyses, discusses the analysis and presentation of data regarding drug response in different subsets of the population, and the agency's ''Guideline for the Study of

Drugs Likely to be Used in the Elderly'' specifically relates this discussion to the geriatric population. The ICH guideline ''Studies in Support of Special Populations: Geriatrics'' reflects sound scientific principles for testing drugs in geriatric populations. FDA recommends consulting these documents for guidance and encourages individuals to contact the agency if questions arise on the sufficiency of data to support ''Geriatric use'' statements not addressed by the guidelines.

11. One comment said that the use of numbers and percentages required in proposed § 201.57(f)(10)(ii)(B) would be impractical, stating that a burdensome amount of updating and revision would be necessary as new information becomes available. The comment suggested that the statements should address whether ''certain thresholds have been reached,'' with the agency verifying that the manufacturer has the numbers to support the statements.

The agency disagrees with the comment. The expression of percentages or actual numbers of older subjects involved in clinical studies is an essential part of § 201.57(f)(10)(ii)(B). The percentage or total number of geriatric subjects precedes the statement that ''No overall differences in safety or effectiveness were observed between these subjects and younger subjects, * * * but greater sensitivity of some older individuals cannot be ruled out.'' This statement applies where sufficient numbers of elderly subjects have taken part in studies to reveal a different response between age groups, but where no differences were detected. The statement suggests that adjusting dosage recommendations for geriatric patients generally will not be necessary. To permit such an implication, it is important to provide practitioners with numbers so that they can weigh the evidence in relation to the needs of an individual patient.

FDA also does not believe that § 201.57(f)(10)(ii)(B) will be overly burdensome or require constant updating. This provision provides for alternative labeling formats using either percentages or the total number of subjects, age 65 and over and age 75 and over, included in clinical studies. The comment may have misunderstood this provision because the percentages refer to the number of subjects included in clinical studies and, unless additional studies are performed, there is no need to update or revise the percentages.

The revised implementation plan should permit ample time for collection and evaluation of data. Manufacturers are urged to contact the agency if they have questions as to the significance of geriatric data related to this requirement.

12. Several comments addressed proposed § 201.57(f)(10)(iii)(B), which requires a statement in the ''Geriatric use'' subsection of the labeling for drugs that are substantially excreted by the kidney. The comments asked for more guidance to determine when a drug is ''substantially excreted'' by the kidney. Another comment suggested that the proposed statement not apply to drugs that are substantially excreted by the kidney but pose no greater risk to patients with renal impairment.

Some drugs, such as phenobarbital, are primarily metabolized and excreted by the liver, while a number of other drugs, such as diuretics, are primarily excreted by the kidneys. The prescriber's knowledge and experience with the individual patient will determine the course of treatment, and FDA does not feel it would be useful at this time to further quantify this phrase. This provision is intended to alert practitioners to the fact that adequate kidney function is important to the optimum safety and effectiveness of the drug product.

If a sponsor believes that none of the requirements described in paragraphs § 201.57(f)(10)(i) through (f)(10)(v) are appropriate or relevant, the sponsor must provide reasons for the omission of a labeling statement and may propose alternative statements as provided under § 201.57(f)(10)(vi).

13. Another comment recommended that, for drugs that are substantially excreted by the kidney, FDA require pharmacokinetic and pharmacodynamic studies in elderly persons.

As stated earlier in this preamble, although the agency encourages further study of drug effects in the elderly, the rule is not intended to require additional clinical studies. The ''Geriatric use'' subsection is intended to provide a place in prescription drug labeling where practitioners can find pertinent information that is already available from clinical experience and investigations. For example, in the ''Guideline for the Study of Drugs Likely to be Used in the Elderly,'' FDA has encouraged assessment of the pharmacokinetic effects of age and of decreased excretory function.

This final rule does not add new requirements for conducting geriatric studies. As stated in the preamble to the regulation on pediatric labeling, various provisions of the Federal Food, Drug, and Cosmetic Act (the act) and the Public Health Service Act (the PHS act), and existing regulations authorize FDA to require such studies under certain circumstances (see section III.C of the document published in the **Federal Register** of December 13, 1994 (59 FR 64240 at 64242)).

14. A few comments objected to the use of the formula provided in the proposed labeling section for calculating creatinine clearance from a serum creatinine measurement. One comment criticized the specific formula, Cockroft-Gault (*Nephron* 16:31–41, 1976), pointing out its limitations when applied to older patients, and suggested that another formula, Jelliffe (*Lancet* 1:975–976, 1971), might be more accurate and appropriate for a ''Geriatric use'' dosage adjustment. Another comment suggested that any formula can become obsolete, and proposed that the regulation not include a formula. The comment said that the agency should instead provide more general guidance for dosing in the presence of kidney impairment that would allow for the use of state-of-the-art assessment tools.

While a survey of available literature indicates that the Cockroft-Gault formula provides a reasonably good estimate of renal function in the elderly, the agency agrees with concerns that a specific formula might be superseded either by a more precise formula or by a new method for estimating creatinine clearance. Because codification of a specific formula could result in less flexibility and to accommodate possible changes in methods of estimating renal function, FDA has deleted the actual formula from the final rule. The agency, however, wishes to stress the importance of monitoring renal function by calculating creatinine clearance. Creatinine clearance can be measured (often difficult outside the metabolic unit) or can be estimated from a creatinine clearance measurement using a formula.

IV. Implementation

15. Several comments addressed the proposed implementation plan for the ''Geriatric use'' labeling requirement. Under the proposal, manufacturers would have had 1 year from the date of publication of a final rule to comply with the ''Geriatric use'' labeling requirements for all products. FDA acknowledged that it may be unable to review all supplements by this effective date, and stated that it would exercise its enforcement discretion not to take action against any product that lacks revised labeling, provided that the applicant has submitted its proposed labeling changes in a timely manner and otherwise acted in good faith to comply with the requirements of the final regulation.

The comments asserted that it would be impossible for companies to comply with the proposed implementation scheme, and that the agency would not have the resources to meet approval dates, thus creating new backlogs in an already over-burdened system. Some comments suggested other timeframes, such as a 2-year, 3-year, or 4-year effective date. Other comments recommended that the agency employ a ''staggered implementation scheme,'' similar to the one used for the implementation of FDA's physician labeling regulations under 21 CFR 201.59.

FDA agrees that the proposed implementation could pose difficulties and has revised the plan to reduce the burdens of compliance on both manufacturers and the agency, while allowing for efficient implementation of the ''Geriatric use'' labeling requirements. The agency has considered the comments and has adopted a plan that will stagger implementation dates. Because some drug classes and drug products are more likely than others to have a significant impact on geriatric patients, based on existing labeling, research, and reports from health care professionals, FDA has provided for staggered implementation of geriatric labeling requirements to expedite labeling for certain drug products and drug classes. The implementation plan is discussed in greater detail in sections IV.A and B of this document.

Certain changes to an approved application require prior FDA approval of a supplemental application in accordance with § 314.70(b) (21 CFR 314.70(b)) or § 601.12(b). For those products not regulated under section 351 of the PHS act (42 U.S.C. 262), changes to add or strengthen contraindications, warnings, precautions, or adverse reactions or to add or strengthen dosage and administration instructions to increase a product's safety (for products other than biological products) may be put into effect at the time a supplement covering the change is submitted to FDA in accordance with § 314.70(c). Labeling changes should be implemented immediately under § 314.70(c)(2)(i) where additional data or clinical trials indicate a need to add or strengthen a contraindication, warning, precaution, or adverse reaction.

Applicants may make some minor labeling changes to products, other than biological products, without submitting a supplement in accordance with § 314.70(d). The applicant is to describe such changes in the annual report.

Applicants need not obtain prior FDA approval of many supplements. For instance, the statement in the ''Geriatric use'' subsection can refer to a particular data base. Where the completion of additional clinical trials and accumulation of data simply strengthen conclusions reflected in existing statements in the geriatric labeling, revision of labeling to incorporate these additional numbers may be regarded as changes to strengthen instructions about dosage and administration. Under § 314.70(c)(2)(iii), these labeling changes may be implemented at the time a supplement is submitted to FDA.

For those products regulated under section 351 of the PHS act, labeling changes must be made in accordance with § 601.12. In the **Federal Register** of July 24, 1997 (62 FR 39890), FDA revised the requirements in § 601.12 for the reporting of changes, including the reporting of changes in labeling, to an approved license application. With the revision of § 601.12, manufacturers will be required to implement and report changes in labeling by the same procedures as described above for other drugs.

As noted above, persons who have questions regarding such changes for biological products should contact the appropriate division.

16. One comment argued that manufacturer and agency implementation burdens would be lessened if the geriatric labeling change applied only to those drugs approved in the last 3 to 5 years. The comment claimed that drugs on the market for a longer time (older drugs) have been used to a sufficient extent that practitioners can determine any unique problems encountered by the elderly patient, making a ''Geriatric use'' subsection unnecessary.

FDA recognizes that while professional experience with older drugs may decrease the need for geriatric labeling, there may be less understanding of the pharmacokinetics of older drugs. Moreover, previously unrecognized problems may be revealed through new research or the circumstances under which drug products are used may change. Such a situation could, for example, result from the discovery of an adverse interaction in geriatric patients between an older drug product and one that has recently been approved.

FDA further recognizes that ease of compliance with this final rule may vary depending on the amount of, and the ability to access, available information. The implementation plan for this final rule takes these and other factors into account to minimize burdens for manufacturers. For instance, the agency expects that the need for a ''Geriatric use'' subsection often may be greatest for recently approved drugs where there is little collective professional experience with the drug in older patients. In addition, this information is most likely to be readily available to manufacturers from a current data base. Likewise, the agency expects geriatric use information for drugs that have been marketed for a longer period of time will be more extensive and more diffuse, and thus more difficult to retrieve and summarize. Printed reports and clinical data for these drugs may be scattered and less likely to have been processed and stored in a computer data base than would be the case for more recently approved drugs. In these cases, a manual search to gather available information may be necessary. The implementation plan for this final rule recognizes that the necessity for such a search is likely to be directly related to the date of an NME approval or biological product license approval. Therefore, under the implementation scheme for the final rule, sponsors will be required to submit geriatric labeling supplements at an earlier date for more recently approved products than for products that have been marketed for a longer time. The agency believes that this implementation plan will allow manufacturers to work within a reasonable timetable to craft meaningful and usable ''Geriatric use'' labeling.

As discussed in section IV, comment 15 of this document, the implementation plan has been revised to reduce the burdens of compliance for both the agency and manufacturers. In revising the implementation plan, the agency specifically considered and addressed the concerns associated with drugs that have been marketed for a number of years. The revised plan gives manufacturers of these drugs longer periods of time to submit geriatric labeling. At the same time, the agency has determined that priority should be given to implementation for certain categories of drugs that either alone or in combination with other drug products may be more likely to cause problems in geriatric patients.

Implementation of the ''Geriatric use'' subsection of prescription drug labeling is as follows:

A. Priority Implementation

Geriatric patients are more likely to have more problems with certain classes of drugs than with others because of the following: Age-induced physiological changes in the patient, the narrow therapeutic range of some drug

products, and the potential for drug-drug and drug-disease interactions, as well as other factors. The revised labeling for drugs subject to priority implementation must be submitted to FDA by August 27, 1998. FDA has therefore selected the following drug classes or drug products for priority implementation:

1. Psychotropic Drugs:

a. Antidepressants,
b. Anxiolytics,
c. Hypnotics, and
d. Antipsychotics;

2. Nonsteroidal Anti-inflammatory Drugs (NSAID's);

3. Digoxin, Antiarrhythmics, and Calcium Channel Blockers;

4. Oral Hypoglycemics;

5. Anticoagulants; and

6. Quinolones.

B. Implementation Based on the NME or Biological Product License Approval Date

All drug products not subject to priority implementation, must comply with this regulation on the basis of the year in which the drug product's NME (active moiety) or biological product license was first approved. For combination products, application holders must determine the approval date of the earliest NME or biological product license. That earlier date will be the controlling date for implementation purposes. The date of issuance of a biological product license should be used for a combination biological product.

FDA is aware that, for a variety of reasons, drug products subject to approved drug applications are not always marketed. An approved product may, for example, be withheld from the marketplace for economic reasons. Later, when conditions change, the drug may be manufactured and actively marketed. To further lessen the burden of implementing this rule, FDA will not require geriatric labeling for approved products that are not currently marketed, including products selected for priority implementation. If, however, an unmarketed approved drug product is subsequently marketed, the product must include appropriate geriatric labeling at the time it is marketed.

The implementation schedule is based on the NME or biological product license approval date as follows:

1989 to present: Revised labeling due August 27, 1999,

1982 through 1988: Revised labeling due August 28, 2000,

1975 through 1981: Revised labeling due August 27, 2001,

1963 through 1974: Revised labeling due August 27, 2002, and

Prior to 1963: Revised labeling due August 27, 2003.

FDA will notify all holders of approved abbreviated applications of the changes in the listed product's geriatric labeling and provide directions on how to incorporate the new text in the labeling. All holders of approved abbreviated applications for which there is no reference listed new drug application (NDA) drug product in the prescription drug product list section of the publication entitled *Approved Drug Products with Therapeutic Equivalence Evaluations* are expected to comply with the implementation plan described in sections IV.A and B of this document by submitting geriatric labeling.

The agency encourages sponsors to voluntarily implement these provisions prior to the scheduled implementation date, where feasible.

All supplements submitted under this rule should be noted as ''Geriatric Labeling Supplement'' in the ''Reason for Submission'' block.

V. Legal Authority

This final rule to revise prescription drug labeling regulations to require a ''Geriatric use'' subsection is authorized by the act and by the PHS act. Section 502(a) of the act (21 U.S.C. 352(a)) prohibits false or misleading labeling of drugs, including, under section 201(n) of the act, failure to reveal material facts relating to potential consequences under customary conditions of use. Section 502(f) of the act identifies as misbranded any drug whose labeling does not bear adequate directions for use, as well as such adequate warnings against unsafe dosage or methods or duration of administration as are necessary to protect users. In addition, section 502(j) defines as misbranded those drugs that are dangerous to health when used in the manner prescribed, recommended, or suggested in their labeling.

In addition to the misbranding provisions, the premarketing approval provisions of the act authorize FDA to require that prescription drug labeling provide the practitioner with adequate information to permit the safe and effective use of the drug product. Under section 505 of the act (21 U.S.C. 355), FDA will approve an NDA only if the drug is shown to be both safe and effective for its intended use under the conditions set forth in the drug's labeling. Section 701(a) (21 U.S.C. 371(a)) authorizes FDA to issue regulations for the efficient enforcement of the act.

Under § 201.100(d) of FDA's labeling regulations, prescription drug products must bear labeling that contains adequate information under which licensed practitioners can use the drug safely for its intended purposes. Section 201.57 describes specific categories of information, including information for drug use in selected subgroups of the general population, which must be present to meet the requirements of § 201.100. In addition, under § 314.125 (21 CFR 314.125), FDA will not approve an NDA unless, among other things, there is adequate safety and effectiveness information for the labeled indications.

Section 351 of the PHS act provides legal authority for the agency to regulate biological products, including labeling. Licenses for biological products are to be issued only upon a showing that they meet standards ''designed to insure the continued safety, purity, and potency of such products'' prescribed in regulations (42 U.S.C. 262(d)). The ''potency'' of a biological product includes its effectiveness (21 CFR 600.3(s)). Section 351(b) of the PHS act prohibits falsely labeling a biological product. FDA's regulations at 21 CFR part 201 apply to all prescription drug products, including biological products.

A drug product not in compliance with § 201.57(f)(10) of this final rule would be considered to be misbranded and an unapproved new drug under the act. A noncomplying product that is a biological product would, in addition, be considered falsely labeled and an unlicensed biological under the PHS act.

VI. Analysis of Impacts

A. Introduction

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize the impact of that rule on small entities. The agency believes that this final rule is consistent with the regulatory philosophy and principles

identified in Executive Order 12866 and the Regulatory Flexibility Act.

The Unfunded Mandates Reform Act (Pub. L. 104–4) requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an annual expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation). The rule does not impose any mandates on State, local, or tribal governments, or the private sector that will result in an annual expenditure of $100,000,000 or more.

The following discussion presents FDA's assessment of the direct costs that the rule will impose on the prescription drug industry. (Further background data are provided in the agency report entitled ''Threshold Assessment of Requirements for Geriatric Labeling'' on file at the Dockets Management Branch (Ref 3.).)

Comments to the agency by an innovator trade group and one large innovator firm (a pharmaceutical firm that develops new drugs) indicated that the proposed requirements would impose a severe economic burden. However, these comments provided no written estimates of either the expected costs or the extent of the research effort that would be needed to comply with the new provisions. FDA's cost estimates, therefore, are based on extrapolations from various agency data bases and plausible assumptions of unit costs. The estimates took into account the number of labels affected, the estimated availability of data on the elderly, the estimated availability of computerized data files, and the amount of existing geriatric labeling. Costs that are not considered include possible industry efforts to conduct new clinical trials to generate data on problems unique to the elderly, possible market shifts among competing products due to changes in labeling, possible displacement of industry workers due to the costs of the regulatory requirements, or any other costs beyond direct effects. Because part of this analysis was prepared in 1993, in support of this final rule as then drafted, much of the underlying data are several years old. As explained below, the use of more recent data would probably project significantly lower costs.

B. Methodology

Estimating the costs to industry required several steps. Data on numbers of marketed drugs, use by the elderly, the frequency of labeling supplement approvals, and the existence of geriatric labeling were available from FDA data files or from previously conducted studies. Information on the effort required to determine appropriate label changes and physically change labels was developed from industry sources and drug reviewing officials within FDA.

1. Number and Age of Products Affected

Two separate analyses were conducted to estimate the number of products affected by the rule. One analysis estimated the number of innovator products, and the other, the number of generic products that would be subject to the rule. An analysis of 1993 IMS America data on marketed products (data derived from a proprietary data base in the National Disease and Therapeutic Index maintained by IMS America; Plymouth Meeting, PA) determined that about 1,578 innovator labels would be subject to the rule. The actual number of innovator product labels subject to the rule is probably slightly larger than this number because the IMS data collection methodology most likely missed very small volume products. However, because there is no easy way to estimate the number of omitted products and the degree of error is thought to be of little practical significance, the counted number of products was used.

Conversations with industry representatives indicated that the process of complying with the regulation would be much more difficult for drugs that have been marketed for a longer time. Products approved before 1975, and in some cases before 1980, lack computer readable clinical trial data. Therefore, subgroup analysis of these early data would require some data entry directly from data recording sheets or individual patient records. Most clinical trial data used for products approved since 1985 are already in an easily analyzable form. However, some data for products approved between 1975 and 1985, although computerized, would not be in a compatible format. This data would require additional manipulation before subgroup analysis could be performed.

Table 1 shows the distribution of the 1,578 innovator products by year of FDA approval. Based on the trend of automation described previously, geriatric labeling compliance will become progressively less expensive with the more recent the date of drug product approval. Compliance activities for products approved after 1985 will cost less than for products approved between 1975 and 1984. Products approved before 1975 will require the greatest expenditure.

TABLE 1—NUMBER OF INNOVATOR PRODUCTS BY YEAR OF FDA APPROVAL

Year	Approvals
Pre-1975	1,191
1975 to 1984	199
1985 to 1991	188
Total	1,578

An analysis of abbreviated new drug application (ANDA) approvals conducted in July 1996, found 2,417 generic products (excluding different strengths and package sizes) approved for marketing at that time. The estimated costs for labeling changes in section VI.C of this document are based on all 2,417 generic products. Although not insignificant, these costs will be considerably less than the costs for innovator products.

2. Current Incidence of Geriatric Use

Ideally, the agency would like to have had access to data on geriatric subjects included in clinical trials for all approved drugs currently marketed. Such information would have helped determine the cost and effort required to analyze the data and the likelihood that the data would prove useful for labeling revisions. Although the elderly are the largest consumers of certain drug products (e.g., for the treatment of cancer and cardiovascular disease), in the past elderly individuals were not commonly included in controlled clinical trials. Therefore, clinical data on elderly patients for drugs that have been marketed for many years will be sparse—even for drugs commonly used by the elderly. Recently, elderly individuals have been included and identified as a subgroup in clinical trials. Consequently, more data will be

available for recently approved products.

Because comprehensive summary data on geriatric subjects in clinical trials do not currently exist, insight on the incidence of geriatric use was gained for this analysis from IMS America data on the number of times a product was mentioned during a doctor/patient visit or phone conversation. Specifically, annual statistics were generated (as of the year ending September 30, 1991) on the number of product mentions for all patients and for patients age 65 and older for all prescription products. The term ''mention'' means that a specific drug was recommended, prescribed, or handed to the patient by the physician. Although the actual number of instances where the patient used the product may be different than the number of mentions, this analysis used only the ratio of elderly use to total use, which tended to cancel out any significant bias.

The raw data on product mentions were summarized into therapeutically equivalent product groups to account for the 1,578 innovator products marketed in 1991. Geriatric use ranged from nearly zero to almost 100 percent depending on the product. The analysis showed that fully half of the innovator products are infrequently used by the elderly—that is, geriatric patients constitute less than 25 percent of the market share for 789 of the 1,578 products. By contrast, the elderly constitute more than 50 percent of the market share for a quarter of the innovator products. This information does not indicate the percentage of elderly subjects participating in clinical trials. In recent years, however, geriatric participation in clinical trials for drug products frequently used by the elderly has increased, and it is likely that less frequent use of a drug product by geriatric patients is consistent with low participation by the elderly in clinical trials for that product.

3. Current Incidence of Geriatric Labeling

In 1989, FDA's Division of Drug Advertising and Labeling conducted a survey of geriatric labeling covering the top 25 drug products used by the elderly and all products in the top 12 classes of drugs used by the elderly. This survey included 425 products including 370 innovator products and 55 generic products. Because the labeling survey did not provide geriatric labeling information for all products, and the geriatric labeling that was found on the surveyed labels did not typically comply fully with the regulation, FDA has used the survey results in this analysis as an indicator of potential data availability, rather than an indicator of compliance with the regulation.

A detailed comparison of the incidence of the geriatric labeling data with the geriatric use data showed that products falling in the middle range of geriatric use have a higher incidence of geriatric labeling than those products with relatively low and relatively high geriatric use. (See FDA's ''Threshold Assessment of Requirements for Geriatric Labeling'' for a graphical illustration of these respective distributions (Ref. 3).) This finding was unexpected. Particularly curious was the low incidence of geriatric labeling among the high geriatric use products. One possible explanation is that a high degree of geriatric use was assumed, but discussions with industry representatives could not confirm this hypothesis.

4. Products By Cost Category

As noted in section VI.B.2 of this document, the geriatric use of 75 percent of the products surveyed is less than 50 percent. FDA assumed that the availability of geriatric data (at least some analyzable data) would not exceed the incidence of geriatric labeling found in the previously described labeling survey. For the 25 percent of the surveyed products for which geriatric use constituted more than 50 percent of total use (high use), the agency assumed that analyzable data exists for the proportion of products that currently have geriatric labeling and that at least some data exist for the remaining products. These distributions led to the construction of four distinct groups of products based on the degree of geriatric use and the availability of geriatric data, roughly defined as follows:

(1) Low geriatric use products with no data available (no incidence of geriatric labeling)—about half of the low elderly use products.

(2) Low geriatric use products with some data available (at least some geriatric labeling)—about half of the low elderly use products.

(3) High geriatric use products with limited data available (no incidence of geriatric labeling)—about half of the high elderly use products.

(4) High geriatric use products with data available (at least some geriatric labeling)—about half of the high elderly use products.

These four product label groups, combined with the distribution of new drug approvals shown in Table 1, provide the basis for FDA's estimated costs. Table 2 displays the estimated number of product labels falling into each of 16 cost categories. The two low geriatric use categories account for three-quarters (three-eights each) of the products in each column and the high use categories account for one-fourth (one-eighth each) of the products. The two columns under the 1975 to 1984 heading account for the differences in the way the data are likely to be stored—half in a form readable by the computer technology used today and half in a form that will require some effort to reformat.

TABLE 2—INNOVATOR PRODUCTS PER COST CATEGORY

Geriatric Use and Data Availability	Pre-1975	1975 to 1984		1985 to 1991	Totals
		Formatted Data	Unformatted Data		
Low Use/ No Data	447	38	37	71	592
Low Use/ Some Data	447	38	37	71	592
High Use/ Limited Data	149	13	12	24	197
High Use/ Some Data	149	13	12	24	197
Totals[1]	1,191	100	99	188	1,578

[1] Column totals may not add due to rounding

Table 3 provides estimates of the average cost per product of complying with the regulation for each geriatric use/geriatric data category shown in Table 2. These values were arrived at after discussing anticipated industry effort to comply with the regulation with several industry officials, and after considering FDA's own experience conducting short-term studies requiring data retrieval, data formatting, and data analysis. The category costs, therefore, are based on subjective, but reasonable, estimates of the levels of effort likely to be involved.

The highest costs ($24,000) are for drug products approved before 1975 for which extensive geriatric data exist, but such data are not available in a computer readable format. In this case, at a minimum, the data would have to be extracted from subject records, entered into a computer file, and analyzed. The results would be compared with summary data on all remaining subjects included in the clinical trials to detect any significant geriatric differences.

Calculations assume that this process, including a literature search and label and supplement preparation, would take about three person-months (the amount of time a person works in 3 months) at a loaded cost of about $50 per person-hour. The least complicated case ($4,000), would be for drug products with no data available on geriatric patients. A literature search would have to be conducted, the label revised, and a supplement submitted to reflect the revision. This process was estimated to take about two person-weeks at the same hourly rate. The remaining cost categories fall between the two just described with differing levels of effort requiring differing levels of costs.

TABLE 3—INNOVATOR COSTS PER PRODUCT BY PRODUCT CATEGORY

Geriatric Use and Data Availability	Pre-1975	1975 to 1984		1985 to 1991
		Formatted Data	Unformatted Data	
Low Use/ No Data	$4,000	$4,000	$4,000	$4,000
Low Use/ Some Data	$8,000	$6,000	$8,000	$6,000
High Use/ Limited Data	$16,000	$6,000	$8,000	$6,000
High Use/ Some Data	$24,000	$6,000	$8,000	$6,000

C. Total Costs of Compliance

The category costs in Table 3 were multiplied by the numbers of labels shown in Table 2 and summed over all categories to arrive at the estimated total costs of compliance for the innovator products. These results are shown in Table 4. Clearly, the greatest costs of the regulation will be for products approved before 1975. These products account for $11,314,500, or 84 percent of the total $13,470,000 estimated costs for innovators, as shown in Table 4.

TABLE 4—TOTAL INNOVATOR COMPLIANCE COSTS BY CATEGORY

Geriatric Use and Data Availability	Pre-1975	1975 to 1984		1985 to 1991	Totals
		Formatted Data	Unformatted Data		
Low Use/ No Data	$1,786,500	$150,000	$148,500	$282,000	$2,367,000
Low Use/ Some Data	$3,573,000	$225,000	$297,000	$423,000	$4,518,000
High Use/ Limited Data	$2,382,000	$75,000	$99,000	$141,000	$2,697,000
High Use/ Some Data	$3,573,000	$75,000	$99,000	$141,000	$3,888,000
Totals	$11,314,500	$525,000	$643,500	$987,000	$13,470,000

FDA's estimates the cost of relabeling each generic product to be $2,000, which accounts for the supplement preparation, the revision and printing of labels based on changes made to innovator product labels, and the destruction of small stocks of existing labels. Thus, the total estimated cost of relabeling 2,417 generic products is $4,834,000, bringing the total estimated cost of the regulation to $18,304,000. Manufacturers of innovator products will incur about 74 percent and manufacturers of generic products about 26 percent of this total.

Although these projections are the best available to the agency, FDA notes that there are reasons to believe that they overstate the likely consequences of the rule. For example:

(1) Part of the analysis is based on data that are several years old, and a greater percentage of products now on the market are thought to be close to compliance with the final rule. Many recently approved NME's (those approved since 1991) contain a geriatric labeling section and already comply with the rule. Moreover, several of the older drug products that would not comply with the rule have been removed from the market since 1991.

(2) The rule applies only to approved products that are actually marketed. This cost analysis, however, assumes that all approved NME's would be subject to the provisions of the rule. Adjusting for these differences would substantially reduce the estimated costs to industry.

D. Effects on Small Entities

The affected pharmaceutical companies can be classified into three industry sectors: Large innovator firms (more than 750 employees), small innovator firms (fewer than 750 employees), and independent generic firms (fewer than 750 employees). Within the two innovator sectors, almost all of the costs will be borne by the large innovators because large firms sponsor almost all innovator product applications. Although the occasional product sponsored by a small innovator firm may require additional research and analysis to support geriatric labeling, it is unlikely that any one small firm would have more than one or two such products or that any one of these products would be marketed if it could not generate over several hundred thousand dollars of revenue per year. As firms have up to 6 years to comply with the rule for all products, the estimated one-time cost per product of $6,000 to $24,000 would be extremely low relative to the income generated from such product(s) during this period.

Most of the small firms affected by the rule will be independent manufacturers of generic drugs. These firms will incur the cost of changing the labels of numerous drug products. The following example illustrates that even the largest of these small firms would not likely incur significant costs in comparison to company revenues. For example, one of the largest independent generic manufacturers (350 employees) held ANDA's in 1995 for approximately 250

products containing 95 chemical entities. According to their 10-k filing with the Securities and Exchange Commission, the company marketed only 37 drug products containing 21 chemical entities in mid-1995. Therefore, the firm would need to make about 21 label changes at a total cost of about $42,000. Not all of these costs would be incurred during the same year, however, because the regulation will be phased in over a 6-year period. Considering these circumstances, the $42,000 cost to this small entity would not be a significant fraction of the company's $200 million in annual sales.

Although the previous example applies to just one firm, given the estimated $2,000 compliance cost for each marketed generic drug, it is difficult to construct a scenario in which the cost of the required label changes could constitute a significant portion of a company's 6-year revenue stream. As a result, although most manufacturers of generic drugs will be affected, very few, if any, will incur costs that are significant in comparison with company revenues. FDA therefore certifies that this rule will not have a significant effect on a substantial number of small entities.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The following title, description, and respondent description of the information collection provisions are shown with an estimate of the annual reporting burden. This estimate includes the time needed for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Most of the paperwork burden imposed by this final rule will be a one-time reporting burden associated with gathering data and designing and manufacturing new labeling that includes a geriatric use subsection in the ''Precautions'' section of the labeling. The paperwork burden will vary widely, with the most significant burden, up to 480 hours, estimated for some innovator drug products approved before 1975. By contrast, the burden for most generic drug products is estimated at 80 hours or less.

In response to comments and on its own initiative, FDA has made a number of changes in the final rule to ease the paperwork burden. First, for the great majority of products affected by this regulation, the revised implementation dates will permit manufacturers sufficient time to design and print new labeling and deplete existing stocks of old labeling before the geriatric subsection is required for the product. Second, FDA will not require geriatric labeling to be submitted for approved products that are not currently marketed. Third, all of the labeling language under § 201.57(f)(10)(ii)(A), and much of the labeling language under § 201.57(f)(10)(ii)(B) and (f)(10)(ii)(C) are provided in the regulation. Fourth, as discussed in section IV of this document, many NME's approved since 1991 contain a geriatric labeling section and are already in compliance, and the labeling of a substantial number of drug products approved before 1991 contains some geriatric information.

Title: Geriatric Use Labeling for Human Prescription Drugs.

Description: FDA is amending its regulations governing the content and format of labeling for human prescription drug products, including biological products, to include information on the appropriate use of drugs for persons 65 and older.

Description of Respondents: Business and other for-profit organizations, including small businesses and manufacturers.

Because labeling was not considered collection of information under the Paperwork Reduction Act of 1980, the agency did not provide a paperwork comment period for the proposed rule. However, the agency is providing an opportunity for public comment under the Paperwork Reduction Act of 1995, which was enacted after the publication of the proposed rule and applies to this final rule. Therefore, FDA now invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA'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 respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology. Individuals and organizations may submit comments on the information collection provisions of this final rule by October 27, 1997. Comments should be directed to the Dockets Management Branch (address above).

At the close of the 60-day comment period, FDA will review the comments received, revise the information collection provisions as necessary, and submit these provisions to OMB for review and approval. FDA will publish a notice in the **Federal Register** when the information collection provisions are submitted to OMB, and an opportunity for public comment to OMB will be provided at that time. Prior to the effective date of this final rule, FDA will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the information collection provisions. 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.

TABLE 5—ESTIMATED ANNUAL REPORTING BURDEN

21 CFR Section	Annual no. of respondents	Hours per response	Total burden hours
201.57(f)(10)	290	120	34,800

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Rochon, P. A., and J. H. Gurwitz, ''Drug Therapy,'' *Lancet* 346(8966):32–36, 1995.

2. Schneider, J. K., L. C. Mion, and J. D. Frengley, ''Adverse Drug Reactions in an Elderly Outpatient Population,'' *American Journal of Hospital Pharmacy*, 49(1):90–96, 1992.

3. Food and Drug Administration, ''Threshold Assessment of Requirements for Geriatric Labeling,'' June 30, 1997.

List of Subjects in 21 CFR Part 201

Drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 201 is amended as follows:

PART 201—LABELING

1. The authority citation for 21 CFR part 201 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 508, 510, 512, 530–542, 701, 704, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 355, 356, 357, 358, 360, 360b, 360gg-360ss, 371, 374, 379e); secs. 215, 301, 351, 361 of the Public Health Service Act (42 U.S.C. 216, 241, 262, 264).

2. Section 201.57 is amended by adding new paragraph (f)(10) to read as follows:

§ 201.57 Specific requirements on content and format of labeling for human prescription drugs.

* * * * *

(f) * * *

(10) *Geriatric use*. (i) A specific geriatric indication, if any, that is supported by adequate and well-controlled studies in the geriatric population shall be described under the ''Indications and Usage'' section of the labeling, and appropriate geriatric dosage shall be stated under the ''Dosage and Administration'' section of the labeling. The ''Geriatric use'' subsection shall cite any limitations on the geriatric indication, need for specific monitoring, specific hazards associated with the geriatric indication, and other information related to the safe and effective use of the drug in the geriatric population. Unless otherwise noted, information contained in the ''Geriatric use'' subsection of the labeling shall pertain to use of the drug in persons 65 years of age and older. Data summarized in this subsection of the labeling shall be discussed in more detail, if appropriate, under ''Clinical Pharmacology'' or the ''Clinical Studies'' section. As appropriate, this information shall also be contained in ''Contraindications,'' ''Warnings,'' and elsewhere in ''Precautions.''

(ii) Specific statements on geriatric use of the drug for an indication approved for adults generally, as distinguished from a specific geriatric indication, shall be contained in the ''Geriatric use'' subsection and shall reflect all information available to the sponsor that is relevant to the appropriate use of the drug in elderly patients. This information includes detailed results from controlled studies that are available to the sponsor and pertinent information from well-documented studies obtained from a literature search. Controlled studies include those that are part of the marketing application and other relevant studies available to the sponsor that have not been previously submitted in the investigational new drug application, new drug application, biological license application, or a supplement or amendment to one of these applications (e.g., postmarketing studies or adverse drug reaction reports). The ''Geriatric use'' subsection shall contain the following statement(s) or reasonable alternative, as applicable, taking into account available information:

(A) If clinical studies did not include sufficient numbers of subjects aged 65 and over to determine whether elderly subjects respond differently from younger subjects, and other reported clinical experience has not identified such differences, the ''Geriatric use'' subsection shall include the following statement:

''Clinical studies of (name of drug) did not include sufficient numbers of subjects aged 65 and over to determine whether they respond differently from younger subjects. Other reported clinical experience has not identified differences in responses between the elderly and younger patients. In general, dose selection for an elderly patient should be cautious, usually starting at the low end of the dosing range, reflecting the greater frequency of decreased hepatic, renal, or cardiac function, and of concomitant disease or other drug therapy.''

(B) If clinical studies (including studies that are part of marketing applications and other relevant studies available to the sponsor that have not been submitted in the sponsor's applications) included enough elderly subjects to make it likely that differences in safety or effectiveness between elderly and younger subjects would have been detected, but no such differences (in safety or effectiveness) were observed, and other reported clinical experience has not identified such differences, the ''Geriatric use'' subsection shall contain the following statement:

Of the total number of subjects in clinical studies of (name of drug), — percent were 65 and over, while — percent were 75 and over. (Alternatively, the labeling may state the total number of subjects included in the studies who were 65 and over and 75 and over.) No overall differences in safety or effectiveness were observed between these subjects and younger subjects, and other reported clinical experience has not identified differences in responses between the elderly and younger patients, but greater sensitivity of some older individuals cannot be ruled out.

(C) If evidence from clinical studies and other reported clinical experience available to the sponsor indicates that use of the drug in elderly patients is associated with differences in safety or effectiveness, or requires specific monitoring or dosage adjustment, the ''Geriatric use'' subsection of the labeling shall contain a brief description of observed differences or specific monitoring or dosage requirements and, as appropriate, shall refer to more detailed discussions in the ''Contraindications,'' ''Warnings,'' ''Dosage and Administration,'' or other sections of the labeling.

(iii)(A) If specific pharmacokinetic or pharmacodynamic studies have been carried out in the elderly, they shall be described briefly in the ''Geriatric use'' subsection of the labeling and in detail under the ''Clinical Pharmacology'' section. The ''Clinical Pharmacology'' section and ''Drug interactions'' subsection of the ''Precautions'' section ordinarily contain information on drug-disease and drug-drug interactions that is particularly relevant to the elderly, who are more likely to have concomitant illness and to utilize concomitant drugs.

(B) If a drug is known to be substantially excreted by the kidney, the ''Geriatric use'' subsection shall include the statement:

''This drug is known to be substantially excreted by the kidney, and the risk of toxic reactions to this drug may be greater in patients with impaired renal function. Because elderly patients are more likely to have decreased renal function, care should be taken in dose selection, and it may be useful to monitor renal function.''

(iv) If use of the drug in the elderly appears to cause a specific hazard, the hazard shall be described in the ''Geriatric use'' subsection of the labeling, or, if appropriate, the hazard shall be stated in the ''Contraindications,'' ''Warnings,'' or ''Precautions'' section of the labeling, and the ''Geriatric use'' subsection shall refer to those sections.

(v) Labeling under paragraphs (f)(10)(i) through (f)(10)(iii) of this section may include statements, if they would be useful in enhancing safe use of the drug, that reflect good clinical practice or past experience in a particular situation, e.g., for a sedating drug, it could be stated that:

''Sedating drugs may cause confusion and over-sedation in the elderly; elderly patients generally should be started on low doses of (name of drug) and observed closely.''

(vi) If the sponsor believes that none of the requirements described in

paragraphs (f)(10)(i) through (f)(10)(v) of this section is appropriate or relevant to the labeling of a particular drug, the sponsor shall provide reasons for omission of the statements and may propose an alternative statement. FDA may permit omission of the statements if FDA determines that no statement described in those paragraphs is appropriate or relevant to the drug's labeling. FDA may permit use of an alternative statement if the agency determines that such statement is accurate and appropriate.

* * * * *

Dated: July 31, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22701 Filed 8–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 140 and 646

[FHWA Docket No. FHWA–97–2681]

RIN 2125–AD86

Railroad/Highway Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: The FHWA is amending its regulations on railroad/highway projects and reimbursement for railroad work on Federal-aid highway projects. The amendments require railroads to: Submit final billings within one year following completion of the railroad work; remove the requirement of a State's certification that work is complete; remove the ''G'' Funds terminology; increase the ceiling for lump sum agreements from $25,000 to $100,000; incorporate changes brought about by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914; and show dimensions for participation limits in metric units. The FHWA makes these changes to conform the existing railroad/highway regulations to more recent laws or regulations, and to provide State highway agencies with clarification and more flexibility in implementing the current law. This rulemaking is part of the FHWA's effort to implement the President's Regulatory Reinvention Initiative.

DATES: This interim final rule is effective August 27, 1997. Written comments must be submitted on or before October 27, 1997.

ADDRESSES: Submit written, signed comments to the docket number that appears in the heading of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Robert Winans, Office of Engineering, (202) 366–0450, or Wilbert Baccus, Office of the Chief Counsel, (202) 366–0780, FHWA, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Present FHWA regulations regarding railroad/highway projects and reimbursement for railroad work on Federal-aid highway projects have evolved from basic principles established decades ago, with many of the policies remaining unchanged. The present regulations are found at 23 CFR part 140, subpart I, and part 646, subpart B. The FHWA amends these regulations in the following manner and for the reasons set forth below.

In part 140, subpart I, § 140.904, paragraph (b)(1) is amended to clarify that the approved program of projects is the approved statewide transportation improvement program, as is now required under 23 U.S.C. 135.

In § 140.922, paragraph (b) is amended to require railroads to submit final billings within one year following completion of the railroad work. Otherwise, previous payments to railroads may be considered final and projects may be closed out. This change will assist highway agencies in their efforts to obtain timely final billings from the railroads. Prior to this action, it had been common for some railroad bills to be received years after the work was completed, thus delaying audit activity and project closure. With the amended language, billings received from railroads after one year following completion of the railroad work can be paid at the discretion of the highway agency. Paragraph (b) is further amended to remove the requirement for State certification that the work is complete, acceptable, and in accordance with the terms of the agreement. The FHWA believes that such certificates are not necessary on individual projects. Instead, compliance can be reviewed on a program basis.

In part 646, subpart B, § 646.200, paragraph (c) is amended to refer to current sections of highway law. Section 405 of title 23, U.S.C., was repealed and section 203 of the Highway Safety Act of 1973 (Pub. L. 93–87, 87 Stat. 282) was codified as part of 23 U.S.C. 130. Paragraph (f) is removed because part 170 of title 23, CFR, no longer exists.

Section 646.202, Authority, is removed and reserved. This section is removed because the authority citation is placed at the part level and, therefore, redundant as a separate section in subpart B.

Section 646.204 is amended to remove paragraph (d) which defines obsolete terminology, to remove the paragraph designations from all definitions, and to place the definitions in alphabetical order.

In § 646.208, paragraphs (a) and (b) are revised to describe only funding sources for rail/highway crossing projects. Information contained in this section on Federal share is moved to § 646.212.

The current text of § 646.212, paragraph (b) is removed. Section 1012(a) of the ISTEA amended 23 U.S.C. 120 by removing subsection (d) concerning Federal share payable for reconstruction of existing grade separation projects on railway/highway crossings. Such projects are no longer eligible for 100 percent Federal funding. Regulatory text from § 646.208(b) is redesignated and revised as a new paragraph (b) in § 646.212 in order to provide information on Federal share in one place.

In § 646.214, paragraph (a)(2) is amended to clarify that the FHWA no longer is required to approve standards for all Federal-aid projects. Section 1016(d) of the ISTEA amended 23 U.S.C. 109 by adding a new subsection (p) which provided that non-NHS projects now follow State approved standards.

In § 646.216, paragraph (d)(3)(ii) is amended to increase the ceiling from $25,000 to $100,000 for using the lump sum payment arrangement for reimbursement for railroad adjustments (other than installation or improvement of grade crossing warning devices and/or grade crossing surfaces) on Federal-aid and direct Federal highway projects. The amendment provides the States greater flexibility in utilizing the lump sum payment arrangement. The purpose of allowing lump sum agreements, in lieu of agreements based on an accounting of actual costs, is to reduce the administrative burden associated

with railroad adjustment projects. Under the lump sum process, cost accounting is easier, project billings are simplified, and final audit of detailed cost records is not required. Typically, final project costs are quite close to the costs estimated for small, routine projects. If more detailed cost accounting methods were followed, however, the FHWA believes that the small degree of accuracy that might be realized would not justify the extra cost involved in carrying out detailed audits. This revision increases the number of railroad adjustments potentially eligible for lump sum payment, anticipates future needs and responds, in part, to the fact that since the $25,000 limit was established in 1982, inflation has reduced the number and limited the scope of projects eligible for lump sum payments.

In § 646.216, paragraph (e)(1) is amended to clarify that the approved program of projects is the approved statewide transportation improvement program now required under 23 U.S.C. 135.

The appendix to subpart B is amended to change the dimensions for horizontal and vertical clearances to metric units, in keeping with FHWA's metric transition timetable of September 30, 1996, published on August 31, 1993, at 58 FR 46036. Since that time, section 205(c) of the National Highway System Designation Act of 1995, Public Law 104–59, 109 Stat. 568, 577, amended the compliance date for use of the metric system (SI) on Federal-aid projects to September 30, 2000.

Rulemaking Analyses and Notices

The Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, allows agencies engaged in rulemaking to dispense with prior notice and opportunity for comment when the agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). For the reasons set further below, the FHWA has determined that prior notice to the public and opportunity for comment on this action are unnecessary and contrary to the pubic interest.

The changes made by this rulemaking provide greater flexibility to the States and conform the existing regulations to current law. First, the changes provide the States with greater flexibility in their billing procedures by allowing them to require railroads to submit final billings on a timely basis and by removing the requirement that States certify that work is complete for each project. Second, the changes increase the ceiling for lump sum agreements, which gives States greater flexibility in utilizing the lump sum payment arrangement, an option already available to them. Finally, the changes set forth in this interim final rule conform existing regulations to more current laws or regulations. Given the nature of these changes, the FHWA is not exercising its discretion in such a way that could meaningfully be affected by public comment. Moreover, the FHWA believes that it is in the public interest to make these changes effective without the delay associated with prior notice and opportunity for comment.

Under the APA, 5 U.S.C. 553(d)(3), agencies can, upon a finding of good cause, make a rule effective immediately and avoid the 30-day delay effective requirement. The FHWA has determined that good cause exists to make this rule effective upon publication for the following reasons. First, the FHWA finds that good cause exists to dispense with the 30-day delay effective requirement because the changes adopted by this action give the States greater flexibility in billing and rid the States of the burden to provide certification that railroad work is complete. Second, good cause further exists because the increased ceiling for lump sum agreements reduces the administrative burden on the States associated with railroad adjustment projects. Finally, the additional changes made by this rulemaking are merely technical in nature, ensuring that the existing regulations conform to current law.

For these same reasons, the FHWA has also determined that prior notice and opportunity for comment are not required under the Department of Transportation's regulatory policies and procedures, as it is not anticipated that such action would result in the receipt of useful information. Therefore, the FHWA is proceeding directly to an interim final rule which is effective upon publication. Nevertheless, in issuing an interim final rule, the FHWA affords interested persons with an opportunity to comment on this action. Comments received will be carefully considered in evaluating whether any change to this interim final rule is needed.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. The FHWA does not consider this action to be a significant regulatory action because the amendments would merely update the railroad regulations for Federal-aid highway projects to conform to recent laws or regulations, and provide States with clarification and flexibility to implement the current law.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on that evaluation, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities. The amendments only clarify or simplify procedures used by State highway agencies in accordance with existing laws or regulations.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a separate federalism assessment. This rule does not impose additional costs or burdens on the States, including the likely sources of funding for the States, nor does it affect the ability of the States to discharge the traditional State government functions. This document merely assists the States by giving them additional flexibility and clarification in implementing railroad/highway regulations.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined

that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 140

Bonds, Claims, Grant programs—transportation, Highways and roads, Railroads.

23 CFR Part 646

Grant programs—transportation, Highways and roads, Insurance, Railroads.

Issued on: August 20, 1997.

Gloria J. Jeff,

Acting Administrator.

In consideration of the foregoing, the FHWA amends title 23, Code of Federal Regulations, by revising part 140, subpart I, and part 646, subpart B, to read as set forth below.

PART 140—REIMBURSEMENT

1. The authority citation for part 140 continues to read as follows:

Authority: 23 U.S.C. 101(e), 106(c), 109(e), 114(a), 120(g), 121(d), 122, 130, and 315; and 49 CFR 1.48(b).

Subpart I—Reimbursement for Railroad Work

2. In § 140.904, paragraph (b)(1) is revised to read as follows:

§ 140.904 Reimbursement basis.

* * * * *

(b) * * *

(1) For work which is included in an approved statewide transportation improvement program.

* * * * *

3. In § 140.922, paragraph (b) is revised to read as follows:

§ 140.922 Billings.

* * * * *

(b) The company shall provide one final and complete billing of all incurred costs, or of the agreed-to lump sum, within one year following completion of the reimbursable railroad work. Otherwise, previous payments to the company may be considered final, except as agreed to between the SHA and the railroad.

* * * * *

PART 646—RAILROADS

4. The authority citation for part 646 is revised to read as follows:

Authority: 23 U.S.C. 109(e), 120(c), 130, 133(d)(1), and 315; 49 CFR 1.48(b).

Subpart B—Railroad-Highway Projects

5. In § 646.200, paragraph (f) is removed and paragraph (c) is revised to read as follows:

§ 646.200 Purpose and applicability.

* * * * *

(c) Additional instructions for projects involving the elimination of hazards of railroad/highway grade crossings pursuant to 23 U.S.C. 130 are set forth in 23 CFR part 924.

* * * * *

§ 646.202 [Removed and Reserved]

6. Section 646.202 is removed and reserved.

7. Section 646.204 is amended by removing paragraph (d); by removing the paragraph designations; and by placing the definitions in alphabetical order.

8. Section 646.208 is revised to read as follows:

§ 646.208 Funding.

(a) Railroad/highway crossing projects may be funded through the Federal-aid funding source appropriate for the involved project.

(b) Projects for the elimination of hazards at railroad/highway crossings may, at the option of the State, be funded with the funds provided by 23 U.S.C. 133(d)(1).

9. In § 646.212, paragraph (b) is revised to read as follows:

§ 646.212 Federal share.

* * * * *

(b) The Federal share of railroad/highway crossing projects may be:

(1) Regular pro rata sharing as provided by 23 U.S.C. 120(a) and 120(b).

(2) One hundred percent Federal share, as provided by 23 U.S.C. 120(c).

(3) Ninety percent Federal share for funds made available through 23 U.S.C. 133(d)(1).

10. In § 646.214, paragraph (a)(2) is revised to read as follows:

§ 646.214 Design.

(a) * * *

(2) Facilities that are the responsibility of the highway agency for maintenance and operation shall conform to the specifications and design standards and guides used by the highway agency in its normal practice for Federal-aid projects.

* * * * *

11. Section 646.216 is amended in paragraph (d)(3)(ii) by replacing the figure ''$25,000'' with the figure ''$100,000''; and by revising paragraph (e)(1) to read as follows:

§ 646.216 General procedures.

* * * * *

(e) *Authorizations.* (1) The costs of preliminary engineering, right-of-way acquisition, and construction incurred after the date each phase of the work is included in an approved statewide transportation improvement program and authorized by the FHWA are eligible for Federal-aid participation. Preliminary engineering and right-of-way acquisition costs which are otherwise eligible, but incurred by a railroad prior to authorization by the FHWA, although not reimbursable, may be included as part of the railroad share of project cost where such a share is required.

* * * * *

Appendix to Subpart B—Horizontal and Vertical Clearance Provisions for Overpass and Underpass Structures—[Amended]

12. The appendix to subpart B is amended as follows:

A. By replacing the words ''20 feet'' with ''6.1 meters'' wherever they appear;

B. By replacing the words ''20-foot'' with ''6.1-meters'' wherever they appear;

C. By replacing the words ''8 feet'' with ''2.5 meters'' wherever they appear;

D. By replacing the words ''9 feet'' with ''2.8 meters'' wherever they appear;

E. By replacing the words ''23 feet'' with ''7.1 meters'' wherever they appear;

F. By replacing the words ''24 feet 3 inches'' with ''7.4 meters'' wherever they appear; and

G. By replacing the words ''26 feet'' with ''8.0 meters'' wherever they appear.

F. By replacing the words ''Nine feet'' with ''Two and eight tenths meters'' wherever they appear.

[FR Doc. 97–22797 Filed 8–26–97; 8:45 am]

BILLING CODE 4910–22–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 206

RIN 3067–AC58

Disaster Assistance; Snow Assistance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule describes Federal assistance that is available to eligible applicants as a result of an Emergency or Major Disaster declaration based on snowstorms.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Melissa H. Howard, Ph.D, Infrastructure Support Division, room 713, 500 C Street SW., Washington DC 20472, (202) 646–3243.

SUPPLEMENTARY INFORMATION: On October 24, 1996, FEMA published in the **Federal Register** at 61 FR 55122 a proposed rule, ''Disaster Assistance; Snow Removal Assistance,'' and invited comments for 30 days ending on November 25, 1996. Comments were received from 11 sources representing a congressional office, State and local governments and a national association.

Three comments were made that the proposed change clarifies and clearly defines FEMA's eligibility criteria for snow assistance. A general comment was that the proposed rule would reduce false expectations and encourage proper planning and self-sufficiency on the parts of State and local governments.

Three comments were made that the proposed rule did not address the declaration criteria for which a presidential disaster for a snow event would be declared or did not take into account the effects of a ''slow emergency'' that may be created by the continual accumulation of severe weather over an extensive period of time. While the original intent was to describe only work and costs that would be eligible after a presidentially-declared emergency or major disaster, language was added to clarify situations that may warrant a presidential declaration. The basic principle guiding presidential declarations will be that the snowstorm must be record or near record, as established by official government records.

Four comments were made that costs associated with labor, equipment and materials for sand and salt operations to enable safe passage over icy surfaces should be an eligible expense. FEMA has simplified the rule by broadening eligible costs to include work eligible under 44 CFR 206.225, Emergency Work.

There were several comments about the limited nature of the eligibility for Federal assistance. Three comments were made that the proposed rule precludes snow removal from tracks and rights-of-way of urban mass transit systems, marine terminals and from airport runways and connecting taxiways and ramp areas, and four comments were made that the list of critical facilities should include other types of facilities besides those mentioned in the proposed rule. The rule now permits all emergency work costs eligible under 44 CFR 206.225 for the period of time that will be specified in the declaration.

Three comments were made that the snow removal policy continues to separate snowstorms from other disasters as defined by the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* The President has the authority under the Stafford Act to declare a major disaster or emergency or to deny a governor's request for a declaration. In the event that a declaration is made, the President has the authority to limit the extent to which Federal disaster assistance may be delivered. Winter storms that cause extensive power outages, serious safety hazards and significant physical damage to public infrastructure may require a declaration authorizing several categories of recovery assistance. The extent of damage and needed assistance will continue to be the basis for the extent of the declaration.

A frequent general comment was whether eligible costs (National Guard snow removal assistance, selective hauling of snow, overtime, equipment rates, etc.) under FEMA's past snow removal policy would be eligible and under what category of work, absent any mention in the proposed rule. As noted above, 44 CFR 206.225 governs costs eligible for Federal assistance. Damage survey reports will be written as Category B, Emergency Protective Measures.

Three comments were made that the one lane/emergency route policy should be expanded to provide assistance for all roads for which the State or local jurisdiction have responsibility. FEMA has expanded the eligibility.

National Environmental Policy Act

This rule is categorically excluded from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. No environmental assessment or environmental impact statement has been prepared.

Regulatory Flexibility Act

The Director certifies that this rule would not be a major rule under Executive Order 12291, and would not have a significant impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, and is not expected (1) to affect adversely the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, nor (3) to create any additional burden on small entities. Hence, no regulatory impact analysis has been prepared.

Paperwork Reduction Act

This proposed rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism

In promulgating this rule, FEMA has considered the Executive Order 12612, Federalism. This rule makes no changes in the division of governmental responsibilities between the Federal government and the States. Grant administration procedures in accordance with 44 CFR part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, remain the same. No Federalism assessment has been prepared.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform, dated October 25, 1991, 3 CFR, 1991 Comp., p. 359.

Congressional Review of Agency Rulemaking

This final rule has been submitted to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801 *et seq.* The rule is not a ''major rule'' within the meaning of that Act. It does not result in nor it is likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, as certified previously, and (2) from the Paperwork Reduction Act.

This rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Public Law 104–4. It does not meet the $100,000,000 threshold of that

Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 206

Disaster assistance, Public assistance.

Accordingly, 44 CFR part 206 is amended as follows:

1. The authority citation for part 206 is revised to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.;* Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.227 is revised to read as follows:

§ 206.227 Snow assistance.

Emergency or major disaster declarations based on snow or blizzard conditions will be made only for cases of record or near record snowstorms, as established by official government records. Federal assistance will be provided for all costs eligible under 44 CFR 206.225 for a specified period of time which will be determined by the circumstances of the event.

Dated: August 18, 1997.

James L. Witt,

Director.

[FR Doc. 97–22679 Filed 8–26–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 94–124; FCC 97–267]

Use of Radio Frequencies Above 40 GHz for New Radio Applications

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Memorandum Opinion and Order* the Commission grants the petition for reconsideration of Cutler-Hammer by amending the regulations to permit operation of lower power fixed radar systems in the 59–64 GHz band, permits interim equipment approval and operation of unlicensed services in the 59–64 GHz band provided that the equipment complies with the proposed spectrum etiquette contained in the Fourth Notice or Proposed Rule Making, denies Vorad Safety Systems, Inc.'s petition for reconsideration requesting relaxation of the spurious emission limits for vehicle radar systems operating in the 46.7–46.9 GHz band, and corrects two typographical errors contained in the First Report and Order (''Order'') in this proceeding.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: John A. Reed (202) 418–2455 or Rodney P. Conway (202) 418–2904. Via electronic mail: jreed@fcc.gov or rconway@fcc.gov, Office of Engineering and Technology, Federal Communications Commission.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Memorandum Opinion and Order*, ET Docket 94–124, FCC 97–267 adopted July 28, 1997, and released August 14, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

Summary of the Memorandum Opinion and Order

1. Cutler-Hammer, a manufacturer of sensors used in industrial applications, filed a petition for reconsideration requesting the Commission amend its rules to permit the operation of lower power, fixed field disturbance sensors (radar) in the 59–64 GHz frequency band. Cutler-Hammer states that lower frequency sensors of the type currently being manufactured have performance limitations that millimeter wave sensors can overcome and improve on sensor performance with the 5 GHz of frequency bandwidth.

2. Cutler-Hammer recognizes that a number of parties participating in this proceeding expressed concern about suggestions that vehicle radar systems be permitted to operate in the 60–61 GHz band. It agrees that the potential for interference from mobile field disturbance sensors to fixed operations is hard to predict and to avoid. Fixed field disturbance sensors operating characteristics are much more predictable and the potential for causing and receiving interference is more easily determined, while the operating characteristics of mobile field disturbance sensors are very difficult to predict due to the inherently variable nature of the system, which results in unpredictable radiation patterns and potentials for causing and receiving interference. Cutler-Hammer indicates that, in contrast, the low power fixed field disturbance sensors it desires to employ would operate with very little power and would create a predictable radiation pattern, permitting them to be designed and installed in such a way that they would neither be susceptible to, nor likely to cause, interference. Accordingly, Cutler-Hammer believes that the prohibition against the use of fixed field disturbance sensors is unnecessarily broad and is not supported by the record.

3. The Commission agrees with Cutler-Hammer that fixed field disturbance sensors at the proposed output level of 9 nW/cm² as measured at 3 meters from the transmit antenna would not be likely to be a source of interference to other communications systems operating with an output level of up to 9 μW/cm² as measured at 3 meters from the transmit antenna in the 59–64 GHz band. This is the only unlicensed frequency band under the Commission's regulations that provides a bandwidth this wide and at a power level that makes operation practical. Accordingly, the Commission is granting the request from Cutler-Hammer to remove the prohibition against fixed field disturbance sensors. The Commission also recognizes that, in many cases, the manufacturing process may require that the sensor be capable of movement, even though the equipment in which the sensor is installed is fixed. Thus, the Commission will clarify in its rules that the permission to operate fixed field disturbance sensors applies to sensors installed in fixed equipment, even if the sensor itself moves within the equipment. However, this action does not affect the Commission's existing prohibition on mobile field disturbance sensors in the 59–64 GHz frequency band.

4. Although the Commission stated previously in this proceeding that operation in the 59–64 GHz band would be permitted only after adoption of a spectrum etiquette, we now believe that this prohibition no longer is necessary and would be detrimental to the introduction of new products and services. Therefore, the Commission will permit operation in the 59–64 GHz band, of any authorized, unlicensed communications devices, including fixed field disturbance sensors, on an interim basis pending consideration of the Spectrum Etiquette proposed in the Fourth Notice of Proposed Rule Making. The Commission believes that permitting interim operation will serve the public interest by permitting early rollout of new and innovative technologies and services. The Commission will require, however, that

equipment approved for such interim operation comply with the proposed Spectrum Etiquette. The Commission stresses that any spectrum etiquette finally adopted in this proceeding may differ significantly from the proposed Spectrum Etiquette contained in the Fourth NPRM and that manufacture and operation of equipment under this interim provision is at the risk of the manufacturer and operator exclusively. The Commission also stresses that initial operation which complies with the proposed Spectrum Etiquette does not guarantee continued operation if any changes in that etiquette are adopted.

5. Vorad Safety Systems, Inc. (''Vorad''), a manufacturer of field disturbance sensors used for vehicle collision avoidance systems, requests reconsideration of the spurious emission limit for sensors operating in the 46 GHz band. Vorad requests that the limits on spurious emissions applicable to field disturbance sensors operating in the 76 GHz band also be applied to sensors operating in the 46 GHz band. The limits on spurious emissions from transmitters in the 76 GHz band are 300 pW/cm^2 at 3 meters for side or rear looking sensors and 600 pW/cm^2 at 3 meters for forward looking sensors. The limit for spurious emissions from transmitters operating in the 46 GHz band is 2 pW/cm^2 at 3 meters.

6. Vorad adds that the Commission relaxed the standard for vehicle radar systems in the 76 GHz band but adhered to its strict proposal for radar operating in the 46 GHz band. Vorad states that the adopted limit conflicts with the Commission's stated goal of encouraging expeditious development of an important safety product. Vorad adds that meeting the stricter limit using current technology would be possible only by reducing operating power, which would significantly degrade the performance of the system.

7. Vorad argues that the limit on spurious emissions adopted by the Commission for the 46 GHz band is not technically justified. It states that the Commission based its decision on the need to protect existing and future U.S. Government uses of the 94 GHz and 140 GHz bands. However, Vorad indicates that the evidence in the record does not demonstrate that there is a real threat of interference to such uses by vehicle radar systems, since vehicle radar systems use highly directionalized antennas and will primarily be used on the nation's highways. It adds that it has operated vehicle radar systems in the 24 GHz band for several years and has been experimenting with operations in the 47 GHz band for over a year. Vorad indicates that the spurious emissions from its 24 GHz and 47 GHz transmissions were suppressed by only 50 dB, and that no complaints of interference were received. Thus, Vorad states that its experience with these systems demonstrates that an attenuation standard of 50 dB is sufficient to protect other spectrum users. Vorad adds that there is no evidence that operations in the 46 GHz band will present more of an interference risk than do operations in the 76 GHz band, for which a much more reasonable standard was adopted. The limits on spurious emissions from transmitters in the 76 GHz band are 300 pW/cm^2 at 3 meters for side or rear looking sensors and 600 pW/cm^2 at 3 meters for forward looking sensors. If the transmitter is operated at its maximum permitted output levels, spurious emissions must be attenuated by at least 50 dB.

8. Finally, Vorad argues that vehicle radar systems in the 76 GHz band will create spurious emissions over a much larger range of spectrum than will operations in the 46 GHz band. It states that the narrow 200 MHz bandwidth employed by transmitters in the 46 GHz band will limit the bandwidth of harmonic emissions. In contrast, the permissible bandwidth of the 76 GHz radar is 1000 MHz, resulting in spurious emissions over much more of the spectrum due to intermodulation frequency products.

9. The National Telecommunications and Information Administration (NTIA) was the only party to file comments in response to the Vorad petition. NTIA strongly opposes VORAD's request to relax the spurious emission limit. It states that the majority of U.S. Government operations occur in the propagation windows centered at 94 GHz, 140 GHz and 220 GHz. The band centered at 220 GHz is centered at a null for water absorption, while still having relatively low attenuation properties due to absorption from dry air. Since the bands being addressed in this proceeding did not exceed 155 GHz and spurious emissions were addressed only below 200 GHz, the 220 GHz band was not addressed in the Commission's earlier considerations. It adds that new radio receiver technologies using wide bandwidth (typically 4–10 GHz) and improved sensitivities have resulted in greater resolution and precision for detection and guidance systems and remote sensing of the environment. NTIA points out that a joint Federal Aviation Administration/Department of Defense/Industry program is currently underway to develop and test ''synthetic vision'' systems intended for use in airport environments during poor visibility. Further, it states that recent analysis indicates that the noise threshold of these receivers can be more than 30 dB below the threshold assumed by the Commission in its *Order* for this type of equipment, so further relaxation of the limit on spurious emissions could have serious consequences on the effectiveness of systems in these bands. Finally, NTIA states that it invited Vorad to present its views to the Interdepartment Radio Advisory Committee (IRAC), but that Vorad did not respond to this offer. NTIA adds that it remains willing to assist Vorad should it decide to pursue an effort to demonstrate compatibility of its equipment, but in the interim urges the Commission not to relax the limit on spurious emissions.

10. The Commission is denying Vorad's petition to relax the limits on spurious emissions from field disturbance sensors operating in the 46 GHz band. The Commission recognized in the *Order* that its decision might have an adverse economic impact on manufacturers but concluded that the limit was appropriate to protect present and future U.S. Government operations in the 94 and 140 GHz bands. It stated that the 94 GHz and 140 GHz bands share many potential uses, since these bands are in the only two atmospheric transmission windows between 60 GHz and 300 GHz. The 94 GHz band is employed for radio astronomy, U.S. Government passive imaging systems, and Department of Defense classified applications. The 140 GHz band is used for radio astronomy and Government military passive imaging systems. In particular, the Commission noted that the Advanced Research Projects Agency's MIMIC program to develop lower-cost millimeter wave components has involved technology in the 94 GHz area and is likely to increase the use of this and other millimeter wave bands. The Commission, in the *Order*, added that, while it appreciated the arguments in the comments from General Motors Corporation and GM Hughes Electronics for relaxing the spurious emission limits, it did not agree that directional antennas and the use of vehicle radar systems on highways would be sufficient to eliminate interference to airborne passive sensors. Further, as noted by NTIA in its comments on Vorad's petition, current development of a passive imaging system used as an aircraft landing aid in adverse weather conditions involves resolution capabilities which are directly related to the amount of RF signal noise in the

band. Thus, we continue to believe that the presence of excessive spurious emissions from other signal sources, *e.g.*, harmonic emissions from vehicle radar systems in the 46 GHz band, would degrade the usefulness of these bands for passive imaging and other possible functions.

11. While Vorad indicates that its previous experience with field disturbance sensors operating at 24 GHz and at 47 GHz and employing a spurious emission suppression of 50 dB has not resulted in complaints of interference, the Commission does not find this sufficiently conclusive to relax the spurious emission requirements. First, operations in the 94 GHz and 140 GHz bands are only now being developed. As U.S. Government and other operations increase in these bands, along with the proliferation of field disturbance sensors in the 46 GHz band, the potential for interference would also increase. Second, Vorad's argument does not address the cumulative effects of multiple transmitters operating simultaneously within a service area. Finally, 50 dB attenuation of the spurious emissions from transmitters operating in the 24 GHz band results in an emission level that is relatively close to the emission limit adopted in the *Order* for spurious emissions from the 46 GHz band.

12. The Commission does not agree with Vorad's claims that harmonic emissions from the 76 GHz system present the same, or greater, interference potential to 94 GHz and 140 GHz systems as sensors operating in the 46 GHz band, even if the 76 GHz devices use frequency doublers or triplers to achieve the fundamental emission. If, as suggested by Vorad, the 76 GHz systems generate their fundamental emissions through the use of a 25.5 GHz oscillator, the third harmonic is at 76.5 GHz, the fourth harmonic is at 102 GHz, the fifth harmonic is at 127.5 GHz, and the sixth harmonic is at 153 GHz. If the 76 GHz systems generate their fundamental emissions through the use of a 38.25 GHz oscillator, the second harmonic is at 76.5 GHz, the third harmonic is at 114.75 GHz, and the fourth harmonic is at 153 GHz. In every case, the harmonic emissions from the 76 GHz system are well removed from the 94 GHz and 140 GHz bands. While Vorad also argues that the wider bandwidth of the 76 GHz system will result in spurious emissions covering a larger bandwidth, as compared to systems in the 46 GHz band, this wider bandwidth is not sufficient to cause the harmonic emissions to fall within the 94 GHz or 140 GHz bands.

13. We decline to permit a higher spurious emission level for field disturbance sensors operating in the 46 GHz band. Accordingly, the Petition for Reconsideration of Vorad Safety Services, Inc. is denied.

14. The Commission is taking this opportunity to correct two typographical errors contained in the *Order* in this proceeding. Section 15.215(a) is being amended to reflect the two new rule §§ 15.253 and 15.255 covering operations above 40 GHz. Section 15.215 notes the exceptions to the general emission limits contained in § 15.209 and should have been amended in the *Order*. Section 15.31(f)(1) is also being corrected to reflect that the inverse linear-distance-squared extrapolation factor (40 dB per decade) for measurements above 40 GHz applies only to measurements performed in the near field. In response to the Second Notice of Proposed Rule Making, 61 FR 14041, March 29, 1996, in this proceeding, Epsilon Lambda, General Motors and Vorad expressed concern that measurements at the specified distance of 3 meters could result in measurements in the near field, requiring the use of an inverse linear-distance-squared extrapolation factor (40 dB per decade) instead of inverse linear-distance (20 dB per decade), as previously specified in the rules. The Commission agreed with these comments but inadvertently stated that all measurements above 40 GHz could be made at a distance greater than 3 meters using an inverse linear-distance-squared extrapolation factor, even if the measurements were not being performed in the near field. However, the inverse linear-distance-squared factor correctly extrapolates the change in signal level versus distance when measurements are made in the near field, whereas the inverse linear-distance factor correctly extrapolates the change in signal level versus distance when measurements are made in the far field. The use of the inverse linear-distance-squared extrapolation factor under all measurement conditions could permit a manufacturer to increase measurement distance until the results demonstrated compliance, even though the emissions exceed the limit when the product is measured at a shorter distance. Accordingly, the rules are being amended to indicate that the use of an inverse linear-distance-squared extrapolation factor applies only to near-field measurements. Measurements in the far field will continue to be extrapolated employing an inverse linear-distance extrapolation factor.

15. In accordance with the above discussion and pursuant to the authority contained in Sections 4(i), 302, 303(e), 303(f), 303(g), 303(r), and 405 of the Communications Act of 1934, as amended, *it is ordered* that the Petition for Reconsideration filed by Cutler-Hammer, Inc., as supplemented, to permit operation of low power, fixed field disturbance sensors in the 60 GHz band is granted as described below by the amendments to part 15 of the Commission's Rules and Regulations are amended as shown below, effective September 26, 1997.

16. *It is further ordered* That the Petition for Reconsideration filed by Vorad Safety Systems, Inc., is denied.

Final Regulatory Flexibility Analysis

17. As required by Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603 (''RFA''), an Initial Regulatory Flexibility Analysis (''IRFA'') was incorporated into the Notice of Proposed Rule Making (''NPRM'') in ET Docket No. 94–124.[1] The Commission sought written public comments on the proposals in the NPRM, including the IRFA. The Commission's Final Regulatory Flexibility Analysis (''FRFA'') in this Memorandum Opinion and Order conforms to the RFA, as amended by the Contract with America Advancement Act of 1996 (CWAAA), Public Law 104–121, 110 Stat. 847 (1996).[2]

18. Need for and Objective of the Rules. Our objectives are to permit the operation within the 59–64 GHz band of fixed field disturbance sensors in an industrial environment. These products were prohibited under the Order in ET Docket No. 94–124.[3]

19. Summary of Significant Issues Raised by Public Comments in Response to the IRFA. No comments were submitted in direct response to the IRFA. However, Cutler-Hammer, Inc. filed a Petition for Reconsideration requesting that the Commission amend its rules to permit the operation within the 59–64 GHz band of fixed field disturbance sensors in an industrial environment. No comments were filed in response to this petition.

20. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply. For the purposes of this Memorandum Opinion and Order, the RFA defines a ''small business'' to be the same as a ''small business concern'' under the Small Business Act, 15 U.S.C. 632, unless the Commission

[1] See 9 FCC Rcd 7078 (1994), 59 FR 61304, November 30, 1994.

[2] Subtitle II of the CWAAA is ''The Small Business Regulatory Enforcement Fairness Act of 1996'' (SBREFA), codified at 5 U.S.C. 601 *et seq.*

[3] See 11 FCC Rcd 4481 (1995), 61 FR 14041, March 29, 1996.

has developed one or more definitions that are appropriate to its activities.[4] Under the Small Business Act, a ''small business concern'' is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA).[5] Since the Regulatory Flexibility Act amendments were not in effect until the record in this proceeding was closed, the Commission did not request information regarding the number of small businesses that might use this service and is unable at this time to determine the number of small businesses that would be affected by this action in addition to Cutler-Hammer, Inc.

21. The Commission has not developed a definition of small entities applicable to unlicensed communications devices. Therefore, we will utilize the SBA definition applicable to manufacturers of Radio and Television Broadcasting and Communications Equipment. According to the SBA regulations, unlicensed transmitter manufacturers must have 750 or fewer employees in order to qualify as a small business concern.[6] Census Bureau data indicates that there are 858 U.S. companies that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities.[7] The Census Bureau category is very broad, and specific figures are not available as to how many of these firms will manufacture unlicensed communications devices. However, we believe that many of them may qualify as small entities.

22. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements. Our new rules permit the introduction of a new type of equipment which will operate in the 59–64 GHz band. As with other communications equipment already permitted to operate within this frequency band, the transmitter must be authorized under the Commission's certification procedure. No changes were made to the standards that must be met by the equipment or the reporting or recordkeeping requirements.

23. Significant Alternatives and Steps Taken to Minimize Significant Economic Impact on a Substantial Number of Small Entities Consistent with Stated Objectives. No alternatives or other steps were addressed in this proceeding.

24. Report to Congress. The Commission shall send a copy of this Final Regulatory Flexibility Analysis, along with this Memorandum Opinion and Order, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A).

[4] See 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 5 U.S.C. 632).

[5] See 15 U.S.C. 632.

[6] See 13 CFR 121.201, (SIC) Code 3663.

[7] See U.S. Dept. of Commerce, 1992 Census of Transportation, Communications and Utilities (issued May 1995), SIC category 3663.

List of Subjects in 47 CFR Part 15

Communications equipment, Highway safety, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Changes

Title 47 of the Code of Federal Regulations, Part 15, is amended as follows:

PART 15—RADIO FREQUENCY DEVICES

1. The authority citation for Part 15 continues to read as follows:

Authority: 47 U.S.C. 154, 302, 303, 304, 307 and 544A.

2. Section 15.31 is amended by revising paragraph (f)(1) to read as follows:

§ 15.31 Measurement standards.

* * * * *

(f) * * *

(1) At frequencies at or above 30 MHz, measurements may be performed at a distance other than that specified provided: Measurements are not made in the near field, and it can be demonstrated that the signal levels to be measured at the distance employed can be detected by the measurement equipment. Measurements shall not be performed at a distance greater than 30 meters unless it can be demonstrated that measurements at a distance of 30 meters or less are impractical. When performing measurements at a distance other than that specified, the results shall be extrapolated to the specified distance using one of the following formulas: For measurements above 30 MHz that are not performed in the near field, an inverse linear-distance extrapolation factor (20 dB/decade); for measurements performed in the near field, an inverse linear-distance-squared extrapolation factor (40 dB/decade).

* * * * *

3. Section 15.215 is amended by revising paragraph (a) to read as follows:

§ 15.215 Additional provisions to the general radiated emission limitations.

(a) The regulations in §§ 15.217 through 15.255 provide alternatives to the general radiated emission limits for intentional radiators operating in specified frequency bands. Unless otherwise stated, there are no restrictions as to the types of operation permitted under these sections.

* * * * *

4. Section 15.255 is amended by revising paragraphs (a) and (b) to read as follows:

§ 15.255 Operation within the band 59.0–64.0 GHz.

(a) Operation under the provisions of this section is not permitted for the following products:

(1) Equipment used on aircraft or satellites; and

(2) Field disturbance sensors, including vehicle radar systems, unless the field disturbance sensors are employed for fixed operation. For the purposes of this section, the reference to fixed operation includes field disturbance sensors installed in fixed equipment, even if the sensor itself moves within the equipment.

(b) Within the 59–64 GHz band, emission levels shall not exceed the following:

(1) For products other than fixed field disturbance sensors, the power density of any emission shall not exceed 9 μW/cm^2 at a distance of 3 meters;

(2) For fixed field disturbance sensors that occupy 500 MHz or less of bandwidth and that are contained wholly within the frequency band 61.0–61.5 GHz, the power density of any emission within the band 61.0–61.5 GHz shall not exceed 9 μW/cm^2 at a distance of 3 meters and the power density of any emission outside of the 61.0–61.5 GHz band, but still within the 59–64 GHz band, shall not exceed 9 nW/cm^2 at a distance of 3 meters; and

(3) For fixed field disturbance sensors other than those operating under the provisions of paragraph (b)(2) of this section, the peak transmitter output power shall not exceed 0.1 mW and the peak power density shall not exceed 9 nW/cm^2 at a distance of 3 meters.

Note to paragraph (b): Equipment may be authorized and operated on an interim basis under the provisions of this section provided it complies with the Spectrum Etiquette parameters contained in the December 13, 1996 submission from the Millimeter Wave Communications Working Group in ET Docket 94–124. Copies of the submission are available for inspection at the Federal Communications Commission Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and may also be purchased from the Federal Communications

Commission's duplication contractor, International Transcription Service, (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036. The submission is also available for viewing on the FCC's internet website [http://www.fcc.gov/oet/dockets/et94–124/].

* * * * *

[FR Doc. 97–22550 Filed 8–26–97; 8:45 am]

BILLING CODE 6712–01–U

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

48 CFR Parts 701, 702, 703, 704, 705, 706, 708, 709, 711, 715, 716, 717, 719, 722, 724, 725, 726, 728, 731, 732, 733, 734, 736, 749, 750, 752, 753; and Appendices A, C, G, and H to Chapter 7

[AIDAR Notice 97–1]

RIN 0412–AA32

Miscellaneous Amendments to Acquisition Regulations; Corrections

AGENCY: Agency for International Development (USAID), IDCA.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to rule document 97–18603, AIDAR Notice 97–1, Miscellaneous Amendments to Acquisition Regulations, in the issue of Tuesday, July 29, 1997 (62 FR 40464).

EFFECTIVE DATE: August 28, 1997.

FOR FURTHER INFORMATION CONTACT: M/OP/P, Ms. Diane M. Howard, (703) 875–1533.

SUPPLEMENTARY INFORMATION: AIDAR Notice 97–1, Miscellaneous Amendments to Acquisition Regulations, was published as a Final Rule on July 29, 1997 (62 FR 40464). Several omissions from and errors in the Rule have been identified and require corrective action. The specific corrections are:

1. Amendments 2 and 6 intended to revise the acronym ''AID'' and ''AID-direct'', respectively, to ''USAID'' and ''USAID-Direct''. However, in several places in the AIDAR, the acronym has periods between the letters, and this version of the acronym also needs to be changed to ''USAID''. The two amendments are corrected accordingly.

2. Amendment 32 revised section 715.613–71, but the phrasing in paragraph (c) needs to be corrected by moving the first two words in (c)(1)(i) up to the end of the phrase in (c)(1) in order to have (c)(1)(ii) read properly.

3. Amendment 59 added a new clause, 752.225–70, containing wording which needs to be corrected to prevent future ambiguities. The specific correction, in the last sentence of the section, will provide the Contracting Officer discretion to require a refund if restricted goods are purchased without his or her prior written approval.

4. Several clauses in Part 752 of this chapter were added or revised to such extent that they require new dates; however, the date used was inaccurate and needs to be corrected to reflect either the actual month in which the Rule was published or the month in which the new clause was implemented (the new clauses at 752.225–70 and 752.225–71 became effective when a deviation was approved in February 1997). The specific amendments (and clauses) are number 59 (752.225–70), number 60 (752.225–71), number 62 (752.226–2), number 67 (752.7001), number 68 (752.7004), number 72 (752.7015), and number 76 (752.7033).

Correction of Publication

Accordingly, the publication on July 29, 1997 of final rule [AIDAR Notice 97–1] Miscellaneous Amendments to Acquisition Regulations (62 FR 40464), the subject of FR document 97–18603, is corrected as follows:

1. In the Preamble on page 40465, in the first column under D. Administrative Changes, in items (1) insert 'and ''A.I.D.'' ' between ' ''A.I.D.'' ' and ''to'' on the fourth line.

CHAPTER 7—[CORRECTED]

2. On page 40466 in the second column, in the second line of amendment 2, ''acronym'' should read ''acronyms'' and ' ''A.I.D.'' ' should read ' ''AID'' and A.I.D.'' '.

3. On the same page and column, amendment 6 should read as follows: ''6. In Chapter 7, sections 711.002–71, 722.170, 752.211–70 and 752.7002 are amended by revising ''AID-direct'' wherever it appears to read ''USAID-direct'', and sections 728.307–2, 728.309, 728.313, and 752.7003 are amended by revising ''A.I.D.-direct'' wherever it appears to read ''USAID-direct''.

715.613–71 [Corrected]

4. On page 40468 in the first column, in amendment 32, paragraph (c)(1) under section 715.613–71 should read as follows:

''(c) * * *

(1) The cognizant technical office makes a preliminary finding that an activity:

(i) Is authorized by Title XII; and

(ii) Should be classed as collaborative assistance because a continuing collaborative relationship between USAID, the host country, and the contractor is required from design through completion of the activity, and USAID, host country, and contractor participation in a continuing review and evaluation of the activity is essential for its proper execution.''

752.225–70 [Corrected]

5. On page 40470, in the first column in amendment 59, in the clause heading for section 752.225–70, ''(May 1997)'' should read ''(February 1997)'', and in the last sentence of the clause, the final phrase, ''the Contractor agrees to refund to USAID the entire amount of the purchase'' should read ''the Contracting Officer may require the contractor to refund the entire amount of the purchase''.

752.225–71 [Corrected]

6. On the same page and column, in amendment 60, in the clause heading for section 752.225–71, ''(May 1997)'' should read ''(February 1997)''.

752.7001 [Corrected]

7. On the same page, in the third column in amendment 67, in the clause heading for section 752.7001, ''(May 1997)'' should read ''(July 1997)''.

752.7004 [Corrected]

8. On the same page and column, in amendment 68, in the clause heading for section 752.7004, ''(May 1997)'' should read ''(July 1997)''.

752.7015 [Corrected]

9. On page 40471 in the first column, in amendment 72, in the clause heading for section 752.7015, ''(April 1996)'' should read ''(July 1997)''.

752.7033 [Corrected]

10. On the same page and column, in amendment 76, in the clause heading for section 752.7033, ''(May 1997'') should read ''(July 1997)''.

Dated: August 11, 1997.

Marcus L. Stevenson,

Procurement Executive.

[FR Doc. 97–22712 Filed 8–26–97; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1157

[STB Ex Parte No. 563]

Commuter Rail Service Continuation Subsidies and Discontinuance Notices

AGENCY: Surface Transportation Board, DOT.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is removing from the Code of Federal Regulations regulations concerning subsidies for the continuation of commuter rail service and notices of the discontinuance of commuter rail service, because the statutes have been repealed.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Effective January 1, 1996, the ICC Termination Act of 1995, Public Law 104–88, 109 Stat. 803 (ICCTA), abolished the Interstate Commerce Commission (ICC) and established the Board within the Department of Transportation. Section 204(a) of the ICCTA provides that ''[t]he Board shall promptly rescind all regulations established by the [ICC] that are based on provisions of law repealed and not substantively reenacted by this Act.''

In a notice of proposed rulemaking served and published in the **Federal Register** on June 12, 1997 (62 FR 32068), the Board proposed to remove the two sets of regulations at 49 CFR part 1157, because some of these regulations were based, at least in part, on repealed statutes. We noted, however, that statutes outside the ICCTA refer to, and hence may require the maintenance in substance of, part 1157. We instituted this proceeding to determine whether these regulations could be eliminated, or whether they had continuing validity and had to be retained.

Background

Subpart A. Subpart A of part 1157 deals with the determination of commuter rail continuation subsidies for Consolidated Rail Corporation (Conrail). As described in our June NPR,[1] under the Regional Rail Reorganization Act of 1973 (3R Act) and the Railroad Revitalization and Regulatory Reform Act of 1976 (4R Act), Conrail was to continue providing rail passenger service if a state or local transportation authority offered a subsidy to pay for the unprofitable service. 45 U.S.C. 744(e).

The 3R Act also created the Rail Services Planning Office (RSPO) of the former ICC, eventually codified at former 49 U.S.C. 10361–64. Pursuant to the 4R Act, RSPO was required to develop standards for the computation of subsidies for the continuation of Conrail commuter services (49 U.S.C. 10362).[2] RSPO issued the regulations originally codified at 49 CFR part 1127 and now found at 49 CFR part 1157, subpart A, on August 3, 1976, 41 FR 32546, in Ex Parte No. 293 (Sub-No. 8), Standards for Determining Commuter Rail Service Continuation Subsidies and Emergency Operating Payments.[3]

Under the Northeast Rail Service Act of 1981 (NERSA), Conrail was relieved, on January 1, 1983, of any legal obligation to provide commuter service. Section 1137 of NERSA chartered the Amtrak Commuter Services Corporation (Amtrak Commuter), a wholly owned subsidiary of the National Railroad Passenger Corporation (Amtrak).[4] 49 U.S.C. 24501–06. Under section 24505(a)(1), Amtrak Commuter is required to provide the commuter rail passenger service that Conrail was obligated to provide. Moreover, under section 24505(a)(2), Amtrak Commuter may provide passenger service if a commuter authority pays the avoidable costs plus a reasonable return on value less the revenues from the transportation. RSPO was to issue the regulations for such payments. Section 24505(b)(1).[5] (The post-NERSA regulatory response will be discussed in connection with subpart B, *infra.*)

The RSPO statutes, 49 U.S.C. 10361–64, were repealed by the ICCTA. Moreover, the ICCTA removed the requirement in 45 U.S.C. 744(e) that RSPO issue regulations for rail passenger subsidies for Conrail. See section 327(3) of the ICCTA. Finally, under 49 U.S.C. 10501(c)(2), as amended by the ICCTA, with certain exceptions not relevant here, ''the Board does not have jurisdiction under this part over mass transportation provided by a local governmental authority.''[6] Nevertheless, the subpart A regulations are referred to in the Amtrak Commuter statute (45 U.S.C. 24505(b)(1)). Accordingly, we sought comment in the June NPR on whether subpart A could be eliminated.

Subpart B. The subpart B regulations of part 1157 concern notices of the discontinuance of commuter rail service by Amtrak Commuter. Under section 24505(e)(2) RSPO was directed to prescribe regulations for ''the necessary contents of the notice required under this subsection.'' RSPO issued rules in Ex Parte No. 293 (Sub-No. 8), which were published in the **Federal Register** on January 5, 1983 (48 FR 413). RSPO divided the regulations at 49 CFR part 1127 (which then contained the subsidy standards) into two sections: subpart A, consisting of the existing subsidy standards,[7] and subpart B, comprising the new discontinuance notice procedures.

The regulations repeat the statutory criteria that Amtrak Commuter may discontinue service on 60 days' notice if it is not offered a subsidy or a subsidy is not paid when due. The regulations prescribe the form and content of the notice and method of posting and also require that the notice be served on the subsidizer, governor, designated state agency, RSPO, and Amtrak.

While section 24505(e)(2) still refers to RSPO prescribing regulations for Amtrak Commuter discontinuance notices, the ICCTA eliminated RSPO and removed references in the Conrail statute at 45 U.S.C. 744(e) to regulations issued by RSPO. Moreover, under section 10501(c)(2), the Board does not have jurisdiction over local governmental authorities providing mass transportation. Thus, we also sought comment in the June NPR on whether the subpart B regulations should be eliminated.

[1] See that document for a more detailed description of the statutory setting for the part 1157 regulations.

[2] The RSPO subsidy regulations were also referenced in the Conrail statute at 45 U.S.C. 744(e).

[3] The subsidy standards prescribe various responsibilities for RSPO. Under § 1157.3(d)(4), upon request of either party, RSPO will mediate disputes about the subsidy agreement, the subsidy standards, and certain plans. Under § 1157.4, parties desiring an interpretation of the standards can file a written petition; RSPO will issue an interpretation unless it determines that the subsidy standards need to be amended, in which case it will institute a rulemaking proceeding. Under § 1157.7(d), in an impasse over joint special studies, either party may submit the dispute to RSPO for resolution. Finally, under § 1157.3(f), the subsidized carrier is to submit financial status reports to RSPO.

[4] Amtrak was created by the Rail Passenger Service Act of 1970, Pub. L. 91–518, 84 Stat. 1327 (1970).

[5] Under 49 U.S.C. 24505(b)(1)(B):

A commuter authority making an offer * * * shall * * * make the offer according to the regulations the Rail Services Planning Office prescribes under section 10362(b)(5)(A) and (6) of this title.

[6] Under former 49 U.S.C. 10504(b)(2), the ICC did not have jurisdiction over mass transportation provided by a local governmental authority if the fares, or the authority to apply to the ICC for changes in those fares, were subject to the approval of the governor of the state in which the transportation was provided. The ICCTA broadened this exemption, and the Board does not have jurisdiction whether or not the governor can approve a fare.

[7] As discussed *infra,* while RSPO issued in response to NERSA new regulations under subpart B for discontinuance notices, it did not make any substantive changes to the subsidy standards; references to Conrail were retained. However, the NPR published September 9, 1982 (47 FR 39700) implicitly proposed to apply the subsidy standards to Amtrak Commuter cases: ''After January 1, 1983, [Amtrak Commuter] is required to take over the commuter operations currently provided by Conrail if a commuter authority offers a subsidy payment *which complies with RSPO's Standards* * * *.'' (Emphasis supplied; citation omitted.)

Position of the Parties

Amtrak filed comments stating that it did not object to the removal of the part 1157 regulations. Amtrak submits that the subpart A regulations did affect it when Conrail was operating commuter services because many of these services occurred over rail lines owned by Amtrak, but that, because Conrail has not provided the continued commuter services since 1983, the subpart A regulations no longer control the compensation Amtrak receives for services provided by others over lines Amtrak owns.

Amtrak also submits that the subpart A regulations were to have been used to determine the subsidies for Amtrak Commuter when it took over the continued commuter services from Conrail on January 1, 1983. It notes, however, that Amtrak Commuter has never conducted any operations because all the commuter authorities chose to operate the continued commuter services themselves or to contract with an entity other than Amtrak Commuter to do so. For the same reason, Amtrak also maintains that it is unnecessary to retain the subpart B regulations.[8]

The American Public Transit Association (APTA) supports the removal of the part 1157 regulations. APTA states that it is a private, nonprofit trade association representing the North American transit industry. Included in its membership are about 400 American public and private mass transit systems that, according to APTA, carry over 95 percent of those using public transit in this country.

The Brotherhood of Locomotive Engineers (BLE) argues that the regulations should not be modified or removed unless there is a need shown for the change, and that such a need was not shown in the June NPR. BLE states that it has not participated in subsidy matters, but indicates that it could become involved in the future. It asserts that ''it is important that [subpart] B of the regulations, governing notice to the public, be maintained.''

Discussion and Conclusions

We will remove the regulations in part 1157, in light of the statutory changes made by the ICCTA, because the regulations have no applicability to current commuter transportation.

We have noted the changes in the ICCTA affecting the part 1157 regulations. The RSPO statutes, 49 U.S.C. 10361–64, were repealed. The ICCTA, moreover, eliminated from section 744(e) references to subsidy standards set by RSPO. Finally, under 49 U.S.C. 10501(c)(2), the ICCTA broadened the exemption from jurisdiction of mass transportation provided by a local governmental authority.

The ICCTA, however, did not remove all statutory references to the RSPO. 49 U.S.C. 24505(b)(2) and 24505(e)(2) still allow RSPO to update the subsidy regulations and require it to prescribe the notice of discontinuance regulations, respectively. We do not know whether the retention of these references to an eliminated office was intentional or not. Therefore, in our June NPR, we asked whether the regulations had validity independent of the existence of RSPO and the jurisdiction of the Board. In response, Amtrak and APTA, commenters with a direct interest in the regulations, do not object to their removal. Amtrak states that Amtrak Commuter has never conducted operations. Thus, currently, and indeed since January 1, 1983, there have been no operations to be subsidized or to discontinue. Accordingly, a need for the rules would only arise if Amtrak Commuter were to begin operations, which it gives no indication of doing. Indeed, in its comments, Amtrak refers to the possible repeal of the Amtrak Commuter provisions of the Rail Passenger Service Act.

In such a situation, we believe that removing the regulations is appropriate. We do not believe that Congress intended that we should retain regulations whose statutory basis has in large measure been eliminated,[9] and whose operational basis is currently nonexistent. Maintaining more than 20 pages of unneeded regulations incurs administrative expense and causes public confusion.

BLE has not given us a positive reason to maintain these regulations. It argues that the rules should not be eliminated ''unless there is a demonstrated need for removal.'' As we have indicated, the elimination of the statutes and the lack of operations by Amtrak Commuter are sufficient reason. Concerning the subpart B rules, BLE states, without further elaboration, that they ''govern[] notice to the public.'' This is true, but there are no operations to give discontinuance notice of, and nobody claiming to be a passenger or representing one has objected.

The Board concludes that the removal of part 1157 would not have a significant effect on a substantial number of small entities. Currently, there are no commuter operations to which the part 1157 rules apply. APTA was the only party commenting on this issue in response to the June NPR.[10] It ''concurs in the Board's judgment that the removal of the regulations will not have any adverse consequences on small entities and will lessen burdens on passenger rail carriers.''

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1157

Railroads, Reporting and recordkeeping requirements, Uniform System of Accounts.

Decided: August 18, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

PART 1157—[REMOVED]

For the reasons set forth in the preamble and under the authority of 49 U.S.C. 721(a), title 49, chapter X of the Code of Federal Regulations is amended by removing part 1157.

[FR Doc. 97–22810 Filed 8–26–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE INTERIOR

50 CFR Part 36

RIN 1018–AD93

Regulations for the Administration of Special Use Permits on National Wildlife Refuges in Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule clarifies, updates, and adds to existing regulations for the administration of all special use permits (permits) on national wildlife refuges (refuges) in Alaska. These regulations provide the U.S. Fish and Wildlife Service (Service) with the necessary regulatory authority to administer the recent changes in the refuges' commercial visitor service programs and

[8] Amtrak also states that the Senate Committee on Commerce, Science, and Transportation recently approved the Amtrak Reform and Accountability Act of 1997, which would repeal all the provisions of the Rail Passenger Service Act concerning Amtrak Commuter.

[9] ''When a statute has been repealed, the regulations based on that statute automatically lose their vitality. Regulations do not maintain an independent life, defeating the statutory change.'' *Aerolineas Argentinas* v. *U.S.*, 77 F.3d 1564, 1575 (Fed. Cir. 1996).

[10] APTA states that it has over 1000 members, including local mass transit systems, suppliers and manufacturers, and transit industry consultants.

to ensure proper and uniform management of all permits on refuges in Alaska.

EFFECTIVE DATE: This rule is effective September 26, 1997.

ADDRESSES: U.S. Fish and Wildlife Service, Attention: Daryle R. Lons, 1011 E. Tudor Rd., Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: Daryle R. Lons at the above address, telephone (907) 786–3354.

SUPPLEMENTARY INFORMATION:

Background

In the November 1, 1996, issue of the **Federal Register** (61 FR 56502–56508) the Service published the proposed rulemaking and invited public comment.

The Alaska National Interest Lands Conservation Act of 1980 (ANILCA, Pub. L. 96–487; 94 Stat. 2371) and the National Wildlife Refuge System Administration Act of 1966 (16 U.S.C. 668dd-668ee) authorize the Secretary of Interior to prescribe regulations as necessary to administer permits for compatible activities on refuges in Alaska. The original regulations governing issuance of permits on units of the National Wildlife Refuge System in Alaska, codified at 50 CFR 36.41, were published in the **Federal Register** in 1981 (46 FR 31827, June 17, 1981, as corrected at 46 FR 40194, August 7, 1981) and were amended in 1986 (51 FR 44793, December 12, 1986). Since then, the permit administration program on refuges in Alaska continued to evolve and grow in both size and complexity. Although the Service issues special use permits for a variety of economic and other privileged specialized uses, most permits issued on Alaska Refuges are for commercial visitor service activities involving guide-outfitters and transporters.

The primary purpose of these regulations is to provide better guidance to Service employees and permittees concerning the administration of commercial visitor service permits on refuges in Alaska. Regulations implementing Section 1307 of ANILCA (see 62 FR 1838, January 14, 1997) were promulgated separately from this rulemaking. The 1307 regulations established procedures for granting historical use, Native Corporation, and local preferences in the selection of commercial operators who provide visitor services other than hunting and fishing guiding on refuges in Alaska. The 1307 regulations supplement these regulations.

Since the Service promulgated the original regulations, the program has evolved due to significant changes in State of Alaska guiding regulations and programs, increases in commercial visitor services on refuges, and changes in the economic environment of the guiding industry. The most visible and significant change in the Service's administration of refuge permits in Alaska was caused by the decision of the Alaska Supreme Court in *Owsichek* v. *State Guide Licensing and Control Board*, 763 P. 2 d 488 (Alaska 1988). That ruling overturned as unconstitutional the State of Alaska's (State) system of assigning exclusive big game guide areas. Until that ruling, the Service depended upon the State's system for selecting big game guides for use areas within refuge lands in Alaska. To allow the State an opportunity to develop a constitutionally acceptable system that would meet Service needs, the Service imposed a moratorium on issuance of permits to new big game guide applicants. After a period of operating under this moratorium, it became apparent that the State would not be able to adopt and implement a program for selection of big game guide-outfitters which also would satisfy Service requirements and mandates. Therefore, the Service developed its own interim program in order to provide an equal opportunity for all registered big game guide-outfitters to compete for permits to operate on refuges in Alaska. After soliciting public comment on a draft system, and making revisions based on those comments, the Service implemented an interim program in June 1992. Following this process, requests for proposals were solicited and the Service notified applicants of selections in January 1993. The Service awarded successful applicants 5-year permits effective July 1, 1993. These regulations will provide the proper authority to allow the Service's big game guide permitting program to continue.

Another factor in the evolution of the permit program has been the significant increase in the number of permits being issued by the refuges. Increase in demand for activities such as sport fish guiding and river floating reached the maximum capacity on several refuges during the late 1980's and early 1990's. Where the Service has had to limit the numbers of permittees for certain activities, this was done by awarding permits through competitive selection processes or by annually renewing permits for existing permittees until implementation of a competitive selection process.

The existing system also needed modification to respond to the changing economic conditions affecting commercial visitor services. Guides started voicing their concerns in the late 1980's that changing economic factors and business requirements made it more and more difficult for commercial visitor service businesses to operate in a professional and safe manner with the limited financial security offered by annual permits. Guides have offered strong arguments that they needed the financial security associated with longer term permits and the right to transfer their permits when they retired. They also sought survivor rights for family members and business partners. The Service addressed their concerns in part by initiating programs to issue competitively awarded, 5-year permits for sport fish guides on Togiak National Wildlife Refuge in 1991 and for big game guide-outfitters on all Alaska refuges in 1992. Also, the Service revised the policy to establish a right of survivorship.

As a result of the changes associated with awarding permits competitively, there has been an apparent overall improvement in permittee compliance with terms of permits, a reduction in negative impacts to refuge resources and other users, and an increase in the quality of visitor services provided to the public.

Early in 1995, Congress directed the Service to reinstate a short-lived and effectively unimplemented 1992 policy directive that required competitively issued hunting and fishing guide permits to have 5-year terms with 5-year renewal rights, allowed the privileges of the permits to be transferable under certain conditions, and required the reissuance of existing competitively awarded permits consistent with the policy. Congress supported a return to the earlier policy by including language in a conference report (H.R. Conference Report No. 402, 104th Congress, 1st Session 1995) regarding the Department's Fiscal Year 1996 appropriations, which directed the Service to reinstate the 1992 policy. The Service is complying with the directive by publishing these regulations. To meet the intent of the directive, these regulations also provide a phase-in period of the competitive system to those permittees who have been conducting a commercial activity in a refuge where the Service has historically limited the numbers of permits issued. Although the Service has only been issuing annual permits to these permittees, the Service, until recently, has given them a reasonable expectation that they would continue to receive permits each year as long as they provided good service and met the terms of their permits. Many of these permittees have invested a significant

amount of time and money and built their lives around a business which is dependent upon receiving a permit.

These regulations make the 1992 policy applicable to all competitively awarded commercial visitor service permits, not just sport fishing and big game hunting guide permits, and will provide the Service with the proper regulatory authority to administer its permit program. The original regulations did not address the competitive award of all big game guide-outfitter permits nor any of the other refuge-specific, competitively awarded permits. In a recent lawsuit concerning implementation of the big game guide-outfitter program, the Service's commitment to developing regulations addressing administration of the program influenced the U.S. District Court in 1994 to find in favor of the Service.

In summary, the goals of this rulemaking are to provide the public, commercial service industry, and Service employees with better guidance for the administration of special use permits on refuges in Alaska; to enhance the conservation of wildlife resources by establishing a system in which operators have a more direct, continuing and long-term interest in conserving and protecting these valuable resources; and to obtain the most capable operators available to provide safe, high quality services to the public.

Analysis of Public Comments and Changes Made to the Proposed Rule

The Fish and Wildlife Service conducted public meetings in Anchorage and Fairbanks, Alaska to provide information about the proposed rule and to receive public testimony. Members of the public made only 3 official oral comments at these meetings. However, the Service received 41 letters providing written comments on the proposed rule. Of these, 33 were from individuals/commercial visitor service businesses, 4 from special interest groups, 2 from the State of Alaska, and 2 from members of the Alaska Congressional delegation.

The following is a section-by-section analysis of all substantive changes that the Service made in the final rule in response to public comment.

Section 36.41(b) Definitions

In response to seven comments, the definition of ''entire business'' was modified slightly to better define what assets to include in the term. A definition for the term ''immediate family'' also was added.

Section 36.41(e)(1) Refers to: Competitively Awarded Permits—(Exception for Environmental Education Related Activities)

This paragraph provides the Refuge Manager with discretionary authority to issue noncompetitive permits on a one-time, short-term basis for environmental education-related activities that also are recreational in nature in use areas where permits of that type of guided recreational activity are otherwise limited to competitive award. In response to two public comments, the amended language clarifies the intent of the proposed language and provides the flexibility needed for organizations such as scouting groups to be eligible to receive such a permit.

Section 36.41(e)(2) Refers to: Exception for Historically Limited Numbers of Current Permittees

In response to one comment, the language, ''consistent with the terms set forth in paragraph (e)(16)'' was added to this provision to clarify the intent of the proposed language. The added language makes it clear that the terms of the affected permittees' permits are consistent with competitively issued permits awarded by the prospectus with invitation to bid method.

Section 36.41(e)(10) Refers to: Terms of Permits

In response to 22 comments, the Service changed the term ''may'' to ''must'' with respect to permits being noncompetitively renewed for an additional 5 years upon a showing that the permittee complied with all applicable permit terms and conditions and had a satisfactory record of performance. The commenters expressed concerns that the proposed language would allow Refuge Managers to arbitrarily decide not to renew the permits even if the permittee met the specified conditions. The intent of the Service, pursuant to the 1992 policy, is to automatically renew such permits provided all of the specified conditions are met. The inclusion of ''must'' in the final rule clarifies the intent of the Service's implementation of this provision. To clarify the administrative requirements for renewing permits, the revised language also includes the requirement that permittees complete an application to receive the 5 year renewal.

Section 36.41(e)(11) Refers to: Transfer of Permits

The Service made several changes in response to seven comments concerning various elements of the transfer provisions. The comments primarily expressed two themes: the 15-year requirement for permittees to hold a permit before being eligible to transfer the privilege is too long, and opposition to the requirement that a permittee must sell their entire business in order to be eligible to transfer their permit privileges. There were also two comments that recommended the Service to add language that would provide the Service with more latitude in allowing transfers based upon the specific facts of each potential case that could arise.

The Service added language, in response to the comments, that provides it with the latitude to approve transfers that will benefit the government in addition to the previously allowed transfers delineated in the proposed regulations. The Service also added language that clarifies that it has complete discretion in determining if transfers will be allowed.

The proposed rule would have required a permittee to hold a permit for 15 years before being eligible to transfer the permit's privilege. This requirement is reduced to 12 years in the final rule. Although the final rule generally requires that a permittee's entire business be sold as a requirement for transfer eligibility, the Service revised the definition of ''entire business,'' as noted previously, to more clearly define included assets. After reevaluating the language of this section, the Service also amended the language to better define what types of violations, convictions and/or penalties would be applicable for evaluating the history of compliance for potential transferees. The Service also may now base denial of transfers upon a sentence of probation.

Section 36.41(e)(14) Refers to: Transfer of Permits to Former Spouses

After reevaluating the language of this and the following section, 36.41(e)(15), the Service revised the language in these sections to make the refuge manager the approving authority for transfers instead of the regional director. This revision makes the approving authority consistent with that of Section 35.41(e)(11).

Section 36.41(e)(15) Refers to: Right of Survivorship

In response to one comment, the Service revised language in the final rule to broaden the eligibility of spouses to retain the permit privilege in the event of death or disability of the permittee. The Service recognizes although it is the responsibility of the permittee to conduct or oversee the actual guiding or other commercial activity on the refuge, it is common

practice for the spouse of the permittee to actually have much of the responsibility for many of the administrative parts of the business. The revised language requires an actively involved spouse in the business who may not have all the required certifications (e.g., big game guiding license) to demonstrate only that they are capable of continuing to provide the authorized services instead of having independently been qualified in order to be eligible to retain the permit privilege. This distinction allows eligible spouses to continue to manage the business and hire an employee, who independently is qualified with all the proper licenses, to conduct the authorized activities for the remaining term of the permit. The revised language retains the requirement that business partners and other immediate family members have to qualify independently to hold the permit in order for the privilege to pass to them.

Section 36.41(h) Refers to: Restriction, suspension and revocation of permits

The Service received four comments concerning this paragraph. The comments generally questioned the validity of the reasons for permit suspension, restriction or revocation, and expressed concerns that the proposed language would allow Refuge Managers to make arbitrary decisions without ''due process.'' As stated in Section 36.41(i), any person who is adversely affected by a Refuge Manager's decision relating to that person's permit has appeal rights to the Regional Director. In response to the commenters' ''due process'' concerns, the Service added language that references the permittee's right to appeal in section 36.41(i).

After reevaluating the language of this section in response to public comments, the Service also amended the language to better define what types of violations/convictions would be applicable.

The following is a section-by-section summary of other substantive comments that the Service received but that did not result in changes being made in the final rule.

Section 36.41(e)(1) Refers to: Lotteries

The Service received eight comments that opposed the use of lotteries as a selection method. All of the commenters felt this selection mechanism is unfair. As stated in the proposed regulations, the prospectus with invitation to bid system will be the primary method used to select commercial visitor services. The Service will use lotteries or other selection methods only where justified and under very limited circumstances such as providing guiding opportunities in areas that would otherwise go unused. The Service believes having the discretion to use alternative selection methods in isolated cases is in the best interest of the public and therefore retained the proposed language in the final rule.

Section 36.41(e)(2) Refers to: Exception for historically limited numbers of current permittees

Two commenters supported and two commenters opposed the inclusion of this paragraph that allows Refuge Managers to issue permits noncompetitively on a one-time basis where the numbers of permits have been limited for an activity prior to the promulgation of these regulations and a prospectus system is not yet developed.

The Service retained this paragraph to comply with the intent of Congressional directive in H.R. Conference Report No. 402, 104th Congress, 1st Session (1995), and to support the interests of existing permittees who in the past typically made significant investments based on their prior understanding that they would continue to receive annually issued permits as long as they met the terms of their permits and provided a good service. This provision will provide these permittees with adequate time to prepare for having to compete as well as giving many of them the opportunity to recoup some of their investments by selling their businesses and transferring their permit privileges.

Section 36.41(e)(4) Refers to: Selection Criteria

The Service received four comments concerning selection criteria. Two of the comments supported adding the language ''experience and performance in providing the same or similar services shall account for no less than 20 percent of the maximum points available under any prospectus.'' One commenter opposed considering the knowledge of the specific area when evaluating proposals and one commenter recommended clarifying what the term ''specific area'' meant.

Although experience accounts for more than 20 percent in current policy for selecting sport fish and big game hunting guides, the Service does not believe it is appropriate or necessary to include a specific figure since the regulations cover all types of competitive activities and a fixed percentage may not be appropriate in all cases. The Service believes that it is appropriate to consider knowledge of the specific area when evaluating proposals. The Service also feels that the proposed language, ''knowledge of the specific area covered by the prospectus'', is sufficiently clear and did not need revising.

Section 36.41(e)(7) Refers to: Minimum Scores

One commenter opposed the Service having the discretion to establish minimum scores for certain competitively-awarded permits. The Service retained this provision because it believes it is in the best interest of refuge resources and guided refuge visitors to be able to establish defined levels of competency above minimum qualification levels for certain types of guided activities in some locations.

Section 36.41(e)(11)(ii) Refers to: Renewal of Existing Permits

Although most commenters supported the renewal of existing permits without competition, three commenters opposed this. The Service retained this provision in response to the Congressional directive received in H.R. Conference Report No. 402, 104th Congress, 1st Session (1995) and the overall support demonstrated by the public comments that the Service received.

Section 36.41(i) Refers to Appeals

One commenter recommended that appeals concerning competitive selection should be handled by the evaluation panel and not the Regional Director. Another commenter recommended keeping the 180-day appeal period instead of the proposed 45-day appeal period.

The Service believes it is in the best interest of appellants to retain the provision that the Regional Director has the responsibility to hear and decide on all appeals. The proposed change in length of the appeal period from 180 to 45 days was one of the specific items that the Service requested comments on in the advance notice to the proposed regulations. The majority of comments supported the change because the 180-day appeal period places selected applicants of competitive awards in a position of not being able to make necessary preparations and commitments for an unnecessarily long period of time. The Service believes it is in the best interest of most permit applicants and guided refuge visitors to reduce the appeal period from 180 to 45 days.

Other Comments

The Service received a number of other comments. Some were very general, such as two commenters opposing the entire rule from being promulgated and another commenter recommending that the Service should

consider cumulative impacts of all special use permits on Alaska refuges. Many of the other comments were more relevant to upcoming policy issues rather than the rule itself. Examples include: several comments recommending revision of existing selection criteria, several comments recommending that the Service provide additional regulatory or policy provisions which would essentially create a ''Bill of Rights'' for permittees, and several comments recommending that performance incentives be established for existing permittees. The Service will give due consideration to these comments during future policy revisions.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the information collections contained in this rule have been approved by the Office of Management and Budget (OMB) under clearance number 1018–0014, with an expiration date of August 31, 2000.

This collection of information will be achieved through the use of USFWS application form 3–2001, in conjunction with the provisions of this rule. The information collection requirements needed for the proper use and management of Alaska National Wildlife Refuges is contained in 50 CFR 36.3. The information is being collected to assist the Service in administering economic and other privileged use programs and, particularly, in the issuance of permits and the granting of statutory or administrative benefits.

This collection of information will establish whether the applicant is eligible and/or is the most qualified applicant to receive the benefits of a refuge permit. The information, such as name, address, phone number, depth of experience, qualifications, time in residence, knowledge of function, and affiliations requested in the application form, is required to obtain a benefit.

The most common respondents to this collection of information will be commercial visitor service operators who wish to be considered to receive a refuge permit. This information will be needed by the USFWS to determine whether a given individual or corporation qualifies. The public reporting burden for this collection of information is estimated to average 1.5 hours each for 150 non-competitively awarded permits and 31.66 hours each for 60 competively awarded permits including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The estimated annual number of respondents is 210, yielding a total annual reporting and record keeping burden of 2125 hours.

Comments and suggestions on the burden estimate or any other aspect of the form should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer; Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224-ARLSQ; 1849 C Street, NW., Washington, DC 20240.

Environmental Considerations

In accordance with 516 DM 2, Appendix 2, the Service has determined that this action is categorically excluded from the NEPA process as it contains ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature'' that will have no potential for causing substantial environmental impact.

Economic Effects/Regulatory Flexibility Act Compliance

This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions. The Service issues approximately 200 permits. The rule will maintain an overall economic status quo without changes in either the number or type of permits being issued.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act (2 U.S.C. 1502 *et seq.*), that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Department has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Primary Author: Daryle R. Lons, Refuge Program Specialist, Fish and Wildlife Service, Alaska Region.

List of Subjects in 50 CFR Part 36

Alaska, Recreation and recreation areas, Reporting and recordkeeping requirements, Wildlife refuges.

Accordingly, the Service amends Part 36 of Chapter I of Title 50 of the Code of Federal Regulations as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: 16 U.S.C. 460(k) *et seq.*, 668dd *et seq.*, 742(a) *et seq.*, 3101 *et seq.*, and 44 U.S.C. 3501 *et seq.*

2. Revise § 36.3 Information Collection to read as follows:

§ 36.3 Information collection.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under 44 U.S.C. *et seq.* and assigned clearance number 1018–0014. The collected information will assist the Service in administering these programs and, particularly, in the issuance of permits and the granting of statutory or administrative benefits. The information requested in the application form is required to obtain a benefit. The public reporting burden for this collection of information is estimated to average 1.5 hours each for 150 non-competitively awarded permits and 31.66 hours each for 60 competitively awarded permits including the time for reviewing instructions, searching existing data sources, gathering and maintaining data needed, and completing and reviewing the collection of information. The estimated annual number of respondents is 210, yielding a total annual reporting and record keeping burden of 2125 hours. Comments and suggestions on the burden estimate or any other aspect of the form should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Interior Desk Officer; Washington, DC 20503; and a copy of the comments should be sent to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS 224–ARLSQ; 1849 C Street, NW., Washington, DC 20240.

3. Section 36.41 is revised to read as follows:

§ 36.41 Permits.

(a) *Applicability.* The regulations contained in this section apply to the issuance and administration of competitively and noncompetitively issued permits for economic and/or other privileged uses on all national wildlife refuges in Alaska. Nothing in

this section requires the refuge manager to issue a special use permit if not otherwise mandated by statute to do so. Supplemental procedures for granting historical use, Native Corporation, and local preferences in the selection of commercial operators to hold permits to provide visitor services, other than hunting and fishing guiding on refuges in Alaska, are addressed in § 36.37, Revenue producing visitor services.

(b) *Definitions.* As used in this section, the term or terms:

Commercial visitor service means any service or activity made available for a fee, commission, brokerage or other compensation to persons who visit a refuge, including such services as providing food, accommodations, transportation, tours, and guides. Included is any activity where one participant/member or group of participants pays more in fees than the other participants (non-member fees, etc.), or fees are paid to the organization which are in excess of the bona fide expenses of the trip;

Entire business means all assets including, but not limited to, equipment, facilities, and other holdings directly associated with the permittee's type of commercial visitor service authorized by permit. This term also includes assets held under the name of separate business entities, which provide the same specific type of commercial visitor services authorized by permit, that the permittee has a financial interest in. The term does not include related enterprises owned by the permittee such as taxidermy and travel services;

Immediate family means the spouse and children, either by birth or adoption, of the permittee.

Operations plan means a narrative description of the commercial operations which contains all required information identified in the prospectus;

Permit means a special use permit issued by the refuge manager which authorizes a commercial visitor service or other activity restricted by law or regulation on a national wildlife refuge;

Prospectus means the document that the Service uses in soliciting competition to award commercial visitor services on a refuge;

Subcontracting means any activity in which the permittee provides financial or other remuneration to anyone other than employees to conduct the specific commercial services authorized by the Service. The permittee's primary authorized activities must be conducted in a genuine employer/employee relationship where the source of all remuneration for services provided to clients is from the permittee. Subcontracting does not apply to booking services or authorized secondary services provided to clients in support of the permittee's primary authorized activities (e.g., a guide paying a marine or air taxi operator to transport clients);

Subletting means any activity in which the permittee receives financial or other remuneration in return for allowing another commercial operator to conduct any of the permittee's authorized activities in the permittee's use area; and

Use area means the designated area where commercial services may be conducted by the permittee.

(c) *General provisions.* In all cases where a permit is required, the permittee must abide by the conditions under which the permit was issued. Refuge managers will provide written notice to the permittee in all cases where documentation of noncompliance is prepared for use in any administrative proceeding involving the permittee.

(d) *Application.* (1) This section and other regulations in this part 36, generally applicable to the National Wildlife Refuge System, require that permits be obtained from the refuge manager. For activities on the following refuges, request permits from the respective refuge manager in the following locations:

Refuge	Office location
Alaska Peninsula National Wildlife Refuge.	King Salmon.
Alaska Maritime National Wildlife Refuge.	Homer.
Aleutian Islands Unit, Alaska Maritime NWR.	Homer.
Arctic National Wildlife Refuge.	Fairbanks.
Becharof National Wildlife Refuge.	King Salmon.
Innoko National Wildlife Refuge.	McGrath.
Izembek National Wildlife Refuge.	Cold Bay.
Kanuti National Wildlife Refuge.	Fairbanks.
Kenai National Wildlife Refuge.	Soldotna.
Kodiak National Wildlife Refuge.	Kodiak.
Koyukuk National Wildlife Refuge.	Galena.
Nowitna National Wildlife Refuge.	Galena.
Selawik National Wildlife Refuge.	Kotzebue.
Tetlin National Wildlife Refuge.	Tok.
Togiak National Wildlife Refuge.	Dillingham.
Yukon Delta National Wildlife Refuge.	Bethel.
Yukon Flats National Wildlife Refuge.	Fairbanks.

(2) For noncompetitively issued permits, the applicant may present the application verbally if he/she is unable to prepare a written application. The refuge manager will keep a written record of such verbal application. For competitively issued permits, the applicant must submit a written application in the format delineated in the prospectus or other designated format of the Service.

(3) The refuge manager will grant or deny applications for noncompetitively issued permits in writing within 45 days, except for good cause. For competitively issued permits, the refuge manager will grant or deny applications in accordance with the time frame established in the prospectus, except for good cause.

(4) Refuge managers may establish application period deadlines for individual refuges for both competitively and noncompetitively issued permits. The refuge manager will send notification of availability for commercial opportunities and application deadlines to existing and/or the previous year's permittees. He/she will publish the notice in at least one newspaper of general circulation in the State and in at least one local newspaper if available, and will make available for broadcast on local radio stations in a manner reasonably calculated to inform local prospective applicants.

(5) The Service may limit the number of applications that an individual may submit for competitively awarded offerings.

(e) *Competitively awarded permits.* (1) Where the number of available permits is limited, refuge managers will award permits competitively. A prospectus with invitation to bid system will be the primary competitive method used for selecting commercial visitor services. Where justified, other selection methods, including but not limited to lotteries, may be used. Such circumstances may include, but not be limited to, the timely refilling of use areas that have become vacant during regularly scheduled terms to prevent commercial visitor service opportunities from going unused, and initiating trial programs on individual refuges. The refuge manager has discretionary authority to issue noncompetitive permits on a one-time, short-term basis to accredited educational institutions and other nonprofit organizations to conduct primarily environmental

education-related activities that also may be recreational in nature in use areas where permits for that type of guided recreational activity are otherwise limited to competitive award.

(2) Where numbers of permits have been limited for an activity prior to the promulgation of these regulations and a prospectus with invitation to bid system has not yet been developed, refuge managers may issue noncompetitive five-year permits consistent with the terms set forth in paragraph (e)(16) of this section on a one-time basis to existing permittees.

(3) The Service will publish notice of all solicitations for competition in accordance with paragraph (d)(4) of this section and include reasonable application periods of not less than 60 days. When competitively selecting permittees for an activity in a use area where permits for that activity were not previously competitively awarded, the Service will publish notice of the upcoming opportunity a minimum of 18 months prior to the effective date of the permit term.

(4) All prospectuses will identify the selection criteria that the Service will use to evaluate the proposals. All prospectuses involving commercial visitor services must include experience and performance in providing the same or similar services as a criterion. In evaluating the experience of an applicant, the Service will specifically consider knowledge of the specific area covered by the prospectus and the nature of the technical skills required to provide quality service to the public.

(5) A panel of Service employees who use a scoring process based on the selection criteria will evaluate and rank applications received in response to a prospectus.

(6) The Service has discretionary authority to not evaluate or consider proposals that are incomplete or improperly submitted.

(7) The Service may establish minimum scores to qualify for the award of permits. If established, these minimum scores will be identified in the prospectus.

(8) The Service may establish limits on the number of use areas within an individual refuge, or on refuges statewide, in which a permittee is authorized to operate. This limit applies to different corporations in which the same individual has any ownership interests.

(9) When vacancies occur in competitively filled use areas, the procedure for reissuing the permits will depend on how long it has been since the permit originally was issued. The Service will award the permit to the next highest ranking interested applicant in the original solicitation, if a vacancy occurs within the first 12 months of the permit's effective date. Resolicited competition for the area will occur as soon as practicable if:

(i) A vacancy occurs after 12 months of the permit's effective date; and

(ii) At least 24 months of the original permit term is available for a new permittee after completion of the solicitation, application, evaluation and awards period. If less than 24 months of the term of the permit is available, the Service has the discretion to solicit competition during the regularly scheduled solicitation period. The Service may annually issue noncompetitive permits for vacant areas, where there has not been significant permittee interest, until competition can be solicited in conjunction with other solicitations for vacant areas.

(10) Terms of permits awarded under the prospectus with invitation method are valid for 5 years except in those instances where the Service issues permits to fill vacancies occurring during a scheduled award cycle. In these instances, the permit duration is limited to the expiration date of the original award period. Permits awarded under the prospectus by invitation method must be renewed noncompetitively by the refuge manager for a period of 5 additional years upon application and a showing of permittee compliance with all applicable permit terms and conditions and a satisfactory record of performance. After one renewal, the Service shall not extend or noncompetitively renew another permit.

(11) Permit privileges may be transferred to other qualified entities that demonstrate the ability to meet Service standards, as outlined in the prospectus upon which the existing permit was based, subject to approval by the refuge manager. Requests for transfers must be made in writing to the refuge manager. A permittee who transfers his/her privileges will not be eligible to be considered for competitively awarded permits for the same type of activity on the same national wildlife refuge for a period of three years following the authorized transfer. The Service retains complete discretion in allowing transfers. In general, the Service approves transfers only upon demonstrating that it is to the government's benefit and if all the following criteria are satisfied:

(i) The transfer is part of the sale or disposition of the current permittee's entire business as earlier defined;

(ii) The current permittee was either conducting the commercial operation in the refuge under authorization of a permit for a minimum of 12 years or owns significant real property in the area, the value of which is dependent on holding a refuge permit. Consideration of the last element will include, but is not limited to:

(A) The relationship of the real property to permitted refuge activities as documented in the operations plan;

(B) The percentage that the authorized refuge activities comprise of the total commercial use associated with the real property; and

(C) The appraised value of the real property.

(iii) The transferee must be independently qualified to hold the permit under the standards of the prospectus of the original existing permit.

(iv) The transferee has an acceptable history of compliance with State and Federal fish and wildlife and related permit regulations during the past 5 years. An individual with any felony conviction is an ineligible transferee. Transfer approval to an individual having any violations, convictions, or pleas of nolo contendere for fish and wildlife related federal misdemeanors or State violations will be discretionary. Denial is based on, but not limited to, whether the individual committed any violation in which the case disposition resulted in any of the following:

(A) Any jail time served or probation;

(B) Any criminal fine of $250 or greater;

(C) Forfeiture of equipment or harvested animal (or parts thereof) valued at $250 or greater;

(D) Suspension of privileges or revocation of any fish and wildlife related license/permits;

(E) Other alternative sentencing that indicates the penalty is of equal severity to the foregoing elements; or

(F) Any multiple convictions or pleas of nolo contendere for fish and wildlife-related Federal misdemeanors or State fish and wildlife-related violations or misdemeanors irrespective of the amount of the fine.

(12) The transferee must follow the operations plan of the original permittee. The transferee may modify the operations plan with the written consent of the refuge manager as long as the change does not result in increased adverse impacts to refuge resources or other refuge users.

(13) Upon timely approval of the transfer, the Service will issue the new permittee a permit for the remaining portion of the original permit term. The refuge manager retains the right to restrict, suspend, revoke, or not renew

the permit for failure to comply with its terms and conditions.

(14) Permit privileges issued under this paragraph (e) may be transferred, subject to refuge manager approval, to a former spouse when a court awards permit-associated business assets in a divorce settlement agreement to that person. The recipient must independently qualify to hold the originally issued permit under the minimum standards identified by the Service, and the permittee must have an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section.

(15) Permit privileges issued under this paragraph (e) may be transferred in the case of death or disability of the permittee, subject to refuge manager approval, as provided in this paragraph (e). In these cases, the permit privileges may pass to a spouse who can demonstrate he/she is capable of providing the authorized services and who has an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section. A spouse who lacks any required license(s) but otherwise qualifies may hire an employee, who holds the required license(s) and who has an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section, to assist in the operation. Permit privileges may also pass to another member of the immediate family or a person who was a business partner at the time of original permit issuance. This person must be independently qualified under the minimum standards identified by the Service at the time of original permit issuance and have an acceptable history of compliance as set forth in paragraph (e)(11)(iv) of this section.

(16) Upon September 26, 1997, refuge managers will amend existing competitively-awarded permits through the prospectus method to make the terms fully consistent with this section, including eligibility for a 5-year non-competitive renewal.

(f) *Fees.* Permittees must pay fees formally established by regional and/or nation-wide Service policy. The refuge manager must document any fee exemption.

(g) *Subletting and subcontracting.* A permittee may not sublet any part of an authorized use area. Subcontracting any service authorized by the permit requires written approval from the refuge manager unless the subcontracted service is specifically identified in the permittee's approved operations plan.

(h) *Restriction, suspension and revocation of permits.* The refuge manager may suspend, revoke, or reasonably restrict the terms of a permit for noncompliance with the terms and conditions of the regulations in this subchapter C; for nonuse of the permit; for violations/convictions (including pleas of nolo contendere) of any law or regulation pertaining to the same type of activity authorized by the permit, whether or not the activity occurred on or off the refuge; to protect public health or safety; or if the refuge manager determines the use to be incompatible with refuge purposes or is inconsistent with the Service's obligations under Title VIII of the Alaska National Interest Lands Conservation Act. All actions pertaining to this paragraph are subject to the appeal process as set forth in paragraph (i) of this section.

(i) *Appeals.* (1) Any person adversely affected by a refuge manager's decision or order relating to the person's permit, or application for a permit, has the right to have the decision or order reviewed by the regional director. This section does not apply to permits or applications for rights-of-way. See 50 CFR 29.22 for the hearing and appeals procedure on rights-of-way.

(2) Prior to making any adverse decision or order on any permit or an application for a noncompetitively issued permit, the refuge manager will notify the permittee or applicant, verbally or in writing, of the proposed action and its effective date. A permittee or applicant of noncompetitively issued permits, shall have 45 calendar days after notification in which to present to the refuge manager, orally or in writing, a statement in opposition to the proposed action or effective date. Notification in writing to a valid permit holder shall occur within 10 calendar days after receipt of the statement in opposition to the refuge manager's final decision or order. An applicant for a noncompetitively issued permit shall be notified in writing within 30 calendar days after receipt of the statement in opposition, of the refuge manager's final decision or order. An applicant for a competitively issued permit who is not selected will not receive advance notice of the award decision. Such applicants, who wish to appeal the decision must appeal directly to the regional director within the time period provided for in paragraph (i)(3) of this section.

(3) The permittee or applicant shall have 45 calendar days from the postmarked date of the refuge manager's final decision or order in which to file a written appeal to the regional director. In appeals involving applicants who were not selected during a competitive selection process, the selected applicant concurrently will have the opportunity to provide information to the regional director prior to the final decision. Selected applicants who choose to take advantage of this opportunity, will retain their right of appeal should the appeal of the unsuccessful applicant result in reversal or revision of the original decision. For purposes of reconsideration, appellants shall present the following information:

(i) Any statement or documentation, in addition to that included in the initial application, permit or competitive prospectus, which demonstrates that the appellant satisfies the criteria set forth in the document under which the permit application/award was made;

(ii) The basis for the permit applicant's disagreement with the decision or order being appealed; and

(iii) Whether or not the permit applicant requests an informal hearing before the regional director.

(4) The regional director will provide a hearing if requested by the applicant. After consideration of the written materials and oral hearing, and within a reasonable time, the regional director shall affirm, reverse, or modify the refuge manager's decision or order and shall set forth in writing the basis for the decision. The applicant must be sent a copy of the decision promptly. The decision will constitute final agency action.

(5) Permittee compliance with any decision or order of a refuge manager shall be required during the appeal process unless the regional director makes a preliminary finding contrary to the refuge manager's decision, and prepares a written determination that such action is not detrimental to the interests of the United States, or upon submission and acceptance of a bond deemed adequate by the refuge manager to indemnify the United States from loss or damage.

(j) *State selection of guide-outfitters.* Nothing in this section will prohibit the Service from cooperating with the State of Alaska in administering the selection of sport fishing guides and big game hunting guide-outfitters operating on national wildlife refuges should the State develop a competitive selection process which is acceptable to the Service.

Dated: August 22, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–22827 Filed 8–26–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 85

RIN 1018–AC67

Clean Vessel Act Pumpout Symbol, Slogan and Program Crediting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule provides definitions for facilities open to the public and public versus private facilities, clarification on submitting proposals, points for education, and the requirements for a uniform pumpout symbol, slogan and program crediting for the Clean Vessel Act of 1992 as authorized in Fish and Wildlife Service regulations.

DATES: This rule becomes effective September 26, 1997.

ADDRESSES: Copies may be obtained by mailing a request to the Division of Federal Aid, Fish and Wildlife Service, U.S. Department of the Interior, 1849 C Street, NW, MS 140 ARLSQ, Washington, DC 20240, or obtained from the Division of Federal Aid, Fish and Wildlife Service, U.S. Department of the Interior, Room 140, 4401 North Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Robert D. Pacific, (703) 358–1845.

SUPPLEMENTARY INFORMATION:

Background

Section 5604 of the Clean Vessel Act (Pub. L. 102–587, Title V, Subtitle F) authorizes the Director of the U.S. Fish and Wildlife Service (Service) to make grants to coastal States for constructing/renovating pumpout and portable toilet dump stations and for implementing associated education programs.

Developing a Pumpout Symbol

The Service consulted with Federal and State agencies, and with organizations and individuals within the marine industry and boating community in developing a pumpout symbol. A scoping meeting was held April 8, 1993, in Arlington, Virginia, to obtain input on a pumpout symbol. States that presently have pumpout symbols were invited to attend, as well as others. Maryland and Virginia attended, as well as the following Federal agency representatives: National Oceanic and Atmospheric Administration (NOAA), Environmental Protection Agency (EPA), U.S. Coast Guard (USCG), and Federal Highway Administration (FHWA). Representatives from States Organization of Boating Access (SOBA), National Marine Manufacturers Association (NMMA), American League of Anglers and Boaters (ALAB), and the International Association of Fish and Wildlife Agencies (IAFWA) also attended. Oregon and the National Association of State Boating Law Administrators did not attend, but provided comments and examples of their current symbols and/or suggested symbols.

A draft scoping document encompassing the information in this rule was sent to nearly 250 individuals and organizations for review and comment on July 8, 1994. Comments were received from three Service Regions, EPA's Chesapeake Bay Program, FHWA, USCG (3 letters), Massachusetts Department of Fisheries, Wildlife and Environmental Law Enforcement, Oregon State Marine Board, Maryland Department of Natural Resources Boating Administration, Florida Department of Environmental Protection, NMMA, Sealand Technology, Inc., Keco, Inc., and Neil Ross Consultants. A summary of comments received was published in the proposed rule in the **Federal Register** on September 19, 1995 (60 FR 48491).

Numerous consultations and scoping meetings were held with Federal, State and marine community staffs, groups and individuals throughout this period. Focus group meetings were held in Miami, Florida, Minneapolis, Minnesota, Seattle, Washington, and Annapolis, Maryland, between June 14 and 28, 1995, to obtain inputs on a symbol, slogan, and to determine boater attitudes toward pumping out their sewage. Each group was shown the suggested symbol and results show that ''the symbol, as tested, is appropriate and easily understood. Boaters volunteered that this symbol can become the 'universal' visual for pumpout stations.''

Consultation occurred with the International Standards Organization, American National Standards Institute, American Boat and Yacht Council, Society of Automotive Engineers, American Institute of Graphic Arts, British Standards Institution, and Permanent International Association of Navigation Congresses. Input was obtained on several pumpout symbol designs at the following meetings: Eleven EPA-sponsored Regional Workshops in 1994 and 1995, through a grant with The International Marina Institute; at the University of Wisconsin-Madison Docks and Marina National Conference; and at several marine community conferences, workshops and meetings.

This rule requires that two proposals be submitted by coastal States when submitting projects in coastal and inland portions of the State. Without this differentiation, adequate evaluation of proposals is not possible since points are different for the two zones.

In the proposed rule, the Service clarified the use of points for education so that States could receive points for education if they had an active, ongoing education program and did not need additional funds in a particular year. Otherwise, States would be forced to request funds to get points even if they did not need the funds.

In response to a request from a State and the marine community, the definitions of facilities open to the public, and public versus private facilities were contained in the proposed rule. The definitions of public/private follows definitions developed earlier by the marine community for surveying marinas for pumpout and other information.

In order to increase public awareness of the program, the marine community recommended developing a pumpout symbol, slogan, and program crediting logo. This rule provides the requirements for that pumpout symbol, slogan, and crediting logo.

There has been an International Standards Organization (ISO) international symbol since 1972 (depicted below).

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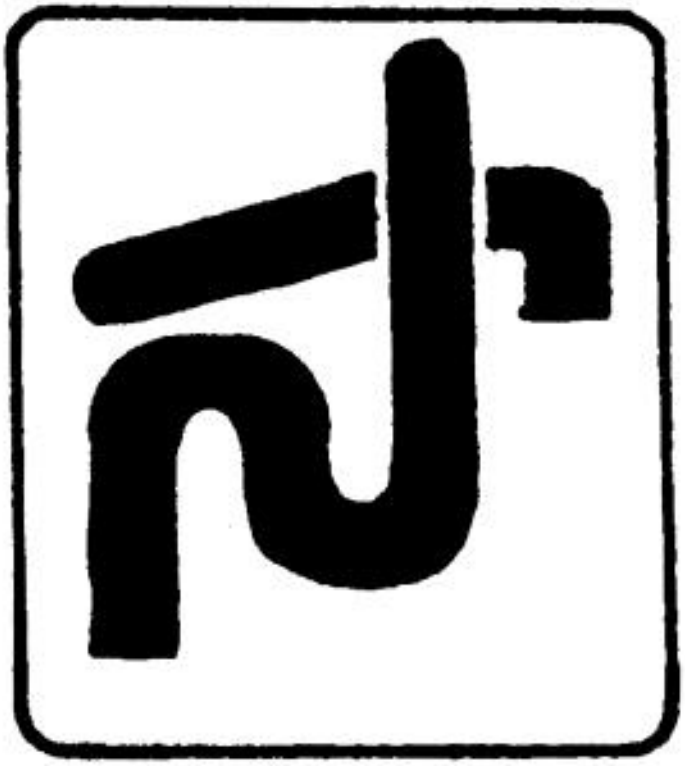

BILLING CODE 4310–55–C

There is also a symbol (depicted below) which appears on National Oceanic and Atmospheric Administration's (NOAA) National Ocean Service (NOS) nautical charts. The letter ''P'' and the circle around the ''P'' are magenta-colored.

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BILLING CODE 4310–55–C

The international symbol has been described by the marine community as not conveying a distinct meaning and is not understood by boaters. That symbol, therefore, has not been accepted by boaters and is not in general use in the United States. Likewise, the NOAA magenta ''P'' and circle on charts were not accepted as having a distinct message when presented to the marine community and have been deemed by Federal Highway Administration and marine community groups as possibly being in conflict with the symbol for ''parking''. Therefore, there is no nationally recognized pumpout symbol in general use to indicate to boaters traveling in different parts of the country where pumpout and portable toilet dump stations are located.

Likewise, there is no nationally recognized slogan. There are several State and private pumpout and portable toilet dump station symbols and slogans in use. The image and words differ from State to State. In order to have a successful campaign nationwide to get boaters to use pumpouts, a single, coordinated message and symbol are needed.

Therefore, the Service developed a pumpout symbol and slogan to provide boaters with a single nationwide symbol of pumpout and portable toilet dump station locations, and to provide a consistent message about the program nationally in education materials produced by each State. Advertising the program with one widely accepted symbol and slogan will decrease confusion, better advertise the program, result in greater use of pumpout and portable toilet dump stations, improve the aquatic environment, and thus contribute to improve economic and health conditions. The symbol and slogan contribute to environmental improvement goals of other Federal, State and local governmental agencies and have the support of boaters, the boating industry and the marine community.

Currently, 50 CFR 80.26 contains a crediting logo, and 50 CFR 85.47 contains suggested language to acknowledge that facilities were constructed with Clean Vessel Act funds. These sections also were reviewed and suggestions made for changes.

Criteria Used To Develop the Symbol

The Service developed criteria to select the pumpout symbol after discussions with individuals involved in the marine community and State and Federal agencies, and review of the documents identified in this rule:

(1) How well the symbol represents the message (Many symbols must be learned before there is adequate recognition of the symbol, therefore, constant repetition of the symbol is more important than the style of drawing or appropriateness of concept.);

(2) The ease with which people learn the symbol (The simpler the symbol, the easier to learn.);

(3) How well the symbol relates to national standards;

(4) How well the symbol is reproducible on letters, etc.;

(5) How visible the sign is to viewers (The simpler the symbol, the easier to recognize it at greater distances and under all light and background conditions.); and

(6) How easy to reproduce, reduce and enlarge the symbol (The symbol must be legible when reduced significantly.).

The Selected Pumpout Symbol

The current international symbol was rejected by nearly all who commented as not being understood by boaters and not communicating a distinct meaning. According to comments made by people in the marine community, the NOAA NOS nautical magenta ''P'' and circle, although it may be suitable on the NOAA nautical charts, does not convey the pumpout message adequately on signs and may be in conflict with other symbols such as parking signs. The current symbols used by States and the suggested complex symbols did not fully comply with the criteria. A suggestion was made by members of the marine community to develop separate symbols for pumpout and portable toilet dump stations. Comments on this suggestion favored one single symbol encompassing both pumpout and portable toilet dump stations to decrease confusion and costs.

The selected symbol encompasses the one feature that invariably appeared in the 50 symbols: the ''arrow'' as well as the ''holding tank'' and ''boat.'' The selected symbol, therefore, represents the core of current and suggested symbols:

(1) It is simple and should be easy to learn;

(2) It follows U.S. Coast Guard format and color standards for signs on waterways (Symbol is black, border is international orange, and background is white);

(3) It is easily reproducible on charts, etc., and should be easily recognizable to viewers at a great distance; and

(4) It is easily reduced or enlarged without losing legibility.

Developing a Pumpout Slogan

In addition to the pumpout symbol, the Service developed a slogan. Some States currently have a slogan, however, no national level slogan exists. The July 8, 1994, scoping document resulted in 52 suggested slogans that was reduced to 17 and presented to boaters at the focus group meetings. The slogan, ''KEEP OUR WATER CLEAN—USE PUMPOUTS,'' was selected by the cooperating Federal agencies (FWS, NOAA, EPA, and USCG), based on the top four slogans recommended by the boaters. ''Boaters prefer a short, straight-forward slogan'' as identified during the focus group meetings.

Developing a Program Crediting Logo

Section 80.26 of 50 CFR part 80 contains the approved crediting logo for the Federal Aid in Sport Fish Restoration Act. Section 85.47 of 50 CFR part 85 contains examples of suggested language for crediting the Clean Vessel Act. The Service received no comments to replace the approved crediting logo. The Service received inputs on suggested language from the July 8, 1994, scoping document request, and subsequently from States and Fish and Wildlife Service Regions and selected suggested language based on these comments.

Summary of Comments and Recommendations

The Service requested, in the September 19, 1995, proposed rule for the Clean Vessel Act Pumpout Symbol, Slogan and Program Crediting, all interested parties to submit comments that might contribute to the development of a final rule within a 60-day period ending November 20, 1995. The Service also requested comments from about 1,000 people with appropriate State and Federal agencies, local governments, boaters and boating organizations, marina owners/operators, marine equipment manufacturers and retailers, conservation organizations, and other interested parties.

The Service received a total of three written comment letters on the proposed rule identifying six issues suggesting clarification and modification of some of the language in the guidelines.

The Service considered all suggestions and recommendations raised by the commenters, and those comments adopted are included in this final rule in the appropriate sections. The following is a discussion of the issues raised by the commenters, the Service's responses to those issues, and a summary of changes made to the proposed rule.

Issue 1. Maryland Department of Natural Resources and BOAT/U.S. Clean Water Trust: Fees under the definition of Equitable Fees, § 85.11, need not be equal for all pumpout users provided Federal/State laws regarding pricing are not violated and that the maximum amount allowable under the Clean Vessel Act ($5.00) is not exceeded. A number of marinas in Maryland charge different categories of customers different fees. For example, some marinas charge a fee to transient boaters while pumpout service is provided either at a reduced cost or at no cost to slipholders/members. Other marinas charge boaters a fee for pumpouts but offer that service for free if fuel is purchased. A ''prepay'' pumpout fee also sounds reasonable provided the slipholder/member is ultimately not being charged more than $5.00 per pumpout. Allowing a certain amount of flexibility in pricing may be both good for business and encourage pumpout usage. New wording was then suggested by the State. BOAT/U.S. Clean Water Trust also commented that a significant number of marinas offer different prices for slipholders and transients. The cost of the pumpout for slipholders is built into the slip lease agreement, and keeping track of pumpout use by individual slipholders is difficult. The definition should ensure that marina operators do not have to keep more records to track the equity of prepaid pumpouts for slipholders versus payment per pumpout for transients.

Response: The Service agrees and has substituted the language suggested by the State of Maryland.

Issue 2. BOAT/U.S. Clean Water Trust: For § 85.11 the definition of ''Facility open to the public'' is longer than is required. Delete the following: * * * at that public or private facility for pumping out, * * *

Response: The Service agrees and has deleted that part of the sentence.

Issue 3. United States Environmental Protection Agency: The definitions do not clearly indicate whether pumpout facilities at private marinas are open and available for public use.

Response: Pumpout facilities at private marinas are open for public use, and language has been added in § 85.11 under the definition of ''Facility open to the public'' to indicate such.

Issue 4. BOAT/U.S. Clean Water Trust: In § 85.43, the pumpout sign should be offered in 2 colors as well as the 3 colors for those with limited printing budgets for signage, publications, or other applications.

Response: The Service agrees. The final symbol is two-colored with a white

background. However, language has been added in § 85.43 (b)(6)(vi), and (c)(1)(i), to indicate that one color, black, may also be used when appropriate, both for the pumpout symbol and for the magenta P qualifying sign. Language also has been added in § 85.47 to indicate the colors that may be used for the crediting logo.

Issue 5. United States Environmental Protection Agency, and BOAT/U.S. Clean Water Trust: Will the number, sizes, etc., of logos, slogans, crediting language, and operation instructions placed on pumpouts confuse the average user? BOAT/U.S. Clean Water Trust suggested prioritizing this information so that the most important information can be included when there is limited space. Other possibilities include covering the cost of producing signs under grant funds, or the Service designing and mass producing a sign with all of the standard information satisfying these requirements. In addition, it will be difficult to control in what colors the symbol is printed if marinas individually are left to create their own signage for pumpout docks.

Response: Information has been added in § 85.43(e) to clarify when different symbols, slogans, and logos should be used so that signs do not become cluttered and confusing. Also, the cost of producing signs is an allowable cost of the program, as indicated in existing § 85.41(a). The Service also is exploring the possibility of providing a number of symbol signs to the States for distribution to marinas.

Issue 6. United States Environmental Protection Agency: The location and size of the Sport Fish Restoration logo required by the rule is not specified.

Response: Language has been added in § 85.47(b) to clarify the location and size of the logo and maintaining proportions for reduction and enlargement. In addition, language regarding maintaining proportions for reduction or enlargement of the symbol has been added to § 85.43 (b)(6)(ii) and (e).

In addition to the comments received, one change was made to 85.43(a), the addition of a specific telephone number, 1–800–ASK–FISH, to be placed on pumpout and dump stations. This number has been fully operational since March 1996 and can be called to find the location of pumpout and dump stations throughout the country and to report a problem with the operation of a particular pumpout or dump station.

Environmental Effects

Because this rule is an administrative action, the effects on the physical, biological and sociological environment are too broad, speculative, and conjectural to be analyzed meaningfully. Therefore, the action is categorically excluded from any National Environmental Policy Act documentation pursuant to 516 DM 2.3 A(2). However, installation of symbol signs will be reviewed as part of the construction or renovation of pumpout and portable toilet dump stations which will require separate environmental consideration.

Information Collection Requirements

These final regulations have been examined under the Paperwork Reduction Act of 1995 and have been found to contain no information collection requirements.

Required Determinations

Economic Effects

The purpose of this rule is to establish a universal symbol for use by marinas to assist customers in locating pumpout facilities for their boats. It is expected that all marinas would provide some form of customer guidance to the services provided by the marina. The only cost associated with this rule would be the re-painting of existing signs to add the new symbol. For those marinas adding pumpout stations after the adoption of this symbol, the cost of adding the symbol would be minimal. The addition of the symbol is voluntary and for the benefit of the marinas' customers. Any cost associated with the inclusion of the symbol on existing and new signs is expected to be minimal, therefore, it is not expected that any significant economic effects would be attributable to this rule. There are no indications that any competitive effects either positive or negative would be associated with this rule and there are no effects on prices charged for services at marinas. In addition, grants are available for private marinas to install pumpout stations provided they are available to the general public. The decision to accept grant funds, and, therefore, general public access to the pumpout station, is voluntary on the part of the private marina and, therefore, a part of usual and customary business decisions. No significant economic costs are expected to result from the grant program.

Other Effects

This rule was not subject to Office of Management and Budget review under Executive Order 12866. The rule allows eligible States to make decisions regarding the use of the pumpout symbol, slogan and crediting logo. A review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) has revealed that this rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, or governmental jurisdictions. This voluntary program provides grant funds to small entities, with minor requirements, such as allowing the general public to use the facilities, therefore, this would have minimal effect on such entities. The effects of these rules will impact agencies in the States, Puerto Rico, Guam, the Virgin Islands, American Samoa, the District of Columbia and the Northern Mariana Islands. The Service has determined and certified pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. The Department has determined that these final regulations meet the applicable requirements provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Intergovernmental Review of Federal Programs

This Clean Vessel Act Grant Program is covered under Executive Order 12372 ''Intergovernmental Review of Federal Programs'' and 43 CFR part 9 ''Intergovernmental Review of the Department of the Interior Programs and Activities.'' Individual projects that are part of this grant program should comply with the provisions of 43 CFR 9.

Author: The primary author of this rule is Robert D. Pacific, U.S. Fish and Wildlife Service.

List of Subjects in 50 CFR Part 85

Coastal zone, Grant programs—natural resources, Reporting and recordkeeping requirements, Sewage disposal, Vessels.

Regulation Promulgation

For the reasons set out in the preamble, part 85 of subchapter F of chapter I, title 50 of the Code of Federal Regulations is amended as set forth below.

PART 85—CLEAN VESSEL ACT GRANT PROGRAM

1. The authority citation for part 85 is revised to read as follows:

Authority: 16 U.S.C. 777g(c).

Subpart A—General

2. Section 85.11 is amended by removing the paragraph designations and adding the following definitions, in alphabetical order, to read as follows:

§ 85.11 Definitions.

* * * * *

Equitable fees. The maximum charge per pumpout is $5.00. Price modifications and discounts are subject to State/Federal laws concerning pricing.

* * * * *

Facility open to the public. (1) A Clean Vessel Act facility that is open and available to the public is one where the public has full and reasonable access to the pumpout/dump station, including:

(i) Provision of signage visible from the water to direct boaters to pumpout/dump stations;

(ii) Location of pumpouts to facilitate ease of use by all boats typical to that particular marina;

(iii) Equitable fees; and

(iv) Reasonable open periods.

(2) To be eligible for funding under this program, both public and private facilities must be open to the public.

* * * * *

Private facilities. Private facilities include those operated by the following:

(1) For profit or non-profit private marinas, docks, etc.;

(2) For profit or non-profit concessionaires, whether they are leased or private facilities, on public lands; or

(3) Yacht or boating clubs, whether they are open to the public or members-only facilities.

Public facilities. Public facilities include municipal, county, port authority, State and Federal marinas, docks, etc., operated by those agencies.

* * * * *

Reasonable open periods. This part does not specify hours, days and seasons, however, some suggested examples, provided no other factors are involved, are presented:

(1) Pumpout/dump stations may be open during the same period the fuel docks are normally open.

(2) Pumpout stations may be open when the marina is open and staff is present to pump out boats.

(3) Pumpout/dump stations may be open during the hours considered to be normal marina business hours as adjusted by seasonal differences.

* * * * *

Subpart B—Application for Grants

3. Section 85.21 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 85.21 Application procedures.

(a) Eligible applicants will submit their proposals to the appropriate Regional Office of the U.S. Fish and Wildlife Service. Coastal States submitting proposals for both the coastal zone and the inland portion of their States, must submit two separate proposals. The Regional Office addresses follow:

* * * * *

Subpart C—Grant Selection

4. Section 85.30(f) is revised to read as follows:

§ 85.30 Grant selection criteria.

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(f) Proposals that include an education/information component, or the State has an active, ongoing education program;

* * * * *

Subpart D—Conditions on Use/Acceptance of Funds

5. Section 85.43 is revised to read as follows:

§ 85.43 Signs and symbols.

(a) *Signs.* Facilities must display appropriate information signs at pumpout and portable toilet dump stations. Such information should indicate fees, restrictions, hours of operation, operating instructions, a contact name and 1–800–ASK–FISH telephone number for boaters to get additional information or to report an inoperable facility.

(b) *Pumpout symbol.* (1) At appropriate times, to increase public awareness of the Clean Vessel Act Pumpout Grant Program, use a pumpout symbol according to Service specifications. Use the pumpout symbol as follows:

(i) As a sign at the entrance to a marina advertising the presence of a pumpout and/or portable toilet dump station;

(ii) As a directional sign within a marina;

(iii) As a sign at a pumpout and/or portable toilet dump station;

(iv) As a symbol on educational and informational material; and

(v) For other uses as appropriate to advance the purposes of the Clean Vessel Act.

(2) To avoid confusion with having two symbols, use the selected symbol both for pumpout stations and portable dump stations. The Service encourages the use of this symbol as it is not copyrighted. The NOAA NOS magenta ''P'' within a magenta circle will continue to be used on nautical charts to identify the location of pumpout and portable toilet dump stations. NOAA will include information about the selected pumpout symbol in the U.S. Coast Pilots, a supplement to the charts, to relate this symbol to the NOAA Nautical Chart magenta ''P'' and circle.

(3) All recipients identified in § 85.11 should display the appropriate pumpout symbol on facilities, such as pumpout and portable toilet dump stations, or on printed material or other visual representations relating to project accomplishments or education/information, and should encourage others to do so. Sub-recipients also should display the symbol and should encourage use by others for the purposes stated in this paragraph (b)(3).

(4) The Service encourages other persons or organizations, such as marinas with pumpout stations not constructed with Clean Vessel Act funds, to use the symbol to advance the purposes of the Clean Vessel Act program.

(5) The following specifications shall apply: The symbol is black, the background is white, and the border is international orange. There is no standard for the black and white, but use black and white colors, not shades. The standards for the international orange color is as follows: For day boards (signs), use retroflective international orange film. For paint, use international orange conforming to FED–STD 595B, chip number 12197 in daylight conditions. For inks, use Pantone Matching System color chart 179C. In order to ensure visibility after dark, use reflectorized film or paint, and/or artificial illumination. Pumpout symbol technical specifications to construct signs and for other purposes are available upon request.

(6) The following rules govern the graphic reproduction of the symbol:

(i) Do not use a smaller than legible symbol.

(ii) If you reduce or enlarge the symbol, maintain the same proportions.

(iii) Do not obscure the symbol by overprinting.

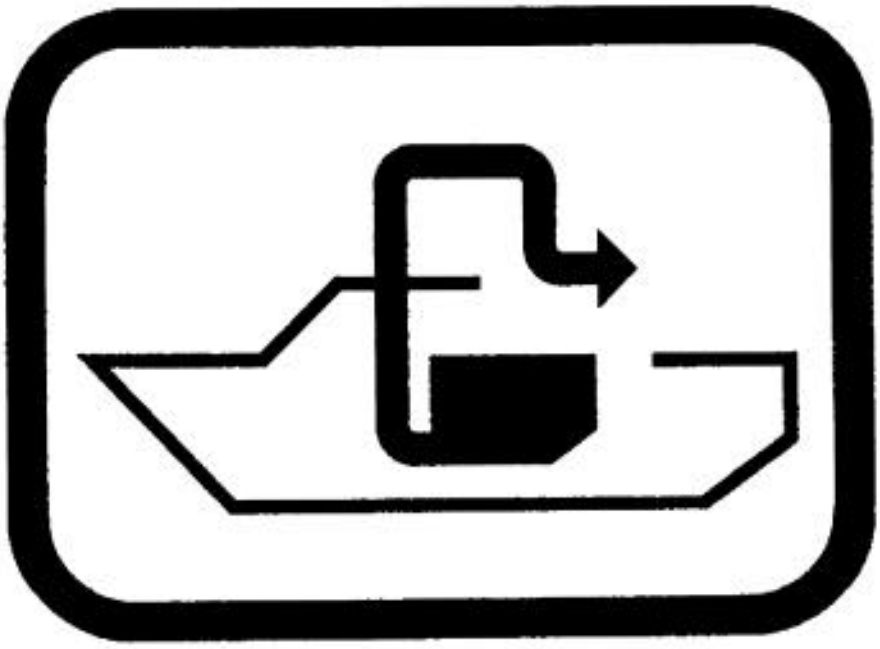
(iv) Do not place the symbol where it will be split by unlike backgrounds.

(v) Do not place the symbol on a background that is highly textured or patterned.

(vi) When appropriate, for economical reasons, depict the symbol in one-color (black) with a white background, rather than two-color (international orange and black) with white background.

(7) The pumpout symbol follows:

BILLING CODE 4310–55–M



(c) *Qualifying signs.*

BILLING CODE 4310–55–C

(1) In conjunction with the symbol, you may use other qualifying signs below the symbol, either on the same sign or on a separate sign.

(i) You may place the message ''(P) PUMP OUT'', ''(P) PUMPOUT STATION'', ''(P) PORTABLE TOILET DUMP STATION'', or other appropriate qualifier, beneath the symbol. Place the magenta-colored ''P'' and circle in front of the message to relate the pumpout symbol to the NOAA NOS nautical charts. Messages may be appropriate for several years until the symbol is understood without the message. When appropriate, substitute a black ''P'' and circle for economical reasons.

(ii) You may place directional arrows beneath the symbol to indicate the direction of pumpout or portable toilet dump station facilities.

(2) The following specifications shall apply: Symbols, such as directional arrows, and letters, are black, and the background is white. For using inks to create the magenta color, use PMS color chart 259U. Letters and black and white colors shall follow the Federal Highway Administration's Manual on Uniform Traffic Control Devices for Streets and Highways (MUTCD), FHWA, 1988. The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, provides for sale copies of the 1988 MUTCD, including Revision No. 3, dated September 3, 1993, Stock No. 050–001–00308–2.

(3) The same rules governing the graphic reproduction of the pumpout symbol, as described in paragraph (b)(6) of this section, shall apply to qualifying signs.

(d) *Pumpout slogan.* (1) Use the pumpout slogan according to Service specifications to help increase boater awareness of the need to use pumpout and dump stations to properly dispose of their boat sewage. Use the slogan in conjunction with the pumpout symbol, on educational/informational material, and for other uses as appropriate to advance the purposes of the Clean Vessel Act. The slogan is not copyrighted, and the Service encourages its appropriate use.

(2) All recipients identified in § 85.11 should display the pumpout slogan on facilities, such as pumpout and portable toilet dump stations as appropriate, and on printed material or other visual representations relating to project accomplishments or education/information, and should encourage others to do so. Sub-recipients should display the slogan for purposes as stated above and should encourage others to do so.

(3) The Service encourages other persons or organizations, such as marinas with pumpout stations not constructed with Clean Vessel Act funds, to use the slogan to advance the purposes of the Clean Vessel Act program.

(4) The following specifications shall apply: Letters are black and background is white. The same reference under specifications for Qualifying Signs in paragraph (c)(2) of this section shall apply.

(5) The same rules governing the graphic reproduction of the pumpout symbol, as described in paragraph (b)(6) of this section, shall apply to the pumpout slogan.

(6) The pumpout slogan follows:

KEEP OUR WATER CLEAN—USE PUMPOUTS

(e) All information signs, pumpout symbol, qualifying signs, and pumpout slogan identified in this section and the crediting logo identified in § 85.47, inform and educate boaters. Therefore, use the signs, symbol, slogan and logo as appropriate. For instance, a sign on the water directing boaters to a pumpout may only need the pumpout symbol, and a qualifying sign beneath, e.g., an arrow, and possibly the words ''PUMPOUT STATION''. For pumpout and dump stations, the pumpout symbol, slogan, information signs, including all information in paragraph (a) of this section, and the crediting and State logo may be appropriate. If desirable, add qualifying signs. Position a legible sign, symbol and logo either on the pumpout/dump station, on a separate sign, or both, for the greatest effect in informing and educating boaters. For other products such as print and video public service announcements, brochures, etc., the placement of symbols, etc. depends on space availability. The following order of priority dictates the order of use under limited space conditions: the pumpout symbol, slogan, 1–800–ASK–FISH telephone number and Sport Fish Restoration crediting logo. Add other information as appropriate. Use judgement when placing information on signs so as not to confuse the reader.

Display the symbol, logo, slogan and information signs in the appropriate locations. To reduce wind drag when bolting signs on pilings, it was found helpful in the Northeast to make signs taller than wider. Symbol or logo size may vary. However, if you reduce or enlarge the symbol, maintain the same proportions.

6. Section 85.47 is revised to read as follows:

§ 85.47 Program crediting.

(a) *Crediting logo.* As the source of funding for Clean Vessel Act facilities, the Sport Fish Restoration program should get credit through use of the Sport Fish Restoration logo. Grant recipients may us the crediting logo identified in 50 CFR 80.26 to identify projects funded by the Clean Vessel Act. The Sport Fish Restoration logo follows:

BILLING CODE 4310–55–M

BILLING CODE 4310–55–C

(b) *Recipient logo display.* Grant recipients are authorized to display the Sport Fish Restoration logo. Section 85.11 identifies recipients eligible to display the appropriate logo according to 50 CFR 80.26. Display includes on pumpout and portable toilet dump stations that grantees acquire, develop, operate or maintain by these grants, or on printed material or other visual representations relating to project accomplishments or education/information. Display the logo in the appropriate location, according to § 85.43(e). Symbol or logo size may vary. However, if your reduce or enlarge the symbol, maintain the same proportions. Recipients may require sub-recipients to display the logo.

(c) *Other display of logo.* Other persons or organizations may use the logo for purposes related to the Federal Aid Clean Vessel Act program as authorized in 50 CFR 80.26.

(d) *Crediting language.* Suggested examples of language to use when crediting the Clean Vessel Act follow:

(1) *Example 1.* The Sport Fish Restoration Program funded this pumpout facility through your purchase of fishing equipment and motorboat fuels.

(2) *Example 2.* The Sport Fish Restoration Program funded this construction through your purchase of fishing equipment and motorboat fuels.

(3) *Example 3.* The Sport Fish Restoration Program funded the production of this pamphlet through your purchase of fishing equipment and motorboat fuels.

(e) *Logo colors.* Option 1 in paragraph (e)(1) of this section describes the preferred logo colors. Use Options 2 or 3 in paragraph (e)(2) or (e)(3) of this section when necessary or to reduce costs. Do not attempt to match these Pantone Matching Systems (PMS) colors with combinations of screened process colors.

(1) *Option 1.* When printed 100 percent on a white background, use PMS 348.

(2) *Option 2.* When using four-color process printing, print the symbol in 100 percent black on a white background.

(3) *Option 3.* When it is not possible to follow the specifications of Options 1 or 2 in paragraph (e)(1) or (e)(2) of this section, print the logo in any 100 percent solid dark color on a contrasting light background.

Dated: July 29, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–22010 Filed 8–26–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 970520120–7198–02; I.D. 040297A]

RIN 0648–AJ19

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; 1997 Management Measures for Nontrawl Sablefish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement management measures for the 1997 limited entry, fixed gear

sablefish fishery north of 36° N. lat. This rule also implements long-term changes to the management measures for this fishery and for the limited entry, fixed gear sablefish fishery south of 36° N. lat. In addition to these regulatory measures, NMFS also announces a 1997 season start date of August 25 for the limited entry, fixed gear regular sablefish season north of 36° N. lat., a season length of 9 days, a season end date of September 3, and an equal cumulative landing limit of 34,100 lbs. These actions are intended to provide qualified fixed gear fishers the opportunity to harvest the 1997 fixed gear allocation and to reduce the risk to human life and safety inherent in the current ''derby'' fishery.

DATES: Effective August 21, 1997.

ADDRESSES: Copies of the Environmental Assessment (EA)/ Regulatory Impact Review (RIR)/Initial Regulatory Flexibility Analysis (IRFA), and the Final Regulatory Flexibility Analysis (FRFA) for this action are available from Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, Rodney McInnis at 562–980–4040, or the Pacific Fishery Management Council at 503–326–6352.

SUPPLEMENTARY INFORMATION: NMFS issues this final rule to implement a recommendation from the Pacific Fishery Management Council (Council), under the authority of the Pacific Coast Groundfish Fishery Management Plan (FMP) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) to implement changes to the management measures for the limited entry, fixed gear sablefish fishery. The notice of proposed rulemaking for this action (62 FR 30305, June 3, 1997) fully described the background and rationale for the Council's recommendations. NMFS requested public comments on this action through July 3, 1997. NMFS received three letters during the comment period, which are addressed later in the preamble to this final rule. Recommendations made at the June 1997 Council meeting and the comments received on the proposed rule resulted in the changes to the regulatory text of the proposed rule that are explained below.

In summary, Council recommendations from the October 1996 and March 1997 meetings strengthened the separation of sablefish fishing effort north and south of 36° N. lat. New management schemes that will improve safety to fishery participants were recommended for each area.

Changes From the Proposed Rule

NMFS either received Council recommendations on, or consulted with the Council on the changes to the proposed rule described in this section.

In March 1997, the total 1996 harvest for the limited entry, fixed gear, daily trip limit fishery for sablefish was estimated at 374 mt (825,000 lb). When the Council made its management recommendations for the limited entry, fixed gear primary (regular plus mop-up) fishery, the Council expressed an expectation that the 1997 daily trip limit fishery might exceed the 1996 total harvest by as much as 11 mt (25,000 lb). NMFS mistakenly wrote this expectation into the codified rule as a guideline for the total harvest for the daily trip limit fishery. As described below in Comment 1, after receiving updated information, the Council offered a correction to the proposed rule that the 385 mt (850,000 lb) was not intended as a harvest target. NMFS changed the regulatory text to eliminate the reference to the 385 mt (850,000 lb) after receiving the Council's comment.

At the June Council meeting, public comment strongly supported and the Council recommended a season start date of August 25 for the limited entry, fixed gear equal cumulative limit (or regular) fishery. The regulatory language from the proposed rule has been altered from describing a framework for a season to setting a season to start on August 25 for the 1997 fishery. However, as NMFS stated at that meeting, administrative appeals to denials of sablefish endorsements will not be completed before mid-September. Thus, some permit holders may receive a sablefish endorsement too late to participate in the fishery that begins August 25. To reconcile this conflict, the regular season will still start on August 25 for endorsement holders; but, an auxiliary regular season will also occur for successful appellants whose appeals are resolved after August 25. The start date of the auxiliary regular season will be announced in the **Federal Register**, and is expected to occur in mid-September, preceding the mop-up portion of the fishery.

This rule will be published very close to the start date of the regular season, primarily because the Council was unable to make final recommendations on this issue until its March 1997 meeting. Under this time constraint, NMFS decided to save time, reduce publication expenses, and limit public confusion by announcing the regular season start date, duration and amount of the cumulative limit with this rule. These announcements result in changes to the 1997 codified regulations only. NMFS expects that the public would prefer the convenience of having changes to management measures and the 1997 season structure in one document, rather than in two separate documents published within days of each other.

In March 1997, the Council recommended a season structure for the 1997 limited entry, fixed gear regular sablefish fishery of a no more than 10-day fishery, with equal cumulative limits for all permit holders with sablefish endorsements. After consulting with the Council's Groundfish Management Team (GMT) at and subsequent to the June 1997 Council meeting to set the exact number of days in the fishery and the equal cumulative limit, NMFS has decided on a nine-day season starting at noon August 25, and ending at noon, September 3, 1997, with an equal cumulative limit of 34,100 lbs.

A final change from the proposed rule, as explained below in the response to Comment 2, is to allow each permit only one cumulative limit in the regular fishery and one in the mop-up fishery. By linking the cumulative limits to the permit as well as the vessel, multiple vessels will not be able to use the same permit during the cumulative limit periods to land multiple cumulative limits on that single permit. This problem will be dealt with in the long term through a rule that has been recommended by the Council, which has not been issued, that limits the timing and frequency of permit transfers.

Management Measures for 1997 Only

For 1997 only, the limited entry, fixed gear sablefish fishery north of 36° N. lat. will consist of a 9-day regular season with a single cumulative limit, equal for all vessels. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed or landed per vessel in a specified period of time, with no limit on the number of landings or trips. In addition, only one regular season and one mop-up season cumulative limit may be landed on a permit, so that no one permit may be used by multiple vessels to the land multiple cumulative limits. The cumulative limit of 34,100 lbs and the 9-day duration of the fishery are based on the number of permits qualifying for the sablefish endorsement and on the harvest taken in the daily trip limit fishery.

The 1997 limited entry, regular fixed gear season will begin at noon on

Monday, August 25, 1997. Only holders of limited entry permits with sablefish endorsements may participate in the fishery. If a limited entry, fixed gear permit holder's application for a sablefish endorsement is on appeal at the time of the season start date, that permit holder may not participate in the regular season. NMFS expects that the endorsement appeal process will be complete by mid-September. Following the completion of the endorsement appeal process, there will be an auxiliary regular season, which will give successful appellants the opportunity to fish towards the same cumulative limit and for the same number of days as those persons participating in the regular fishery. NMFS will announce the start date of the auxiliary regular season in the **Federal Register** before the start of that season.

According to the Council's recommendation, as described in the March 1997 EA/RIR for this issue, the duration of the equal cumulative limit fishery was to be set as close to 10 days as possible, and with a harvest ''overhead'' of at least 25 percent using the best estimate of projected harvest, and with an overhead of at least 15 percent using a reasonable ''worst case'' scenario. ''Overhead'' is defined as the difference between the expected harvest level and the total harvest that would occur if each permitted vessel took its cumulative limit (maximum potential harvest). The total allowable harvest for the regular and auxiliary regular fishery will be the amount of the limited entry, fixed gear sablefish allocation in excess of the amount that is expected to be taken by the daily trip limit fishery. The Council is managing the daily trip limit fishery north of 36° N. lat. so that its 1997 harvest does not substantially exceed its 1996 harvest of 415 mt (915,000 lbs).

Estimates of the likely total harvest in the regular and auxiliary regular fishery have been made conservatively in order to ensure that the fishery does not exceed its total allocation. Because of the provision of overhead and the conservative management described above, the regular and auxiliary regular fishery is not expected to harvest all of the limited entry, fixed gear allocation for north of 36° N. lat. in excess of that required for the daily trip limit fishery. Following an estimation of the catch from the regular and auxiliary regular fishery, there will be a mop-up fishery to harvest this excess. The recommendation on the size of the mop-up cumulative limit will be made by the Council's Groundfish Management Team, after calculation of the actual landed catch from the initial and auxiliary cumulative limit fishery and the daily trip limit fishery. NMFS will announce the start date, duration, and cumulative limit amount for the mop-up portion of the fishery in the **Federal Register** before the start of the mop-up season.

In 1997, there will be a 48-hour closure before the regular fishery north of 36° N. lat., during which time no fixed gear vessel (limited entry and open access) may deploy gear used to take and retain groundfish, or take and retain sablefish north of 36° N. lat. The 1997 pre-season closure will begin at noon on August 23 and end at noon on August 25, at the start of the fishery. All fixed gear used to take groundfish must be out of the water during this period. For auxiliary regular fishery participants, there will also be a 48-hour closure before the start of that fishery, during which time the same rules that govern the pre-season closure for the regular fishery apply just to auxiliary regular fishery participants.

There will be no opportunities for either pot or longline fishers to set their gear before the 1997 regular or auxiliary regular season start times.

Management Measures for 1997 and Beyond

This rule introduces a framework that allows the start date of the regular, north of 36° N. lat., limited entry, fixed gear sablefish season to be set for any day from August 1 through September 30. The Administrator, Northwest Region, NMFS, will establish the season start date after consulting with the Council, taking into account tidal conditions, Council meeting dates, alternative fishing opportunities, and industry comments.

To facilitate enforcement at the end of the regular season, there will be a 48-hour post-season closure north of 36° N. lat., during which time no sablefish taken with fixed gear (limited entry or open access) may be taken and retained for the 48 hours immediately after the end of the regular season. However, sablefish taken and retained during the regular season may be possessed and landed during that 48-hour period. In 1997, this 48-hour post-season closure will begin at noon on September 3 and end at noon on September 5. Gear may remain in the water during the 48-hour post-season closure; however, gear used to take and retain groundfish may not be set or retrieved during this period. In 1997, there will also be a 48-hour post-season closure after the auxiliary regular season, for auxiliary fishery participants, during which time auxiliary fishery participants must comply with the rules set for all fixed gear fishers for the post-season closure at the end of the regular season.

Outside of the regular season (the initial cumulative limit fishery), the mop-up fishery, and the associated 48-hour closures, there is generally a daily trip limit fishery for all vessels with limited entry permits for pot or longline gear. Vessels with limited entry permits for pot or longline gear, but without sablefish endorsements, may not participate in the regular season or the mop-up season; they may only harvest sablefish when the daily trip limit fishery is open for limited entry vessels. The daily trip limit fishery will be open during the time between the end of the 48-hour closure following the cumulative limit period and the beginning of the mop-up fishery.

Commencing at 12 noon local time (l.t.), September 5, 1997, the daily trip limits for nontrawl sablefish will resume at 300 lb (136 kg) per day north of 36° N. lat. (Daily trip limits apply to calendar days. Therefore, on September 5, 1997, a daily trip limit may be landed between 12 noon and 12 midnight l.t. Beginning at 0001 hours 1.t. on September 6, 1997, daily trip limits will apply to the full 24 hours.) A vessel participating in the regular fishery must begin landing its catch before 12 noon l.t., September 5, 1997, and complete the offloading before returning to sea or continuing a trip at sea, or the daily trip limit will apply to the fish remaining on board after 12 noon l.t. on September 5, 1997. The regular season trip limit for sablefish smaller than 22 inches (56 cm) still applies.

The regular and mop-up seasons in the area south of 36° N. lat. have been eliminated. The daily trip limit fishery will continue in the southern area during the time of the regular and mop-up seasons, and associated closures north of 36° N. lat. Southern area fishers will be managed with the intent of providing a year-round trip limit fishery, and those without sablefish endorsements may not move north to take part in the primary northern season. There is a separate Acceptable Biological Catch (ABC) for the waters south of 36° N. lat.

Southern area fixed gear sablefish fishing will henceforth be managed under routine management measures imposed under 50 CFR 660.323(b). ''Routine'' management measures for sablefish include all changes to trip and landing frequency limits for all gears. Reasons for routine management measures include: To extend the fishing season; to minimize disruption of traditional fishing and marketing patterns; to reduce discards; to discourage target fishing while allowing

small incidental catches to be landed; to allow small fisheries to operate outside the normal season; and, for the open access fishery only, to maintain landings at the historical proportions during the 1984–88 window period. This rule does not amend § 660.323(b) but appropriately references it. Trip limits for sablefish in this area will be established in the annual specifications, and may be adjusted during the fishing year.

Comments and Responses

The comments in 3 letters received during the public comment period ending July 3, 1997, are summarized below. Comment 1 is a comment from the Council itself, whose staff sent a letter with a correction to the proposed rule. Comments 2 through 9 are comments sent by an individual in opposition to the 1997 management regime. This letter included an attachment of 13 letters of comment opposing equal allocation, sent from industry participants to the Council during its consideration of this issue, plus an additional letter comment sent by this same individual to NMFS prior to the publication of the proposed rule, with a report on fishery safety by a university economist. Comments 10 through 14 are comments from a letter of support sent by two associations representing West Coast fishing vessel owners and fishers. This letter raised specific issues concerning the Magnuson-Stevens Act National Standards for fisheries management, as they apply to this fishery.

Comment of Correction

Comment 1: The draft regulations for the 1997 season contain a reference to a target harvest of 385 mt (850,000 lbs) for the daily trip limit portion of the limited entry, fixed gear sablefish fishery. It was not intended that this target value be included as part of the codified regulations. Furthermore, more recent information indicated that the daily trip limit fishery took a higher amount in 1996 (415 mt (915,000 lb)), and more would be needed for 1997. The Council also recognizes that further adjustments to the duration of the fishery and the size of the cumulative limit may need to be made based on the number of vessels that ultimately qualify for sablefish endorsements.

Response: The codified text from the proposed rule has been altered to eliminate the reference. During its March 1997 meeting, the Council recommended setting a target harvest for the primary fishery that would leave about 385 mt (850,000 lb) for the daily trip limit fishery. The goal of this recommendation was to allow some expansion in the daily trip limit fishery over what it had harvested in 1996. The Council expected that the total 1997 catch in the daily trip limit fishery would expand slightly over the total 1996 catch. At that time, it was estimated that the daily trip limit fishery had taken approximately 374 mt (825,000 lbs) in 1996, and might take as much as 385 mt (850,000 lbs) in 1997. By the June 1997 Council meeting, calculations of the total 1996 sablefish harvest in the limited entry, daily trip limit fishery were finalized at a total of 415 mt (915,000 lbs). If a cap of 385 mt (850,000 lbs) for the daily trip limit fishery were to remain in the codified text, the daily trip limit fishery would be constrained contrary to the logic of the Council's original recommendations.

Comments Opposing Rule

Comment 2: There are no restrictions on permit transfers. Permit holders who are able to take either the cumulative limit before the end of the cumulative limit period, or the mop-up limit before the end of the mop-up period would be allowed to transfer their permits, which may permit multiple boats to catch the limits during the times set for both the cumulative limit and mop-up periods of the fishery.

Response: NMFS agrees. Therefore, the proposed rule has been modified so that the cumulative limit is a period limit for the permit as well as for the vessel. By linking the cumulative limits to both the vessel and the permit, multiple vessels will not be able to make multiple cumulative limit landings on the same permit during the cumulative limit periods. This change is consistent with the intent of the Council's recommendations for management of the 1997 limited entry, fixed gear sablefish regular fishery. This problem will be dealt with in the long term through a rule that has been recommended by the Council, but not yet implemented, that would limit the timing and frequency of permit transfers for all gear types.

Comment 3: For vessels unable to catch the cumulative limit within the cumulative limit period, the fishery will still be an unsafe derby. A report by a university economist argues that because the 1997 fishery will increase the amount of time that lower-level harvesters will be in a derby-like setting, the 1997 season is less safe than a derby.

Response: The Council debated at its October 1996 and March 1997 meetings whether the equal cumulative limit fishery would still be unsafe for vessels unable to catch the cumulative limit within the time allotted for the fishery. Fishers who knew that they would not be able to catch the cumulative limit within the allotted time testified at the Council meeting that any increase in the number of days in the fishery would allow them to slow the pace of their fishing and improve their ability to operate in a more safe manner. The U.S. Coast Guard also testified on the safety hazards of derby fisheries and stated that the longer the season, the safer the fishery. For vessels that are able to catch the cumulative limit within the cumulative limit period, the safety of the fishery will increase.

Comment 4: The equal cumulative limit system disregards historic fishery participation levels and redistributes fish and income away from high producers to low procedures and away from the pot sector to the longline sector.

Response: As discussed in the preamble to the proposed rule, the Council determined that the safety benefits that could be gained from replacing the derby fishery with a slower-paced equal cumulative limit fishery would outweigh the one-time negative impact that such a regime would have on the highest producers in the fleet. The Council has considered historic participation as demonstrated in the documents produced for this action, Amendment 9, and the 1998 3-tier proposal. Nonetheless, the Council chose to recommend the equal cumulative limit for 1997 as the best short-term solution. At the June 1997 council meeting, the Council recommended that NMFS implement a three-tiered cumulative limit regime for managing the fishery in 1998 and beyond, which should provide fishers with fishing opportunities more closely aligned to past catch distribution.

Comment 5: Information at the March 1997 Council meeting indicated that the 1996 daily trip limit fishery took 385 mt (850,000 lb). Information on the 1997 daily trip limit fishery indicates that the fishery has exceeded the 1996 catch. If the daily trip limit fishery catch is higher than what was expected at the March 1997 Council meeting, NMFS will be unable to implement a catch limit for the cumulative limit fishery that will maintain the required overhead.

Response: As mentioned above, ''overhead'' is the amount by which the harvest would exceed the expected catch if every eligible vessel participates in the fishery and fully harvests its legal limit. The concept of overhead is based on the premise that not all participants in this fishery will harvest the cumulative limit. A fishery where all participants have the opportunity to

catch a cumulative limit and they are all able to catch that limit would be considered an individual fishing quota (IFQ). The Sustainable Fisheries Act of 1996 put a moratorium on the implementation of new IFQ programs until October 1, 2000.

Management measures for the limited entry, fixed gear sablefish fishery have been carefully crafted to not violate the IFQ prohibition. The Council has constrained the monthly limits in the daily trip limit fishery to ensure that the total 1997 catch does not greatly exceed the total 1996 daily trip limit fishery catch. With these constraints in place, NMFS has structured the fishery to meet the Council's parameters by adjusting the season length and trip limit level.

Comment 6: If NMFS reserves a portion of the catch available to the cumulative limit fishery for successful appellants to the sablefish endorsement application process to take during the time of the mop-up fishery, there would be a redistribution of catch amounts between the regular and mop-up portions of the fishery, which is not allowed under the current regulations.

Response: The auxiliary regular fishery is part of the regular fishery; it is not part of the mop-up fishery. The mop-up season will be held after the auxiliary regular season. A reasonable estimate of the amount needed for both regular seasons under the less conservative scenario described in the EA/RIR for this issue has been made. This estimate determined the duration and cumulative limit for the regular seasons. The amount available to the mop-up portion of the fishery will, as in the past, depend on the accuracy of the catch projections and on the amount of harvest needed to accommodate the daily trip limit fishery for the remainder of the year. As in years past, the NMFS Regional Administrator may determine that too little of the fixed gear allocation remains to conduct an orderly or manageable fishery, in which case there would be no mop-up season. This division of catch and establishment of an auxiliary season is not being implemented through pre-existing regulations, but through this final regulation.

Comment 7: The mop-up season has a fairly small cumulative limit for each participant and it is likely that every participant in the mop-up fishery will be able to take that cumulative limit during the mop-up cumulative limit during the mop-up period, there will be no overhead and the fishery will be an IQ.

Response: The mop-up fishery does not exist independently of the regular fishery and, in fact, may not even occur if all of the sablefish available to the regular season is taken during the regular season. Conservative management of the regular fishery to prevent the total regular fishery catch from exceeding the amount available to that fishery creates the probability that not all of the sablefish available to the regular fishery will be taken during the regular fishery. The regulations finalized by this rule allow for the possibility of a mop-up in the event that not all of the sablefish available to the regular fishery is taken during the regular fishery. NMFS expects that overhead within the entire primary fishery, which is the regular fishery in combination with the mop-up fishery, will be within the Council's parameters of 15–25 percent. The structure of the mop-up fishery is similar to the mop-up fishery under past derbies and under the proposed three-tier system for 1998 and beyond.

Comment 8: Before actions taken at the June 1997 Council meeting, the overhead suggested for the cumulative limit fishery was 15 percent to 25 percent of the total estimated catch. Reserving a portion of the catch for successful endorsement application appellants, allowing transfers of permits during the fisheries, the higher than expected daily trip limit fishery catch, and altering the division of catch between the regular and mop-up portions of the fishery will absorb the available overhead and allow each participant to catch his or her cumulative limit, which would be an individual quota fishery.

Response: NMFS disagrees. As noted in the response to Comment 5 above, the cumulative limit and the overhead are calculated based on the total amount of sablefish available to the fishery and the projected harvest in the fishery. In addition, NMFS has eliminated the potential problem that could result from permit transfers (see Comment 2). Altering the amount of fish available to the fishery, or the projected total harvest does not necessarily eliminate the overhead, it simply requires a recalculation of the cumulative limit and cumulative limit period duration.

Comment 9: The Council recommended equal allocation for 1997 because NMFS did not have time to implement a 3-tiered cumulative limit system in time for the 1997 season.

Response: The 1997 management regime of equal cumulative limit fishery was recommended by the Council at its October 1996 meeting and refined during its March 1997 meeting. During the discussions of this issue at the October 1996 meeting, some industry members commented that they would like to have the fishery managed as a tiered cumulative limit regime. The Council agreed to set up an industry advisory committee to discuss such an option for 1998.

The tiered management option had not been discussed or analyzed prior to October 1996. The Council adopted the current management regime for 1997 because it was the best available short-term alternative to the derby. The Council did not adopt a tiered cumulative limit option for 1997, because Council members and staff wished to have sufficient time to consult with the public, design parameters for such an option, and analyze the potential impacts of a tiered cumulative limit program through at least two Council meetings, as required by the FMP. NMFS implementation of a tiered cumulative limit program would also require considerable time to initiate and complete the rulemaking process, and to sort and analyze fisheries landings data so that endorsed permit holders could be assigned to the correct tiers.

There was not enough time between November 1996 and July 1997 for the two-meeting process, full Council pre- and post-decisional analyses, the federal rule publication process, and tier implementation by NMFS.

Comments Supporting Rule

Comment 10: Under the proposed rule, there would be a greater opportunity to harvest more selectively for the higher valued sablefish, resulting in fewer discards of lower value bycatch. The proposed rule would slow the pace of the affected fisheries, and thus reduce the abandonment of gear and the consequent mortality due to ''ghostfishing.'' Notably, a slower fishery than that described in the proposed rule might result in an increased number of discards.

Response: Bycatch can occur for many reasons. In a derby fishery, where all fishers are participating at their highest possible rates of fishing, fishers may not have the time to fish in a selective manner. Fish would be hauled on board as quickly as possible without regard to species or size, and then a portion would be discarded according to market or regulatory constraints on what catch should and may be retained. Conversely, in a fishery where all participants have ample time to sort through their catch and fish until their vessels are filled with the highest-value fish, many lower-value fish may be discarded in the process. It is difficult to determine the optimal point between these two scenarios for minimizing fishery discards. The 1997 management

regime certainly allows fishers to slow their rates of fishing over the rates of previous years and improve the selectively of their fishing methods. Selectivity in fishing, however, is a matter of personal ethics and fishing skill. NMFS does agree that a slower-paced fishery should have the much desired result of reducing gear abandonment and ghostfishing by lost gear.

Comment 11: By assuring a slower pace of harvesting in the affected fisheries, the adoption of the proposed rule would result in improved safety of life at sea. The proposed limited entry measures would allow fishermen to time their harvesting activities so as to avoid dangerous weather conditions. In addition, fishermen would be better able to avoid fatigue and the attendant risk of accidental injury and death.

Response: NMFS agrees. If there had been a derby in 1997, it would have been 3–4 days in duration. The management regime implemented by this rule significantly improves safety in the fishery over a 3–4 day derby.

Comment 12: The adoption of the proposed rule would ensure a balance of the interests of all affected communities. While some redistribution of landings would likely occur, sustained participation would be assured for all communities, consistent with conservation requirements of the Act. Any adverse effects would be minimized, to the extent practicable, for all affected communities, by providing fair and reasonable access to the fisheries for all participants.

Response: NMFS agrees. Access by all affected communities is still maintained with this action. However, NMFS recognizes that, for 1997, resources within the fishery will be reallocated between participants in a manner inconsistent with historic participation levels.

Comment 13: The proposed rule is designed to ensure that overfishing is prevented and that the optimum yield is achieved on a continuing basis. The system of landing limits and time and area closures, including the device of a mop-up fishery, allows close control of the fishery to achieve optimum yield.

Response: NMFS agrees.

Comment 14: Several times the Federal court has held that the Magnuson-Stevens Act provides the authority for the Secretary to sacrifice the interests of some groups of fishermen, for the benefit, as the Secretary sees it, of the fishery as a whole.

Response: NMFS agrees and has determined that the 1997 measures are reasonable for the overall fishery this year. NMFS does, however, support a 1998 management regime for this fishery that both achieves both increased safety over prior year derbies and takes into account historic fishing levels.

Classification

Under 5 U.S.C. 553(d)(3), the Assistant Administrator finds good cause to waive the 30-day delay in effectiveness for this rule. August 25 was chosen as a season opening date in order to promote safety and to allow fishermen to participant in order fisheries aside from this directed sablefish fishery. In order for the limited entry fixed gear sablefish fishery to fully benefit from the increased vessel safety produced by a longer season and not have the fishery delayed until later in the year when safety could be compromised by worsening weather conditions, this rule must be made effective to allow a regular season for endorsed permit holders to begin August 25. To this extent, to delay the effectiveness of this rule would be contrary to the public interest.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

The Final Regulatory Flexibility Analysis consists of the IRFA (as submitted by the Council and supplemented by the preamble to the proposed rule (62 FR 30305, June 4, 1997)), and a NMFS addendum prepared for this final rule. All of the 164 vessels that are expected to qualify for sablefish endorsements north of 36° N. lat. and participate in the 1997 limited entry, fixed gear sablefish fishery are small entities. Approximately 38 operators (23 percent of expected endorsed participants) are expected to suffer a loss of greater than 5 percent of their total gross fishing revenues, a ''substantial'' number for the purposes of the RFA. There will likely be a 29 percent redistribution of the harvest from traditionally high producers to traditionally low producers, a redistribution of ex-vessel revenue of about $2.5 to $3.0 million. Individuals in the top third of the fleet in terms of production levels will experience reductions in sablefish incomes, which will be funneled into distributed gains for the lower producing two-thirds of the fleet. Thus, when looking at the fleet as a whole, the impact on high producers would be mitigated by the benefit to the low producers, which are also small businesses. The Council initially reviewed five options for management in this fishery: N1—the status quo; N2—a three week cumulative limit with a mop-up fishery; N3—a three week cumulative limit with different limits for longline and pot vessel; N4—trip size/frequency limits using three one-week periods, with no mop-up fishery; and N5—three months of monthly trip limits. The initial option chosen, N2, was determined by NMFS to constitute an IFQ system, which is prohibited by the Magnuson-Stevens Act until October 1, 2000. Without substantial changes, options N3–N5 would constitute IFQ's as well. To avoid the derby fishery the Council chose to modify option N2, because it was the most feasible to be implemented before the 1997 fishery. The option had already been approved by the Council and was acceptable to the majority of participants in the fishery. As modified the option would provide sufficient ''overhead'' in uncaught fish so that it would not be considered an IFQ. (See responses to comments 5 and 9 for a discussion of overhead). There was insufficient time to modify previously rejected options due to the considerable time required to initiate and execute a more complex program and follow all requirements of the FMP. The management alternative that would have had the least significant economic impact to the fleet would have been the status quo derby, N1. However, the Council decided to reduce the danger that the derby poses to human life and safety and chose an available management alternative that could be implemented in time for an August–September 1997 fishery.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: August 21, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

Subpart G—West Coast Groundfish Fisheries

2. Section 660.323 is amended by revising paragraph (a)(2) to read as follows:

§ 660.323 Catch restrictions.

(a) * * *

(2) *Nontrawl sablefish*. This paragraph (a)(2) applies to the regular and mop-up seasons for the nontrawl limited entry sablefish fishery north of 36° N. lat., except for paragraphs (a)(2) (ii) and (iv) of this section, which also apply to the open access fishery north of 36° N. lat. Limited entry and open access fixed gear sablefish fishing south of 36° N. lat. is governed by routine management measures imposed under paragraph (b) of this section.

(i) *Sablefish endorsement*. In order to lawfully participate in the regular, auxiliary regular, or mop-up season for the nontrawl limited entry fishery, the owner of a vessel must hold (by ownership or otherwise) a limited entry permit for that vessel, affixed with both a gear endorsement for longline or trap (or pot) gear, and a sablefish endorsement.

(ii) *Pre-season closure—open access and limited entry fisheries*. (A) From 1200 local time (l.t.), August 23, 1997, until 1200 l.t., August 25, 1997, sablefish taken with fixed gear in the limited entry or open access fishery in the EEZ north of 36° N. lat. may not be retained or landed. Beginning January 1, 1998, sablefish taken with fixed gear in the limited entry or open access fishery in the EEZ north of 36° N. lat. may not be retained or landed during the 72 hours immediately before the start of the regular season for the nontrawl limited entry sablefish fishery.

(B) From 1200 l.t., August 23, 1997, until 1200 l.t., August 25, 1997, all fixed gear used to take and retain groundfish must be out of EEZ waters north of 36° N. lat. Beginning January 1, 1998, all fixed gear used to take and retain groundfish must be out of EEZ waters north of 36° N. lat. during the 72 hours immediately before the opening of the regular season for the nontrawl limited entry sablefish fishery, except that pot gear used to take and retain groundfish may be deployed and baited in the EEZ up to 24 hours immediately before the start of the regular season.

(C) From August 21, 1997 through December 31, 1997, during the 48 hours immediately before the opening of the auxiliary regular season for the nontrawl limited entry sablefish fishery, participants in the auxiliary regular season may not retain or land sablefish, and must have all fixed gear used to take and certain groundfish out of EEZ waters.

(iii) *Regular season—nontrawl limited entry sablefish fishery; starting in 1998*. The NMFS Regional Administrator will announce a season for waters north of 36° N. lat. to start on any day from August 1 through September 30, based on consultations with the Council, taking into account tidal conditions, Council meeting dates, alternative fishing opportunities, and industry comments. During the regular season, the limited entry nontrawl sablefish fishery may be subject to trip limits to protect juvenile sablefish. The regular season will end when 70 percent of the limited entry nontrawl allocation has been or is projected to be taken. The end of the regular season may be announced in the **Federal Register** either before or during the regular season.

(iv) *Post-season closure—limited entry and open access*. (A) No sablefish taken with fixed gear north of 36° N. lat. may be taken and retained from 1200 l.t., September 3, 1997, until 1200 l.t., September 5, 1997. Sablefish taken and retained during the regular season may be possessed and landed during this 48-hour period. Gear may remain in water during this 48-hour post-season closure. Fishers may not set or pull from the water fixed gear used to take and retain groundfish during the 48-hour post-season closure. At 1200 l.t. on September 5, 1997, the daily trip limit regime will resume.

(B) From August 21, 1997, through December 31, 1997, for participants in the auxiliary regular season, no sablefish may be taken with fixed gear and retained during the 48 hours immediately after the end of the auxiliary regular season of the nontrawl limited entry sablefish fishery. Sablefish taken and retained during the auxiliary regular season may be possessed and landed during that 48-hour period. Gear may remain in water during the 48-hour post-season closure. Auxiliary regular season participants may not set or pull from the water fixed gear used to take and retain groundfish during the 48-hour post-season closure. At the end of the post season closure, the daily trip limit regime will resume.

(C) Beginning January 1, 1998, no sablefish taken with fixed gear may be taken and retained during the 48 hours immediately after the end of the regular season for the nontrawl limited entry sablefish fishery. Sablefish taken and retained during the regular season may be possessed and landed during that 48-hour period. Gear may remain in water during the 48-hour post-season closure. Fishers may not set or pull from the water fixed gear used to take and retain groundfish during the 48-hour post-season closure. At the end of the post-season closure, the daily trip limit regime will resume.

(v) *Mop-up season—limited entry fishery*. (A) A mop-up season to take the remainder of the limited entry nontrawl allocation will begin in waters north of 36° N. lat. about 3 weeks after the end of the regular season, or as soon as practicable thereafter. During the mop-up fishery, a cumulative trip limit will be imposed. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips. No vessel may land more than one cumulative limit. The length of the mop-up season and the amount of the cumulative trip limit, including the time period to which it applies, will be determined by the Regional Administrator in consultation with the Council or its designees, and will be based primarily on the amount of fish remaining in the allocation, the amount of sablefish needed for the remainder of the daily trip limit fishery, and the number of mop-up participants anticipated. The Regional Administrator may determine that too little of the nontrawl allocation remains to conduct an orderly or manageable fishery, in which case there will not be a mop-up season. There will be no daily trip limit fishery during the mop-up season. At the end of the mop-up season, the daily trip limit fishery will resume.

(B) From August 21, 1997 through December 31, 1997: No more than one mop-up cumulative limit may be landed on each limited entry permit with a sablefish endorsement.

(vi) *Other announcements; starting in 1998*. The dates and times that the regular season starts and ends (and trip limits on sablefish of all sizes are resumed), the dates and times for the 48-hour post-season closure, the dates and times that the mop-up season begins and ends, and the size of the trip limit for the mop-up fishery will be announced in the **Federal Register** and may be modified. Unless otherwise announced, these seasons will begin and end at 12 noon on the specified date.

(vii) *Regular season and auxiliary regular season; from August 21, 1997 through December 31, 1997—limited entry fishery*. (A) The regular season for the nontrawl limited entry sablefish fishery north of 36° N. lat. will start at 1200 noon, l.t. on August 25, 1997, and end at 1200 noon l.t. on September 3, 1997. During this period, each vessel with a sablefish endorsement on its permit will have a cumulative trip limit of 34,100 lb. A cumulative trip limit is the maximum amount of sablefish that may be taken and retained, possessed, or landed per vessel in a specified period of time, with no limit on the number of landings or trips. No more

than one regular season cumulative limit may be landed on each limited entry permit with a sablefish endorsement. No vessel may land more than one cumulative limit. Each vessel is subject to the following per-trip limit for small sablefish: Sablefish smaller than 56 cm (22 in) total length may comprise no more than 1,500 lb (680 kg) or 3 percent of all legal sablefish 56 cm (22 in) (total length) or larger, whichever is greater. There will be no daily trip limit fishery during the regular season.

(B) Permit holders whose applications for sablefish endorsements are under administrative appeal at the time the regular season begins will not be allowed to participate in the regular season. There will be a 9-day auxiliary regular season for permit holders whose sablefish endorsements are granted after August 25. The season will be held following the end of the appeal process. The auxiliary regular season start date will be announced by the NMFS Regional Administrator and published in the **Federal Register**. Each vessel participating in this season will have a cumulative trip limit of 34,100 lb. No more than one regular season cumulative limit may be landed on each limited entry permit with a sablefish endorsement. No vessel may land more than one cumulative limit. Each vessel is subject to the following per-trip limit for small sablefish: Sablefish smaller than 56 cm (22 in) total length may comprise no more than 1,500 lb (680 kg) or 3 percent of all legal sablefish 56 cm (22 in) (total length) or larger, whichever is greater.

(viii) *Other announcements; from August 21, 1997 through December 31, 1997.* The number of days in the mop-up season, dates and times that the auxiliary regular, and mop-up seasons start and end (and trip limits on sablefish of all sizes are resumed), dates of the pre- and post-season closures for the auxiliary regular season, and the size of the trip limit for the mop-up season will be announced in the **Federal Register** and may be modified. Unless otherwise announced, these seasons will begin and end at 1200 l.t. on the specified date.

* * * * *

[FR Doc. 97–22709 Filed 8–21–97; 5:04 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 961227373–6373–01; I.D. 082097C]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; End of the Primary Season and Resumption of Trip Limits for the Shore-based Whiting Sector

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces the end of the 1997 regular season for the shore-based fishery for Pacific whiting (whiting), and resumption of a 10,000 lb (4,534 kg) trip limit, at 12 noon local time (l.t.), Friday, August 22, 1997, because the allocation for the shore-based sector will be reached by that time. This action is intended to keep the harvest of whiting at levels announced by NMFS on January 6, 1997, and May 20, 1997.

DATES: Effective from 12 noon l.t, August 22, 1997, until the effective date of the 1998 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**, unless modified, superseded, or rescinded. Comments will be accepted through September 11, 1997.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), National Marine Fisheries Service, 7600 Sand Point Way NE., Seattle, WA 98115–0070; or William Hogarth, Acting Regional Administrator, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140 or Rodney McInnis at 562–980–4040.

SUPPLEMENTARY INFORMATION: This action is authorized by regulations implementing the Pacific Coast Groundfish Fishery Management Plan (FMP), which governs the groundfish fishery off Washington, Oregon, and California. On January 6, 1997 (62 FR 700), regulations were published announcing the annual management measures for Pacific coast whiting. The regulations at 50 CFR 660.23(a)(4) (62 FR 27519, May 20, 1997) established separate allocations for the catcher/processor, mothership, and shore-based (also called ''shoreside'') sectors of the whiting fishery. Each allocation is a harvest guideline, which when reached, results in the end of the primary season for that sector. The catcher/processor sector is composed of catcher/processors, which are vessels that harvest and process whiting. The mothership sector is composed of motherships and catcher vessels that harvest whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, whiting. The shoreside sector is composed of vessels that harvest whiting for delivery to shore-based processors. The allocations, which are based on the 1997 commercial harvest guideline for whiting of 207,000 mt, are: 70,400 mt (34 percent) for the catcher/processor sector; 49,700 mt (24 percent) for the mothership sector; and 86,900 mt (42 percent) for the shoreside sector.

The best available information on August 19, 1997, indicated that 80,792 mt of whiting had been taken by the shore-based sector through August 16, 1997, and that the 86,900–mt shore-based allocation would be reached by 12 noon l.t., August 22, 1997. Accordingly, the primary season for the shore-based sector ends at 12 noon l.t., August 22, 1997, at which time no more than 10,000 lb (4,534 kg) of whiting may be taken and retained, possessed or landed by a catcher boat in the shore-based sector per fishing trip. The regulations at 50 CFR 600.323(a)(3)(i) describe the primary season for the shore-based sector as the period(s) when the large-scale target fishery is conducted (when routine trip limits accommodating small fresh fish and bait fisheries and bycatch in other fisheries under § 600.323(b) are neither needed nor in effect). The 10,000 lb (4,534 kg) trip limit, which also had been in effect before the primary season, is intended to accommodate small bait and fresh fish markets, and bycatch in other fisheries.

NMFS Action

For the reasons stated above, and in accordance with the regulations at 50 CFR 660.323(a)(4)(iii)(C) NMFS herein announces:

Effective 12 noon l.t., August 22, 1997—No more than 10,000 lb (4,534 kg) of whiting may be taken and retained, possessed, or landed by a catcher vessel participating in the shoreside sector per fishing trip.

Classification

This action is authorized by the regulations implementing the FMP. The

determination to take this action is based on the most recent data available. The aggregate data upon which the determination is based are available for public inspection at the Office of the Regional Administrator (see **ADDRESSES**) during business hours. This action is taken under the authority of 50 CFR 660.323(a)(4)(iii)(C) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 21, 1997.

George H. Darcy

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–22707 Filed 8–21–97; 5:04 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 166
Wednesday, August 27, 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.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 230

[Release No. 33–7438; File No. S7–22–97]

RIN 3235–AH23

Equity Index Insurance Products

AGENCY: Securities and Exchange Commission.

ACTION: Concept release; request for comments.

SUMMARY: The Securities and Exchange Commission is requesting comments on the structure of equity index insurance products, the manner in which they are marketed, and any other matters the Commission should consider in addressing federal securities law issues raised by equity index insurance products.

DATES: Comments must be received on or before November 20, 1997.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–22–97; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–6009. Electronically submitted comments will also be posted on the Commission's Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Megan L. Dunphy, Attorney, Mark C. Amorosi, Branch Chief, or Susan Nash, Assistant Director, (202) 942–0670, Office of Insurance Products, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, N.W., Mail Stop 10–6, Washington, D.C. 20549–6009.

SUPPLEMENTARY INFORMATION: The Securities Act of 1933 (the ''Securities Act'') includes an ''insurance exemption'' that exempts ''insurance policies'' and ''annuity contracts'' from the Act's registration requirements. Equity index insurance products, recently introduced by the insurance industry, combine features of traditional insurance products and traditional securities. The Commission requests information about the structure of equity index insurance products and the manner in which they are marketed. The Commission also requests comment on any other matters the Commission should consider in addressing federal securities law issues raised by equity index insurance products.

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I. Background

The Commission is considering the status of equity index annuities and other equity index insurance products under the federal securities laws. Today the Commission is requesting public comment regarding these products.

An equity index annuity is a contract issued by a life insurance company that generally provides for accumulation of the contract owner's payments, followed by payment of the accumulated value to the contract owner in a lump sum or series of payments. During the accumulation period, the insurer credits the contract owner with a return that is based on changes in an equity index, such as the Standard & Poor's Composite Index of 500 Stocks (''S&P 500 Index''). The insurer also guarantees a minimum return to the contract owner if the contract is held to maturity.

Equity index annuities are designed to appeal to risk averse consumers who desire to participate in market increases, without sacrificing the guarantees of principal and minimum return offered in traditional fixed annuities. Other consumers may be seeking to lock in prior gains from stock market investments while retaining some exposure to the market.[1]

The first equity index annuities were introduced in 1995.[2] By the end of 1995, there were four insurers marketing equity index annuities; and, by the end of 1996, over 30 equity index annuities were available.[3] In 1997, this expansion is expected to continue with as many as 40 insurers issuing an estimated 50 equity index annuity contracts.[4] Equity index annuity sales reached $2 billion in 1996, with 1997 sales projected to be as much as $10 billion.[5] Recently, the types of equity index insurance products have proliferated, with single premium deferred annuities joined by flexible premium deferred annuities, immediate annuities, and life insurance policies.[6]

Equity index insurance products combine features of traditional insurance products (guaranteed minimum return) and traditional securities (return linked to equity markets). Depending upon the mix of features in any insurance product, including an equity index insurance product, the product may or may not be entitled to exemption from registration

[1] See, *e.g.*, Bill Harris, ''Tips For Selling Indexed Annuities,'' National Underwriter, Aug. 5, 1996, at 12.

[2] See, *e.g.*, Linda Koco, ''3 More Equity Index Annuities Make Mkt. Debuts,'' National Underwriter, Dec. 23, 1996, at 11.

[3] See, *e.g.*, ''More Insurers Expected To Jump On Indexed Bandwagon,'' Bank Investment Product News, Feb. 3, 1997, at 11 [hereinafter ''*Bank Investment Product News*'']; James B. Smith, Jr., ''Survey Shows Strong Interest in Offering EIAs,'' National Underwriter, Jan. 20, 1997, at 14 [hereinafter ''Survey''].

[4] See, *e.g.*, Bank Investment Product News, *supra* note 3.

[5] See, *e.g.*, Bridget O'Brian and Leslie Scism, ''Equity-Indexed Annuities Score Big Hit, But They Put a High Price on Protection,'' Wall Street Journal, May 30, 1997, at C1.

[6] See, *e.g.*, Linda Koco, ''Some Index Annuity Products Are Going Optional,'' National Underwriter, Oct. 21, 1996, at 21 [hereinafter ''Going Optional''].

under the Securities Act as an ''insurance policy'' or ''annuity contract.'' To date, most equity index annuities have not been registered under the Securities Act, although commentators have acknowledged that substantial uncertainty exists whether all of these products are entitled to exemption from registration.[7]

The Commission believes that both purchasers and insurers may benefit from greater clarity in this area. With respect to products that are not covered by the insurance exemption, investors are entitled to the protections afforded by the federal securities laws—full disclosure concerning the issuer and the product and marketing through registered broker-dealers that are subject to the Commission's oversight. With respect to products that are covered by the insurance exemption, greater certainty would reduce the risk to all parties of expensive and time-consuming litigation.

The Commission is considering the issues raised by equity index insurance products. As part of its consideration, the Commission today seeks public comment on the structure of these products, the manner in which they are marketed, and any other matters the Commission should consider in addressing federal securities law issues raised by equity index insurance products.[8]

II. Description of Equity Index Insurance Products

A. Equity Index Annuities

1. Product Features

Equity index annuity contracts generally share two characteristics: (i) A return based on changes in an equity index, and (ii) a guaranteed minimum return if the contract is held to maturity. Other features of equity index annuity contracts vary from product to product.

Premium Payments. To date, the majority of products on the market are single premium deferred annuities, with the purchaser making one premium payment that is accumulated for some period prior to pay-out.[9] Some insurers offer flexible premium deferred annuities, permitting multiple premium payments in amounts determined by the purchaser, and immediate annuities, providing for immediate commencement of the pay-out period.[10]

Floor Guarantee. The guaranteed minimum return for a single premium product typically is 90% of premium accumulated at a 3% annual rate of interest, an amount that is generally required by applicable state insurance laws.[11]

Computation of Index-Based Return. The index-based return depends on the particular combination of indexing features specified in the contract. The most common indexing features are described below.[12]

- *Index.* The return of equity index annuities is typically based on the S&P 500 Index, but other domestic and international indices are also used. Some products permit the contract owner to select one or more indices from a specified group of indices.
- *Determining Change in Index.* Index growth generally is computed without regard to dividends. There are several methods for determining the change in the relevant index over the period of the contract. The ''point-to-point'' method compares the level of the index at two discrete points in time, such as the beginning and ending dates of the contract term. The ''high water mark'' or ''look-back'' method compares the highest index level reached on specified dates throughout the term of the contract (*e.g.,* contract anniversaries) to the index level at the beginning of the contract term. The ''annual reset,'' ''cliquet,'' or ''lock-in'' method compares the index level at the end of each contract year to the index level at the beginning of that year, with the gain for each year ''locked in'' even if the index declines in the following year. Averaging techniques may be used with these formulas to dampen the volatility of index changes. For example, in the point-to-point method, the ending index value could be computed by averaging index values on each of the final 90 days of the contract term.
- *Participation Rate or Spread.* Two methods typically are used to compute the extent to which a contract owner is credited with index growth. In some contracts, the participation rate, frequently between 75% and 90%, is multiplied by index growth to determine the applicable share of index appreciation to be credited. The participation rate is typically set at the time the annuity is purchased and may be reset either annually or at the start of the next contract term. Other contracts specify a percentage, called the ''margin'' or ''spread,'' that is subtracted from index growth to determine the applicable share of index appreciation to be credited.
- *Caps and Floors.* Some contracts limit the maximum (''cap'') and minimum (''floor'') index-based returns that may be credited to a contract. Caps and floors are generally guaranteed for the entire contract term, although a few equity index annuities provide for annual reset of the cap and floor.

Computation of Contractual Benefits. Equity index annuities provide a variety of benefits, including surrender values, annuitization benefits, and death benefits, each of which may be computed in a different manner.

Term of Product. Equity index annuities are issued for varying terms, including terms of three, five, seven, or nine years.

Surrender Charges. Surrender charges are commonly deducted from withdrawals, but these charges often are eliminated for a 30 to 45 day window at the end of each index term. There may also be a limited free withdrawal privilege.

Vesting. Vesting schedules are often implemented to deter early surrenders of contracts that credit the index-based return periodically throughout the term of the contract. Typically, a small percentage of the index-based return is available for withdrawal in the first year, with the percentage increasing over time until the entire return is available at the end of the term.

2. Funding of Insurer's Obligation

Equity index annuities typically are backed by assets held in the insurance company's general account. A portion of the general account assets is invested in fixed income instruments to support the minimum return guarantee. Insurance companies typically purchase

[7] See, *e.g.,* Jeffrey S. Puretz and Christopher M. Gregory, ''Should Equity Index Annuities Be Registered?,'' National Underwriter, Jan. 20, 1997, at 22; Stephen E. Roth and Kimberly J. Smith, ''Emerging Developments Relating to Fixed Insurance Products Under the Federal Securities Laws,'' ALI–ABA Conference on Life Insurance Company Products 45, 65–95 (1996). The equity index annuities that have been registered contain features that could reduce amounts received by contract owners below the floor typically guaranteed by equity index annuities. See, *e.g.,* Pre-Effective Amendment No. 1 to Registration Statement on Form S–1 of Keyport Life Insurance Company (File No. 333–13609) (filed Feb. 7, 1997); Pre-Effective Amendment No. 1 to Registration Statement of Valley Forge Life Insurance Company (File No. 333–02093) (filed Oct. 17, 1996).

[8] The Commission's consideration of whether equity index insurance products are exempt from registration as ''insurance products'' or ''annuity contracts'' does not relate to the status under the federal securities laws of index products issued by non-insurers to which the insurance exemption is inapplicable.

[9] See, e.g., Survey, supra note 3.

[10] See, e.g., Going Optional, supra note 6.

[11] See, e.g., Michelle Clayton, ''How Product Marketers Stylize Equity Indexed Annuities,'' Bank Mutual Fund Report, Mar. 10, 1997, at 1.

[12] See, e.g., Thomas F. Streiff, ''Three Basic Ways of Achieving Equity Indexing,'' National Underwriter, Nov. 4, 1996, at 18; William Harris, ''A Selling Perspective on Equity Indexed Annuities,'' National Underwriter, Nov. 4, 1996, at 16; Going Optional, supra note 6; Albert B. Crenshaw, ''A Rising Investment Star: Equity-Indexed Annuities,'' Washington Post, Oct. 20, 1996, at H1.

derivatives to hedge their indexed-based return obligations, although insurers vary in the degree to which they hedge these obligations.

3. Distribution Channels

The most frequently used channels of distribution for equity index annuities have been banks and insurance agents who are not licensed as registered representatives of a broker-dealer. To date, broker-dealers have played a less significant role.[13]

B. Equity Index Life Insurance

Equity index life insurance policies have been introduced recently.[14] The available policies are universal life insurance policies that permit the holder to vary the amount and timing of premium payments and change the death benefit. The cash value of an equity index life insurance policy is credited with a return that is based on changes in an equity index. As with equity index annuities, the insurer also guarantees a minimum return on the policy's cash value. Equity index life insurance policies typically offer annual crediting of index-based interest and index participation rates that are reset annually and are generally lower than those for equity index annuities.[15] At least two companies currently offer equity index life insurance policies, and it is estimated that as many as 25 companies are developing these products.[16]

III. Applicability of the Federal Securities Laws to Equity Index Insurance Products

Section 3(a)(8) of the Securities Act exempts from the registration requirements of the Act any ''insurance policy'' or ''annuity contract'' issued by a corporation subject to the supervision of the insurance commissioner, bank commissioner, or similar state regulatory authority.[17] The exemption, however, is not available to all products labelled ''insurance policies'' or ''annuity contracts.'' For example, ''variable annuities,'' which pass through to the contract owner the investment performance of a pool of assets, are securities rather than exempt annuity contracts.[18]

The Commission and the courts have addressed the insurance exemption on a number of occasions. Under existing case law, factors that are important to a determination of a contract's status under Section 3(a)(8) include (1) the allocation of investment risk between insurer and contract owner and (2) the manner in which the contract is marketed.

In 1986, faced with the proliferation of annuity contracts commonly known as ''guaranteed investment contracts,'' the Commission adopted Rule 151 under the Securities Act to establish a safe harbor for certain annuity contracts that will not be deemed subject to the federal securities laws.[19] The factors that determine an annuity contract's eligibility for the safe harbor include the applicability of state insurance regulation, the assumption of investment risk by the insurer, and the manner of marketing the contract. In situations when the Rule 151 safe harbor is not applicable, the status of a contract may be analyzed by reference to the principles discussed in Rule 151 and the accompanying releases and to judicial precedents construing Section 3(a)(8).[20] This would include, for example, an annuity that does not fall within the safe harbor or a life insurance policy.

This section discusses the factors that have been used by the Commission and courts to determine whether a product is entitled to the insurance exemption, and the manner in which those factors may apply to equity index insurance products. Commenters are asked to provide detailed information on the structure, operation, and marketing of equity index insurance products. Commenters should specifically discuss the application to equity index insurance products of the factors that have been used by the Commission and the courts to determine whether a product is entitled to the insurance exemption.

A. Applicability of State Insurance Regulation

To gain the benefit of the Rule 151 safe harbor, an annuity contract is required to be issued by a corporation subject to the supervision of a state insurance commissioner, bank commissioner, or similar state regulator.[21] In addition, the contract itself is required to be subject to state regulation as an annuity or insurance.[22] Equity index insurance products on the market today generally are issued by companies subject to state insurance regulation, thereby appearing to meet this threshold requirement for insurance status.

Commenters are requested to address the status under state law of equity index insurance products. Are all of these contracts regulated as annuities or insurance? For contracts that are regulated as annuities or insurance, commenters are asked to describe the provisions of state law that apply, *e.g.*, regulation of reserves, investment restrictions, approval of contract forms, illustration requirements, market conduct standards, applicability of state insurance guaranty laws. How does the applicability of state insurance regulation to equity index insurance products affect the need for federal securities regulation of these products?

B. Investment Risk

1. Case Law

Under existing case law, the allocation of investment risk between insurer and contract owner is significant in determining whether a particular contract is insurance for purposes of the federal securities laws. In *SEC* v. *Variable Annuity Life Insurance Co.* (hereinafter ''*VALIC*''), the Supreme Court determined that absent some element of fixed return, *i.e.*,''some investment risk-taking on the part of the company,'' an annuity contract is outside the scope of Section 3(a)(8).[23] The *VALIC* court found a variable annuity contract to be a security, not insurance, when the insurer invested premiums in a pool of common stocks

[13] See, *e.g.*, Survey, *supra* note 3; Cerulli Associates, Inc. and Lipper Analytical Services, Inc., The Cerulli-Lipper Analytical Report: The State of the Variable Annuity and Variable Insurance Markets 37–40 (1996).

[14] See, *e.g.*, Linda Koco, ''Transamerica Occidental Unveils Equity-Indexed UL,'' National Underwriter, Jan. 6, 1997, at 25 [hereinafter ''Transamerica Occidental'']; Linda Koco, ''Two More Index UL Policies Make Their Debuts,'' National Underwriter, Mar. 10, 1997, at 9.

[15] See, *e.g.*, ''Transamerica Occidental,'' *supra* note 14.

[16] See, *e.g.*, Linda Koco, ''Equity Index Market Shows Signs of Fierce Competition,'' National Underwriter, Jan. 27, 1997, at 9.

[17] The Commission has previously stated its view that Congress intended any insurance contract falling within Section 3(a)(8) to be excluded from all provisions of the Securities Act notwithstanding the language of the Act indicating that Section 3(a)(8) is an exemption from the registration but not the antifraud provisions. Definition of ''Annuity Contract or Optional Annuity Contract,'' Securities Act Rel. No. 6558 (Nov. 21, 1984) [49 FR 46750, 46753 (Nov. 28, 1984)] [hereinafter ''Proposing Release'']. [18] *SEC* v. *Variable Annuity Life Ins. Co.*, 359 U.S. 65 (1959); *SEC* v. *United Benefit Life Ins. Co.*, 387 U.S. 202 (1967).

[19] 17 CFR 230.151; Definition of Annuity Contract or Optional Annuity Contract, Securities Act Rel. No. 6645 (May 29, 1986) [51 FR 20254 (June 4, 1986)] [hereinafter ''Adopting Release'']. A guaranteed investment contract is a deferred annuity contract under which the insurer pays interest on the purchaser's payments at a guaranteed rate for the term of the contract. In some cases, the insurer also pays discretionary interest in excess of the guaranteed rate.

[20] Adopting Release, *supra* note 19, 51 FR at 20255 n.4, 20261.

[21] 17 CFR 230.151(a)(1). This requirement is parallel to the language of Section 3(a)(8).

[22] Adopting Release, *supra* note 19, 51 FR at 20255.

[23] 359 U.S. 65, 71 (1959).

and other equities and the value of the contract owner's benefit payments varied directly with the success of the underlying investments.

The Supreme Court subsequently clarified that a contract could provide for some assumption of investment risk by the insurer, but nonetheless be a security. In *SEC* v. *United Benefit Life Ins. Co.* (hereinafter ''*United Benefit*''), the insurer guaranteed that the cash value of its variable annuity contract would never be less than 50% of purchase payments made and that, after ten years, the value would be no less than 100% of payments.[24] The Court determined that this contract, under which the insurer did assume some investment risk through minimum guarantees, was a security. In making this determination, the Court distinguished a contract ''which to some degree is insured'' from a contract of ''insurance.'' [25]

Commenters are requested to discuss generally how investment risk is allocated between insurer and contract owner in equity index insurance products. Commenters should also compare this allocation of risk to other insurance products and discuss how this allocation of investment risk affects the application of the federal securities laws to equity index insurance products.

2. Rule 151

To gain the benefit of the Rule 151 safe harbor, an insurer is required to assume the investment risk under the contract.[26] For purposes of the safe harbor, an insurer is deemed to assume the investment risk if the following conditions are satisfied.

a. Contract Value not Tied to Separate Account. The safe harbor requires that the value of the contract not vary according to the investment experience of a separate account, a separately managed pool of assets operating independently of the investment experience of the insurer's general account.[27] Equity index annuities typically are general account products, whose value does not vary according to the investment experience of a separate account. These products therefore appear to satisfy the first condition of the Rule 151 investment risk test.

Commenters are requested to describe the investments used by an insurer to support its obligations under an equity index insurance product. Commenters should also address how the nature of these investments affects the analysis of equity index insurance products under the federal securities laws. For example, should the relative levels of a contract owner's purchase payment allocated to the floor guarantee and the index-based benefit affect the status of a contract as insurance under the federal securities laws? Is the status of an equity index insurance product affected by whether, or the degree to which, an insurer hedges its obligations to pay the index-based benefit? To the extent an insurer's obligations are hedged, does it bear investment risk with respect to those obligations? In the alternative, is there, in essence, a pass-through of performance from insurer to contract owner, with the contract owner experiencing the performance of the hedging instruments that the insurer purchased to hedge the contract?

b. *Guarantee of Purchase Payments and Credited Interest.* The safe harbor requires that the insurer, for the life of the contract, guarantee the principal amount of purchase payments and credited interest, less any deduction for sales, administrative, or other expenses or charges.[28] For equity index annuities, insurers generally guarantee 90% of purchase payments and annual interest of 3%. Commenters should address whether the typical floor guarantee for equity index annuities, by itself, satisfies the investment risk requirement, or whether there must be some additional guarantee. Commenters are requested to address whether, and under what circumstances, the typical 10% deduction from purchase payments is attributable to sales, administrative, or other expenses or charges and therefore falls within the rule's parameters. Commenters should also address whether there are equity index annuities that reduce the floor guarantee by charges of any type, and how any such charges affect the investment risk analysis.[29] Commenters should also discuss any floor guarantees in equity index annuities that are different from 90% of purchase payments with annual interest of 3%. Commenters should address how the different floor guarantees affect the investment risk analysis.

Commenters should describe any floor guarantees provided by equity index life insurance products and how the guarantees affect their status under the federal securities laws. Commenters should address whether an equity index life insurance policyholder is dependent on cash value growth in excess of guaranteed minimums to gain the anticipated benefits under the policy.

c. Specified Rate of Interest. The safe harbor requires that the insurer credit a specified rate of interest, in an amount at least equal to the minimum rate required by applicable state law.[30] Equity index annuities typically appear to satisfy this condition by guaranteeing a minimum interest rate of 3%, which is generally equal to the minimum rate required by state law. Commenters should describe the minimum guaranteed rate on various equity index insurance products. Do the guaranteed rates satisfy this condition of the safe harbor?

d. Excess Interest. The safe harbor requires that the insurer guarantee that the rate of any interest to be credited in excess of the guaranteed minimum rate not be modified more frequently than once per year.[31] Rule 151, as originally proposed, would have excluded from the safe harbor any annuity that linked excess interest to an index. The Commission reasoned that an insurer that uses an index feature externalizes its discretionary excess interest rate, shifting to the contract owner all of the investment risk regarding fluctuations in that rate.[32] In adopting Rule 151, the Commission extended the rule's coverage to permit insurers to make limited use of index features in determining the excess interest rate, so long as the excess rate is not modified more frequently than annually.[33] Specifically, the insurer could specify an index to which it would refer, no more often than annually, to determine the excess rate that it would guarantee under the contract for the next 12-month or longer period. In addition, an insurer could not change the terms of the index feature used for calculating the excess rate more frequently than once per year.

Commenters are requested to discuss how the use of an index-based formula for calculating contract values under equity index annuities affects the allocation of investment risk between insurer and contract owner. How does the use of an indexed-based return determined retrospectively by reference to a formula that is established prospectively affect the status of these contracts as securities or insurance? Commenters are specifically requested

[24] 387 U.S. 202, 205 (1962).

[25] *Id.* at 211.

[26] 17 CFR 230.151(a)(2).

[27] 17 CFR 230.151(b)(1).

[28] 17 CFR 230.151(b)(2)(i).

[29] See Registration Statement of Valley Forge Life Insurance Company (File No. 333–02093) (filed Mar. 29, 1996) (minimum guaranteed value of registered equity index annuity reduced by rider charge for equity index feature).

[30] 17 CFR 230.151(b)(2)(ii) and (c).

[31] 17 CFR 230.151(b)(3).

[32] Proposing Release, *supra* note 17, 49 FR at 46753 n.19.

[33] Adopting Release, *supra* note 19, 51 FR at 20260.

to address the Commission's expressed concern with shifting the risk of fluctuations in an index rate to a contract owner and the Commission's decision to limit the benefit of Rule 151 to situations where an index is used to fix a specific excess interest rate in advance. Additionally, comment is requested on how the nature of particular indexing formulas and the duration of any guarantees of caps, floors, participation rates, margins, or other terms affect the allocation of investment risk between the contract owner and the insurer.

C. Marketing

Marketing is another significant factor in distinguishing insurance from a security. In *United Benefit,* the Supreme Court, in holding an annuity contract to be outside the scope of Section 3(a)(8), found significant the fact that the contract was ''considered to appeal to the purchaser not on the usual insurance basis of stability and security but on the prospect of 'growth' through sound investment management.'' [34] Under these circumstances, the Court concluded ''it is not inappropriate that promoters' offerings be judged as being what they were represented to be.'' [35] Rule 151 incorporates a ''marketing'' test.[36] As a condition to the safe harbor, the contract must not be ''marketed primarily as an investment.'' The Commission is concerned that the nature of equity index insurance products may make it particularly difficult to market these products without primary emphasis on their investment aspects.

Commenters should describe how equity index insurance products are marketed and how the marketing factor applies to equity index insurance products. Given the structure and purposes of equity index insurance products, can they be marketed without focusing primarily on their investment aspects? Comments should address both written sales materials and oral sales presentations, including the ability of an insurer to train and monitor its sales force to ensure that equity index insurance products are not marketed with primary focus on their investment aspects. Commenters are requested to identify the distribution channels that are used in marketing equity index insurance products and discuss whether the use of particular distribution channels affects an insurer's ability to market these products without focusing primarily on their investment aspects. Commenters are also asked to identify the products that are viewed as competitive alternatives to equity index annuities and address how the nature of these other products (*e.g.,* whether securities or insurance) affects the manner in which equity index insurance products are marketed.

D. Mortality Risk

When the Commission adopted the Rule 151 safe harbor, it determined not to include a requirement that the insurer assume some mortality risk through, for example, guaranteeing annuity purchase rates for the life of the contract. The Commission noted, however, that in a Section 3(a)(8) facts and circumstances analysis of contracts outside the Rule 151 safe harbor, the presence or absence of mortality risk may be an appropriate factor to consider.[37]

Commenters are requested to describe with specificity the nature of the mortality risks assumed by insurers in connection with equity index insurance products. For equity index annuities, commenters should describe the terms of any guaranteed annuity purchase rates, whether those rates are comparable to rates available in more traditional annuity contracts, and the likelihood that contract owners will annuitize. Comment is also requested on the significance of mortality risk in determining whether an equity index insurance product is exempted by Section 3(a)(8). Is mortality risk a relevant factor and, if so, what weight should it be given?

IV. Request for Comments

All interested persons are invited to submit written comments on equity index insurance products. Whenever possible, submissions should describe particular equity index insurance products with specificity and include sample sales literature and contracts. Commenters should address the ways in which equity index insurance products are similar to or different from traditional fixed annuities and life insurance, on the one hand, and variable annuities and variable life insurance, on the other. Particular emphasis should be placed on the factors described above, including state insurance law, investment risk, marketing, and mortality risk.

The Commission also requests that commenters address the following:

- Are there features that all equity index insurance products share that result in all of them being covered by the insurance exemption or, in the alternative, not covered by the insurance exemption? If so, commenters should identify the features that cause all equity index insurance products to be classified together. If not, commenters should identify the features that distinguish equity index insurance products that are covered by the insurance exemption from those that are not.
- Are there differences between broad types of equity index insurance products that are relevant to the analysis of their status under the federal securities laws? If so, commenters should separately address different types of products, *e.g.,* single premium products versus flexible premium products or annuities versus life insurance. For example, commenters should address any differences in mortality risk between equity index annuities and life insurance.

The Commission also requests comment on the implications for small business of federal securities law issues raised by equity index insurance products.

V. Conclusion

The Commission is requesting comments on a number of specific issues raised by equity index insurance products. In addition, commenters are encouraged to address any other matters that they believe merit examination.

Dated: August 20, 1997.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–22597 Filed 8–26–97; 8:45 am]

BILLING CODE 8010–01–P

[34] *United Benefit,* 387 U.S. 202, 211 (1962).

[35] *Id.* For other cases applying a marketing test, see *Berent* v. *Kemper Corp.,* 780 F.Supp. 431 (E.D. Mich. 1991), *aff'd,* 973 F.2d 1291 (6th Cir. 1992); *Associates in Adolescent Psychiatry* v. *Home Life Ins. Co.,* 729 F.Supp. 1162 (N.D. Ill. 1989), *aff'd,* 941 F.2d 561 (7th Cir. 1991); *Grainger* v. *State Security Life Ins. Co.,* 547 F.2d 303 (5th Cir. 1977).

[36] 17 CFR 230.151(a)(3).

[37] Adopting Release, *supra* note 19, at 20255–56. See also Proposing Release, *supra* note 17, at 46752 (requesting comment on whether mortality risk assumption should be a required element of the Rule 151 safe harbor); General Statement of Policy Regarding Exemptive Provisions Relating to Annuity and Insurance Contracts, Securities Act. Rel. No. 6051 (Apr. 5, 1979) [44 FR 21626, 21627–28 (Apr. 11, 1979)] (predecessor interpretive release to Rule 151 stating that meaningful mortality risk by insurer was prerequisite to determination that contract was ''insurance,'' not ''security'').

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 178

[Notice No. 855]

RIN 1512–AB68

Posting of Signs and Written Notification to Purchasers of Handguns (97R–2186P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend the firearms regulations to require that signs be posted on the premises of Federal firearms licensees and that written notification be issued with each handgun sold advising of the provisions of the Youth Handgun Safety Act.

DATES: Written comments must be received on or before November 25, 1997.

ADDRESSES: Send written comments to: Chief, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; ATTN: Notice No. 855.

FOR FURTHER INFORMATION CONTACT: Marsha D. Baker, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, N.W., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

The Youth Handgun Safety Act (YHSA) generally makes it unlawful for a person to transfer a handgun to anyone under 18 years of age or for anyone under 18 years of age to knowingly possess a handgun. 18 U.S.C. 922(x). In enacting this provision in 1994, Congress found that criminal misuse of firearms often starts with the easy availability of guns to juvenile gang members. In addition, Congress found that individual States and localities may find it difficult to control this problem by themselves. Therefore, Congress found it necessary and appropriate to assist the States in controlling violent crime by stopping the commerce in handguns with juveniles nationwide and allowing the possession of handguns by juveniles only when handguns are possessed and used under certain limited circumstances.

In a memorandum for the Secretary of the Treasury dated June 11, 1997, the President stated that a major problem in our Nation is the ease with which young people gain illegal access to guns. The President observed that firearms are now responsible for 12 percent of fatalities among American children and teenagers. Also, firearms are the fourth leading cause of accidental deaths among children ages 5 through 14, and are now the primary method by which young people commit suicide. Moreover, between 1984 and 1994, the number of juvenile offenders committing homicides by firearms nearly quadrupled.

To implement the provisions of the YHSA, and to ensure that handgun purchasers are familiar with its provisions, ATF is proposing regulations requiring that signs be posted on the premises of Federal firearms licensees and that written notification be issued by licensees to nonlicensed handgun purchasers warning as follows:

(1) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18;

(2) A violation of the prohibition against transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison;

(3) Handguns are a leading contributor to juvenile violence and fatalities; and

(4) Safely storing and locking handguns away from children can help ensure compliance with Federal law.

The proposed regulations state that signs provided by ATF must be posted by Federal firearms licensees on their licensed premises where prospective handgun purchasers can readily see them. In addition, the written notification to be issued to each handgun purchaser must be made available either by providing the purchaser with ATF Publication 5300.(xx) or some other type of written notification that contains the same language, e.g., a manufacturer's or importer's instruction manual or brochure provided to the handgun purchaser.

The requirement that written notification be issued upon delivery of a handgun to a nonlicensee would apply not only to handguns sold by licensees, but also to the return of handguns to their owners, e.g., the return of a handgun after repair and the redemption of a handgun from pawn. The requirement would also extend to curio or relic handguns transferred by licensed collectors. However, this requirement would not apply to a licensee who sells a handgun to a nonlicensee where the delivery is made through another licensee. In such a case, the licensee delivering the handgun to the nonlicensee would be responsible for delivering the notice.

Licensing as a collector of curio or relic firearms does not make the collector's premises a business premise or open the premises to the public. Moreover, a licensed collector may lawfully dispose of curios or relics away from the licensed premises. For these reasons, the proposed sign posting requirement would not apply to licensed collectors. Nor would the requirement apply to any other type of licensee who lawfully disposes of handguns to nonlicensees who do not appear at the licensee's premises, e.g., a licensee who ships repaired handguns or replacement handguns to nonlicensees.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities. The proposed regulations are necessary to implement the President's June 11, 1997, announcement of firearms initiatives intended to protect the American public from gun violence. The notices and signs that are proposed in this document would be provided free of charge by the Government to Federal firearms licensees. Licensees may choose to provide the required written notice in another format; however, they always have the option of using the notices provided by ATF. Moreover, any new requirement relating to the posting of signs and the distribution of notices would place only a minimal burden on firearms licensees. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no new reporting or recordkeeping requirements are proposed.

Public Participation

ATF requests comments on the notice of proposed rulemaking from all

interested persons. Comments received on or before the closing date will be carefully considered.

Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any material in comments as confidential. Comments may be disclosed to the public. Any material the commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure.

Any interested person who desires an opportunity to comment orally at a public hearing should submit his or her request, in writing, to the Director within the 90-day comment period. The Director, however, reserves the right to determine, in light of all circumstances, whether a public hearing is necessary.

Disclosure

Copies of this notice and the written comments received will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, N.W., Washington, DC.

Drafting Information

The author of this document is Marsha D. Baker, Regulations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 178

Administrative practice and procedure, Arms and ammunition, Authority delegations, Customs duties and inspections, Exports, Imports, Military personnel, Penalties, Reporting requirements, Research, Seizures and forfeitures, and Transportation.

Authority and Issuance

27 CFR Part 178—Commerce in Firearms and Ammunition is amended as follows:

Paragraph 1. The authority citation for 27 CFR Part 178 continues to read as follows:

Authority: 5 U.S.C. 552(a); 18 U.S.C. 847, 921–930; 44 U.S.C. 3504(h).

Par. 2. Section 178.103 is added to Subpart F to read as follows:

§ 178.103 Posting of signs and written notification to purchasers of handguns.

(a) Each licensed importer, manufacturer, dealer, or collector who delivers a handgun to a nonlicensee shall provide such nonlicensee with written notification as described in paragraph (b) of this section.

(b) The written notification required by paragraph (a) of this section shall state as follows:

(1) Federal law prohibits, except in certain limited circumstances, anyone under 18 years of age from knowingly possessing a handgun, or any person from transferring a handgun to a person under 18;

(2) A violation of the prohibition against transferring a handgun to a person under the age of 18 is, under certain circumstances, punishable by up to 10 years in prison;

(3) Handguns are a leading contributor to juvenile violence and fatalities; and

(4) Safely storing and locking handguns away from children can help ensure compliance with Federal law.

(c) This written notification shall be delivered to the nonlicensee on ATF I 5300.(xx), or in the alternative, the same written notification may be delivered to the nonlicensee on another type of written notification, e.g., a manufacturer's or importer's brochure accompanying the handgun, a manufacturer's or importer's operational manual accompanying the handgun, a sales receipt or invoice, or a label or sticker applied to the handgun package or container delivered to a nonlicensee. Any written notification delivered to a nonlicensee other than on ATF I 5300.(xx) shall be legible, clear, and conspicuous and shall be no smaller than 10-point type.

(d) Except as provided in paragraph (e) of this section, each licensed importer, manufacturer, or dealer who delivers a handgun to a nonlicensee shall display at its licensed premises (including temporary business locations at gun shows) a sign (ATF I 5300.(xx)), containing the written notification prescribed by paragraph (b) of this section. The sign shall be displayed where customers can readily see it. Licensed importers, manufacturers, and dealers will be provided with such signs by ATF. Replacement signs may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950.

(e) The sign required by paragraph (d) of this section need not be posted on the premises of any licensed importer, manufacturer, or dealer whose only dispositions of handguns to nonlicensees are to nonlicensees who do not appear at the licensed premises and the dispositions otherwise comply with the provisions of this part.

Signed: August 1, 1997.

John W. Magaw,

Director.

Approved: August 11, 1997.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 97–22875 Filed 8–22–97; 4:20 pm]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

31 CFR Part 103

RIN 1506–AA09, 1506–AA20

Financial Crimes Enforcement Network; Bank Secrecy Act Regulations; Money Services Businesses—Draft Forms; Open Working Meeting

AGENCY: Financial Crimes Enforcement Network, Treasury.

ACTION: Meeting on draft forms relating to proposed regulations.

SUMMARY: The Financial Crimes Enforcement Network (''FinCEN'') will hold a working meeting to give interested persons the opportunity to discuss with FinCEN officials issues regarding draft forms that will be used to implement the proposed Bank Secrecy Act regulations for money services businesses published on May 21, 1997.

DATES: September 3, 1997, 1:30 p.m. to 4:30 p.m.

ADDRESSES: Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536.

FOR FURTHER INFORMATION CONTACT:

Legal or Technical: Charles Klingman, Financial Institutions Policy Specialist, FinCEN, at (703) 905–3602.

Attendance: Camille Steele, at (703) 905–3819, or Karen Robb, at (703) 905–3770.

General: FinCEN's Information telephone line, at (703) 905–3848, or www.ustreas.gov/treasury/bureaus/fincen (''What's New'' section).

SUPPLEMENTARY INFORMATION: On May 21, 1997, FinCEN issued three proposed regulations relating to the treatment of money services businesses under the Bank Secrecy Act. The first proposed regulation (62 FR 27890) would define money services businesses and require the businesses to register with the Department of the Treasury and to maintain a current list of their agents. The second proposed regulation (62 FR 27900) would require money transmitters, and issuers, sellers, and redeemers, of money orders and traveler's checks, to report suspicious

transactions involving at least $500 in funds or other assets. The third proposed regulation (62 FR 27909) would require money transmitters and their agents to report and retain records of transactions in currency or monetary instruments of at least $750 in connection with the transmission or other transfer of funds to any person outside the United States, and to verify the identity of senders of such transmissions or transfers.

On July 8, 1997, FinCEN announced that it would hold four working meetings to give interested persons the opportunity to discuss with FinCEN officials issues arising under the proposed regulations (62 FR 36475). The meetings addressed issues relating to (1) the definition and registration of money services businesses (July 21, 1997, Vienna, VA), (2) money transmitters (July 28, 1997, New York, NY), (3) stored value products (August 1, 1997, San Jose, CA), and (4) issuers, sellers, and redeemers of money orders or traveler's checks (August 15, 1997, Chicago, IL). At those meetings, FinCEN distributed draft copies of the forms that will be used to implement the proposed regulations.

FinCEN is announcing today a meeting on September 3, 1997 to discuss issues relating to the draft forms for (1) registration of money services businesses, (2) suspicious transaction reporting by money transmitters and issuers, sellers, and redeemers, of money orders and traveler's checks, and (3) currency transaction reporting by money tranmsitters of $750 or more outside the United States.

Copies of the draft forms will be available at the meeting. Persons wishing to obtain copies of the draft forms in advance of the meeting should call the number listed under the heading *Attendance* in the **FOR FURTHER INFORMATION CONTACT** section of this notice. The draft forms are for discussion only; therefore, money services businesses should not file these draft forms.

The meeting is not intended as a substitute for the Paperwork Reduction Act notices that will be published regarding the forms. Rather, the meeting is intended to help make the comment process on the draft forms as productive as possible by providing a forum between the industry and FinCEN concerning issues relating to the forms. The meeting will be open to the public and will be recorded. A transcript of the meeting will be available for public inspection and copying; prepared statements will be accepted for inclusion in the record. Accordingly, oral or written material not intended to be disclosed to the public should not be raised at the meeting.

Persons wishing to attend or to participate in the meeting should inform either Camille Steele or Karen Robb as listed under the **FOR FURTHER INFORMATION CONTACT** section.

Dated August 21, 1997.

Joseph M. Myers,

Federal Register Liaison Officer, Financial Crimes Enforcement Network.

[FR Doc. 97–22759 Filed 8–26–97; 8:45 am]

BILLING CODE 4820–03–P

POSTAL SERVICE

39 CFR Part 111

Delivery of Mail to a Commercial Mail Receiving Agency

AGENCY: Postal Service.

ACTION: Notice of proposed rule with request for comments.

SUMMARY: The purpose of this proposal is to amend section D042.2.5 through D042.2.7 of the Domestic Mail Manual to update and clarify procedures for delivery of an addressee's mail to a Commercial Mail Receiving Agency (CMRA). The proposal provides procedures for registration to act as a CMRA; an addressee to request mail delivery to a CMRA; and in delivery of the mail to a CMRA.

DATES: Comments must be received on or before September 26, 1997.

ADDRESSES: Written comments should be mailed to Manager, Delivery, Operations Support, U.S. Postal Service, 475 L'Enfant Plaza SW Room 7142, Washington, DC 20260–2802. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Roy E. Gamble, (202) 268–3197.

SUPPLEMENTARY INFORMATION: An appropriate amendment to 39 CFR 111.3 to reflect these changes will be published if the proposal is adopted. The proposal to amend sections D042.2.5 through D042.2.7 of the Domestic Mail Manual is in response to a need to clarify and revise current rules to safeguard the mails. Recent audits indicate that many CMRAs are not in full compliance with current requirements to properly safeguard the mails.

Security of the mails is the issue most important to all customers. Audits and follow-up reviews indicate a need for easy-to-understand rules that receive consistent interpretation to satisfy the different needs and requirements of both the sender and the addressee customer. In some instances, it appears that CMRAs are not aware of or do not fully understand, the current rules. Accordingly, this proposal seeks to clarify and update and adds some new requirements to existing rules. In many instances, these requirements are similar to those for obtaining post office box service.

The proposed requirements are sensitive to the addressee customer's needs and protective of the sender customer's requirement for a secure mail stream. The proposed rules will require Postal Service employees to monitor and enforce compliance. The requirements also emphasize to CMRAs the need for mail security and the consequences of noncompliance.

Summary of proposed changes. Section D042.2.5 confirms the addressee's right to request delivery to a CMRA and provides procedures for a person to establish a commercial mail receiving agency.

Section D042.2.5(b) requires CMRAs to complete and submit Form 1583–A to the postmaster (or designee) to register as a CMRA. The Form 1583–A is a new form that provides a standard vehicle for registration. It also requires the CMRA owner or manager to furnish valid identification to register.

Section D042.2.5(c) requires the postmaster to verify the identity and witness the signature of the CMRA owner or manager. The CMRA owner or manager must also sign the form acknowledging receipt of DMM regulations relevant to the operation of a CMRA.

Section D042.2.5(d) confirms the current policy that CMRAs may not accept accountable mail from their customers for mailing.

Proposed section D042.2.6 clarifies procedures for addressees to request delivery to a CMRA and requirements for delivery of mail to a CMRA, consistent with current rules.

Section D042.2.6(a) requires the addressee and the CMRA to complete Form 1583, and clarifies the type of identification that the addressee must present and the CMRA's responsibility to witness the addressee's signature. This section also requires the CMRA to verify the identity of the addressee and to write the CMRA actual delivery address designation assigned to the addressee in block 3 on Form 1583. This proposal prevents mail delivery to a CMRA without verifiable consent of the actual addressee and reflects current practices to confirm that identification belongs to the person presenting it.

Section D042.2.6(b) is a new provision that requires addressees to disclose when the private mailbox is being used for the purpose of doing or soliciting business to the public. In this instance, information required to complete Form 1583 may be available to the public under Privacy Act provisions.

Section D042.2.6(c) clarifies the CMRA's responsibility to provide the original Form 1583 to the Postal Service and to maintain a duplicate copy at the CMRA business location.

Proposed D042.2.6(d) provides procedures for when an addressee terminates his or her relationship with the CMRA. As with current rules, the CMRA must write the termination date on its copy of Form 1583. However, unlike the current rule, the proposed rule requires that the CMRA retain the form for 12 months. The CMRA does not provide immediate notice of the termination to the Postal Service; instead, the CMRA submits quarterly updates of the CMRA's customer list to the Postal Service. This replaces the annual submission of such lists as required by the current DMM D042.2.7(d).

Proposed section D042.2.6(e) provides that the CMRA delivery address designation for customer's mail must contain specific address elements identifying it as the location to which a mailpiece is delivered. This proposal is consistent with the current policy of general addressing standards as required by A010.1.1 and A010.1.2, Address Content and Placement.

Proposed D042.2.6(f) confirms the current policy that postal forms are not valid if altered or modified.

Proposed sections D042.2.6 (g) and (h) confirm the current policy that subjects the CMRA to suspension of delivery if the CMRA is not in full compliance with requirements for operating a CMRA.

Proposed sections D042.2.7 clarifies the handling of mail by CMRAs, particularly mail addressed to former customers.

Sections D042.2.7 (a) and (b) reiterate current policy that the addressee and CMRA may not file change-of-address orders when the relationship terminates and that mail re-mailed by the CMRA must have new postage affixed.

Section D042.2.7(c) changes the time interval from annual to quarterly for CMRAs to submit to the Postal Service an alphabetical list of all its customers including those terminated within the last 12 months.

Proposed section D042.2.7(d) clarifies regulations for refusal of mail. The CMRA must accept and if necessary re-mail (with new postage) mail addressed to current customers and customers who have terminated their relationship with the CMRA within the last 12 months. If mail is received more than 12 months after the customer relationship with the CMRA terminates, the CMRA may return the mail to the Postal Service, endorsed as required by section D042.2.7(e).

Section D042.2.7(e) confirms the obligation of the CMRA to return to the Postal Service mail for any addressee for whom the CMRA does not have a valid Form 1583. It also requires the CMRA to endorse this mail as specified and return it to the Postal Service the next business day after receipt. The section also confirms the obligation of the CMRA to return misdelivered mail to the Postal Service.

Section D042.2.7(f) specifies that the CMRA must not deposit any return mail into a collection box. The CMRA must return this mail to the post office or give it to the letter carrier responsible for delivery to the CMRA.

Although exempt from the notice and comment requirements of the Administrative Procedures Act (5 U.S.C. of 553 (b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comment on the following proposed revisions to the Domestic Mail Manual, incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Section D042.2.0 of the Domestic Mail Manual is amended by revising subsections D042.2.5, D042.2.6, and D042.2.7 to read as follows:

Part D042—Conditions of Delivery

* * * * *

2.0 DELIVERY TO ANOTHER

* * * * *

2.5 CMRA

a. An addressee may request mail delivery to a commercial mail receiving agency (CMRA). The CMRA accepts delivery of the mail and holds it for pickup or re-mails it to the addressee, prepaid with new postage.

b. Each CMRA must register with the post office responsible for delivery to the CMRA. Any person who establishes, owns or manages a CMRA must provide a Form 1583–A, Application to Act as Commercial Mail Receiving Agency, to the postmaster (or designee) responsible for the delivery address. The CMRA owner or manager must complete all entries and sign the Form 1583–A. The CMRA owner or manager must furnish two items of valid identification; one item must contain a photograph of the CMRA owner or manager. The following are examples of acceptable identification:

(1) Valid driver's license.

(2) Armed forces, government, or recognized corporate identification card.

(3) Passport or alien registration card.

(4) Other credential showing the applicant's signature and a serial number or similar information that is traceable to the bearer.

The postmaster (or designee) may retain a photocopy of the identification for verification purposes. Furnishing false information on the application or refusing to give required information will be reason for denying the application. When any information required on Form 1583–A changes or becomes obsolete, the CMRA owner or manager must file a revised application with the postmaster.

c. The postmaster (or designee) must verify the documentation to confirm that the CMRA owner or manager resides at the permanent home address shown on the Form 1583–A; witness the signature of the CMRA owner or manager; and sign the Form 1583–A. The postmaster must provide the CMRA with a copy of the DMM regulations relevant to the operation of a CMRA. The CMRA owner or manager must sign the Form 1583–A acknowledging receipt of the regulations. The postmaster must file the original of the completed Form 1583–A at the post office and provide the CMRA with a duplicate copy.

d. The approval of Form 1583–A does not authorize the CMRA to accept accountable mail (for example: Registered, Insured, or COD) from their customers for mailing. The only acceptable mailing point for accountable mail is the post office.

2.6 Delivery to CMRA

a. Mail delivery to a CMRA requires that both the owner or manager and each addressee complete and sign Form 1583, Application for Delivery of Mail Through Agent. The CMRA owner or manager, or authorized employee, or a notary public must witness the signature of the addressee. The addressee must complete all entries on Form 1583. The CMRA owner or manager must verify the documentation to confirm that the addressee resides or conducts business at the permanent

address shown on Form 1583. Furnishing false information on the application or refusing to give required information will be reason for withholding the addressee's mail from delivery to the agency and returning it to the sender. When any information required on Form 1583 changes or becomes obsolete, the addressee must file a revised application with the CMRA. The addressee must furnish two items of valid identification; one item must contain a photograph of the addressee. The following are examples of acceptable identification:

(1) Valid driver's license.

(2) Armed forces, government, or recognized corporate identification card.

(3) Passport or alien registration card.

(4) Other credential showing the applicant's signature and a serial number or similar information that is traceable to the bearer.

The CMRA owner or manager may retain a photocopy of the identification for verification purposes. The CMRA owner or manager must list the two forms of identification (block 9) and write the complete CMRA actual delivery address designation used to deliver mail to the addressee (block 3) on Form 1583.

b. The addressee must disclose on Form 1583 when the private mailbox is being used for the purpose of doing or soliciting business to the public. The information required to complete this form may be available to the public if ''yes'' in block 5 on Form 1583 is checked.

c. The CMRA must provide the original completed Forms 1583 to the postmaster. The CMRA must maintain duplicate copies of completed Forms 1583 on file at the CMRA business location. The Forms 1583 must be available at all times for examination by postal representatives and the Postal Inspection Service. The postmaster must file the original Forms 1583 alphabetically by last name of the addressee for each CMRA at the station, branch, or post office. The postmaster files the original Forms 1583 without verifying the address of residence or firm shown on the Forms 1583. Verification is required only when the postmaster receives a request by the Inspector-In-Charge, or when there is reason to believe the addressee's mail may be, or is being, used for unlawful purposes.

d. When the agency relationship between the CMRA and the addressee terminates, the CMRA must write the date of termination on its duplicate copy of Form 1583. The CMRA must notify the post office of termination dates through the quarterly updates (due on January 1, April 1, July 1, and October 1) of the alphabetical list of customers cross-referenced to the CMRA actual addressee delivery designations. The alphabetical list must contain all new customers, current customers, and those customers who terminated within the last 12 months, including the date of termination. The CMRA must retain the endorsed duplicate copies of Forms 1583 for 12 months after the termination date. Forms 1583 filed at the CMRA business location must be available at all times for examination by postal representatives and the Postal Inspection Service.

e. A CMRA must represent its delivery address designations for the intended addressees as a private mailbox (PMB). The CMRA delivery address designations must specify the location to which a mailpiece is delivered. Mail pieces must bear delivery address designations that contain at least the following elements, in this order:

(1) Intended addressee's name or other identification. *Examples: Joe Doe or ABC CO.*

(2) PMB and number. *Example: PMB 234.*

(3) Street number and name or post office box number or rural route designation and number. *Examples: 10 Main St or PO BOX 34 or RR 1 BOX 12.*

(4) City, state and ZIP Code (5–digit or ZIP+4). *Example: Herndon Va 22071–2716.*

The CMRA must write the complete CMRA actual delivery address designation used to deliver mail to each individual addressee or firm on the PS Forms 1583 (block 3).

f. A CMRA or the addressee must not modify or alter Form 1583 or Form 1583–A. Modified or altered forms are invalid and the addressee's mail returned to sender in accordance with Postal Service regulations.

g. The CMRA must be in full compliance with DMM D042.2.5 through D042.2.7 and other applicable postal requirements to receive delivery of mail from the post office.

h. The postmaster may, with the next higher level approval and notification to the Inspector-In-Charge, suspend delivery to a CMRA that, after proper notification, fails to comply with D042.2.5 through D042.2.7 or other applicable postal requirements.

2.7 Addressee and CMRA Agreement

In delivery of the mail to the CMRA, the addressee and the CMRA agree that:

a. When the agency relationship between the CMRA and the addressee terminates, neither the addressee nor the CMRA will file a change-of-address order with the post office.

b. The CMRA must re-mail mail intended for the addressee for 12 months after the termination date of the agency relationship between CMRA and addressee. When re-mailed by the CMRA, mail requires payment of new postage.

c. The CMRA must provide to the postmaster a quarterly list (due January 1, April 1, July 1, and October 1) of its customers in alphabetical order cross-referenced to the CMRA actual addressee delivery designations. The alphabetical list must contain all new customers, current customers, and those customers who terminated within the last 12 months, including the date of termination.

d. A CMRA may not refuse delivery of mail if the mail is for an addressee that is a customer or former customer (within the last 12 months). The agreement between the addressee and the CMRA obligates the CMRA to receive all mail, except restricted delivery, for the addressee. The addressee may authorize the CMRA in writing on Form 1583 (block 6) to receive restricted delivery mail for the addressee.

e. If the CMRA has no Form 1583 on file for an intended addressee, the CMRA must return that mail to the post office responsible for delivery. The CMRA must return this mail to the post office the next business day after receipt with this proper endorsement: ''Undeliverable, Commercial Mail Receiving Agency, No Authorization To Receive Mail for This Addressee.'' Return this mail without payment of new postage to the post office. The CMRA must also return misdelivered mail the next business day after receipt.

f. The CMRA must not deposit return mail in a collection box. Return mail must be returned to the post office or given to the letter carrier responsible for delivery to the CMRA.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–22694 Filed 8–26–97; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60, 61, and 63

[FRL–5880–8]

RIN 2060–AG21

Amendments for Testing and Monitoring Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: Amendments.

SUMMARY: This action proposes amendments to 40 CFR parts 60, 61, and 63 to reflect miscellaneous editorial changes and technical corrections throughout the parts in sections pertaining to source testing or monitoring of emissions and operations, and proposes to add Performance Specification 15 (PS 15) to Appendix B of Part 60. In addition, the test methods in Appendix A of Part 60, Appendix B of Part 61, Appendix A of Part 63, and the performance specifications in Appendix B of Part 60 are proposed to be restructured in the format recommended by the Environmental Monitoring Management Council (EMMC) to achieve uniformity and consistency between Agency methods. The editorial changes and technical corrections to the subparts, test methods, and/or performance specifications in Parts 60, 61, and 63 are proposed to maintain the intent of the regulations.

DATES: *Comments.* Comments must be received on or before October 27, 1997 unless a hearing is requested by September 8, 1997. If a hearing is requested, written comments must be received by October 14, 1997.

Public Hearing. Anyone requesting a public hearing must contact EPA no later than September 8, 1997. If a hearing is held, it will take place on September 10, 1997, beginning at 9:00 a.m.

Request To Speak at Hearing. Persons wishing to present oral testimony must contact EPA by September 10, 1997.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket No. A–97–12 (see docket section below), room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. The Agency requests that a separate copy also be sent to the person listed in the **FOR FURTHER INFORMATION CONTACT** section below.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at the EPA's Emissions Measurement Laboratory, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Lala Cheek (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone (919) 541–5545.

Docket. Docket No. A–97–12, containing materials relevant to this rulemaking, is available for public inspection and copying between 8:00 a.m. and 5:30 p.m., Monday through Friday, except for Federal holidays, at the EPA's Air and Radiation Docket and Information Center, Room M–1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone (202) 260–7548. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Foston Curtis, Emission Measurement Center (MD–19), Emissions, Monitoring, and Analysis Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1063 or at fax number (919) 541–1039.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background and Purpose
II. EMMC Format
III. Significant Technical Revisions to Specific Test Methods, Performance Specifications, and Rules
A. General
B. ASTM Methods Updates
C. Continuous Instrumental Methods (Part 60, Appendix A)—Methods 3A, 6C, 7E, 10, and 20
D. Method 5 (Part 60, Appendix A)
E. Method 5E (Part 60, Appendix A)
F. Method 5H (Part 60, Appendix A)
G. Method 18 (Part 60, Appendix A)
H. Methods 306, 306A, and 306B (Part 63, Appendix A)
IV. Addition of Performance Specification 15
V. Copies of Regulatory Text
VI. Administrative Requirements
A. Docket
B. Office of Management and Budget Review
C. Regulatory Flexibility Act
D. Paperwork Reduction Act
E. Unfunded Mandates Reform Act

I. Background and Purpose

As part of its efforts to promote methods consolidation and integration between EPA Program Offices, the EMMC developed a consensus format for documentation of analytical methods. The Office of Air and Radiation has adapted the format for its new methods and is attempting to update its existing methods to this format. The EMMC format is shown in Section II. To achieve consistency between the test methods and performance specifications, EPA is proposing to restructure the test methods and performance specifications shown in Table 1 in the EMMC format. In addition, EPA reviewed the test methods and performance specifications and associated regulations in 40 CFR Parts 60, 61, and 63 and found that corrections and revisions were necessary. The corrections and revisions consisted primarily of typographical errors, technical errors in equations and diagrams, and narrative that is no longer applicable due to more recent additions. However, a few methods required further revision due to needed technical updates and comments received from the public. These methods are discussed in Section III. It is important to note that although numerous technical corrections were made to portions of the subparts in Parts 60, 61, and 63, changes were not made to any compliance standard, reporting, or recordkeeping requirement. For this notice, EPA is only proposing revisions to sections of the subpart pertaining to source testing or monitoring of emissions and operations.

II. EMMC Format

The test methods and performance specifications listed in Table 1 are being proposed in the restructured format shown in Table 2 which is recommended by EMMC. Only in a few instances were there any deviations from this recommended format.

TABLE 1.—TEST METHODS AND PERFORMANCE SPECIFICATIONS RESTRUCTURED IN THE EMMC FORMAT

40 CFR part 60, appendix A	40 CFR part 60, appendix B	40 CFR 61, appendix B	40 CFR 63, appendix A
1, 1a	PS–2	101, 101a	303, 303a
2, 2a, 2b, 2c,	PS–3	102	304a,
2d, 2e	PS–4, PS–4a	103	304b
3, 3a, 3b	PS–5	104	305

TABLE 1.—TEST METHODS AND PERFORMANCE SPECIFICATIONS RESTRUCTURED IN THE EMMC FORMAT—Continued

40 CFR part 60, appendix A	40 CFR part 60, appendix B	40 CFR 61, appendix B	40 CFR 63, appendix A
4	PS–6	105	306,
5, 5a, 5b, 5d,	PS–7	106	306a,
5e, 5f, 5g, 5h	PS–8	107, 107a	306b
6, 6a, 6b, 6c	PS–9	108	
7, 7a, 7b, 7c,		108a	
7d, 7e		108b	
8		108c	
10, 10a, 10b		111	
11			
12			
13a, 13b			
14			
15, 15a			
16, 16a, 16b			
17			
18			
19			
20			
21			
22			
23			
24, 24a			
25, 25a, 25b,			
25c, 25d, 25e			
26, 26a			
27			
28, 28a			
29			

TABLE 2.—EMMC FORMAT

Section No.	Section heading
1.0	Scope and Application.
2.0	Summary of the Method.
3.0	Definitions.
4.0	Interferences.
5.0	Safety.
6.0	Equipment and Supplies.
7.0	Reagents and Standards.
8.0	Sample Collection, Preservation, Storage and Transport.
9.0	Quality Control.
10.0	Calibration and Standardization.
11.0	Analytical Procedure.
12.0	Calculations and Data Analysis.
13.0	Method Performance.
14.0	Pollution Prevention.
15.0	Waste Management.
16.0	References.
17.0	Tables, Diagrams, Flowcharts, and Validation Data.

III. Significant Technical Revisions to Specific Test Methods, Performance Specifications, and Rules

A. General

A safety section (Section 5) was added to most of the test methods and performance specifications. This section discusses only those safety issues specific to the method and any target analytes or reagents that pose specific toxicity or safety issues.

B. ASTM Methods Updates

The American Society for Testing and Materials assisted EPA in revising test method references of ASTM methods by providing an update of all ASTM procedures cited in the test methods. Many Agency methods cite obsolete versions of ASTM methods that have been improved and redated or redesignated since the EPA methods were promulgated. Where appropriate, the redated and redesignated versions are included to add flexibility and clarify which methods may be used. In addition, the Incorporation by Reference citations in § 60.17 are amended to add the updated ASTM versions. The Agency is grateful for ASTM's assistance in this effort.

C. Continuous Instrumental Methods (Part 60, Appendix A)—Methods 3A, 6C, 7E, 10, and 20

The continuous instrumental methods have been coordinated to require the same performance specifications and, where applicable, the same testing procedures and equipment specifications.

D. Method 5 (Part 60, Appendix A)

Section 6.1.1.7 (formerly Section 2.1.6) specifies that a temperature sensor be installed so that the sensing tip of the temperature sensor is in direct contact with the sample gas and that the temperature around the filter holder be regulated and monitored during sampling. EPA recognized that, depending on the sampling apparatus, temperature in the heating area may be measured at different locations (e.g., near the heater or at the top of the heated area) resulting in deviations from the recommended temperature range of 248±25°F. This modification was made so that temperature inside the heating area is measured at a consistent location in the gas stream. This modification requires that an extra temperature sensor be used with the filter heating system.

E. Method 5E (Part 60, Appendix A)

Section 6.3.4 (formerly Section 2.3.4) no longer specifies the Beckman Model 915 analyzer with a 215 B infrared or equivalent. Since the Beckman Model 915 is no longer manufactured, the EPA determined that the Rosemount Model 2100A TOC analyzer was comparable to the Beckman 915 model. As a result, Section 6.3.4 no longer specifies the Beckman Model 915 with 215 B infrared or equivalent but instead, the Rosemount Model 2100A TOC analyzer.

F. Method 5H (Part 60, Appendix A)

Section 7.3.4.1 (formerly Section 3.3.1.4) has been revised to specify that only three calibration gas levels (high-range, mid-range, and zero gases) are needed to calibrate the carbon dioxide, carbon monoxide, and sulfur dioxide

(SO_2) analyzers instead of four calibration gas levels. The low-range calibration gas is no longer required. This revision is consistent with the gas levels used to calibrate the SO_2 analyzer as described in Section 7.4 (formerly Section 5.3) of Method 6C (Determination of Sulfur Dioxide Emissions from Stationary Sources).

G. Method 18 (Part 60, Appendix A)

The Agency is soliciting comments on procedural modifications to Method 18 being proposed in this action. In the direct interface sampling procedure, the requirement for two consecutive samples to have less than 5 percent difference is being replaced with taking 5 consecutive samples per run. This modification allows for direct interface sampling to be used in cases where the process is highly variable. The adsorbent tube procedure is being modified to allow the source to choose any commercially available adsorbent material, instead of relying on the few adsorbents listed in the previous version of the method. In preparing calibration gases, it is proposed to allow the use of gas dilution instruments meeting the requirements of Method 205 of 40 CFR part 51, appendix M.

H. Methods 306, 306A, and 306B (Part 63, Appendix A)

Numerous editorial revisions were made to clarify the requirements of Methods 306, 306A, and 306B. The applicability sections of Methods 306, 306A, and 306B have been revised to add continuous chromium plating at iron and steel facilities to the list of source categories to which these methods apply. The requirement for filtration of all samples to be analyzed by ion chromatography has been eliminated from Section 9.2 (formerly Section 5.2.3) of Method 306 and Section 9.2 (formerly Section 5.2.3) of Method 306A. Instead, a qualifying note has been added stating that filtration is not required if a sample does not contain particulate matter. The filtration procedure would only apply when visible particulate is present in the sample (chromium electroplating and anodizing baths emit little, if any particulate); when needed, the tester is referred to the filtration procedure in Method 0061 in *Test Methods for Evaluating Solid Waste, Physical/Chemical Methods, SW–846 Manual,* November 1986. Section 9.2.2 (formerly Section 5.1) of Method 306 has been revised to modify the post-sampling pH requirement for the sodium bicarbonate absorbing solution when it will be submitted to analysis by ion chromatography for hexavalent chromium. The pH must be ≥8.0 rather than ≥8.5, as the sodium bicarbonate solution does not reach a pH of 8.5. This requirement has also been added to Section 9.2.2 of Method 306A. Specific requirements for sample storage and sample holding times have been added to Sections 9.3 and 9.4, respectively, of Methods 306 and 306A. Section 9.1.2.3 (formerly Section 5.1.2.3) of Method 306A has been revised to add an option to adjust the sample volume for leaks discovered during the post-test leak-check. This option is consistent with that of Method 5 (40 CFR part 60, appendix A).

IV. Addition of Performance Specification 15

Performance Specification 15 is being proposed for addition to Appendix B of Part 60. Performance specification 15 may be used by sources to certify extractive Fourier Transform Infrared spectroscopy (FTIR) continuous emission monitors for regulated pollutants. The specification will determine the acceptability of FTIR continuous emission monitoring systems and is not source-specific. The procedure gives the source the option of using several techniques for FTIR certification including relative accuracy testing, spiking of target compounds, and comparison of dual instruments.

V. Copies of Regulatory Text

The text of the other proposed amendments is not included in this **Federal Register** action because of the magnitude of the reformatted test methods and amendments. The significant proposed amendments are discussed fully in this preamble. Performance Specification 15, which is a new procedure, is being published with this action as a proposed amendment to appendix B to part 60. The unpublished proposed amendments are available in Docket A–97–12 or by request from the Air and Radiation Docket and Information Center (see **ADDRESSES**) or the EPA contact person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section. The proposed amendments may also be obtained over the Internet at http://www.epa.gov/oar/oaqps/emc; choose the ''Test Methods'' menu, then choose ''Proposed Test Methods.'' The amendments will be listed on the EPA Technology Transfer Network (TTN). The TTN is 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 the phone call. Dial (919) 541–5742 for data transfer of up to a 14,400 bps modem. Select TTN Bulletin Board: ''Emission Measurement Technical Information Center (EMTIC)'' and select menu item ''Proposed Methods.'' If more information on the operation of the TTN is needed, contact the systems operator at (919) 541–5384.

VI. Administrative Requirements

A. Docket

The docket is an organized and complete file of all information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials) [Clean Air Act Section 307(d)(7)(A)].

B. Office of Management and Budget Review

Under Executive Order 12866 (58 FR 51735 October 4, 1993), EPA is required to judge whether a regulation is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of this Executive Order to prepare a regulatory impact analysis (RIA). The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation 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 rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. The Agency has determined that this regulation would result in none of the adverse economic effects set forth in Section 1 of the Order as grounds for finding the regulation to be a significant rule. The Agency has,

therefore, concluded that this regulation is not a significant rule under Executive Order 12866.

C. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this proposed rule. The EPA has also determined that this rule will not have a significant adverse impact on a substantial number of small businesses. This rulemaking does not impose emission measurement requirements beyond those specified in the current regulations, nor does it change any emission standard. As such, it will not present a significant economic impact on a substantial number of small businesses.

D. Paperwork Reduction Act

The rule does not impose or change any information collection requirements subject to OMB review under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

E. Unfunded Mandates Reform Act

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

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, nor does this action significantly or uniquely impact small governments, because this action contains no requirements that apply to such governments or impose obligations upon them. Therefore, the requirements of the Unfunded Mandates Act do not apply to this action.

List of Subjects in 40 CFR Part 60

Environmental protection, Air pollution control, New sources, Test methods and procedures, Performance specifications, Continuous emission monitors.

40 CFR Part 61

Environmental protection, Air pollution control, Test methods and procedures.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Test methods and procedures.

Dated: August 18, 1997.

Carol M. Browner,

Administrator.

It is proposed that 40 CFR part 60 be amended as follows:

1. The authority citation for part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, 7601 and 7602.

2. By adding Performance Specification 15 in numerical order to Appendix B to read as follows:

Appendix B—Performance Specifications

* * * * *

Performance Specification 15—Performance Specification for Extractive FTIR Continuous Emissions Monitor Systems in Stationary Sources

1.0 *Scope and Application.* 1.1 *Analytes.* This performance specification is applicable for measuring all hazardous air pollutants (HAPs) which absorb in the infrared region and can be quantified using Fourier Transform Infrared Spectroscopy (FTIR), as long as the performance criteria of this performance specification are met. This specification is to be used for evaluating FTIR continuous emission monitoring systems for measuring HAPs regulated under Title III of the 1990 Clean Air Act Amendments. This specification also applies to the use of FTIR CEMs for measuring other volatile organic or inorganic species.

1.2 *Applicability.* A source which can demonstrate that the extractive FTIR system meets the criteria of this performance specification for each regulated pollutant may use the FTIR system to continuously monitor for the regulated pollutants.

2.0 *Summary of Performance Specification.* For compound-specific sampling requirements refer to FTIR sampling methods (e.g., reference 1). For data reduction procedures and requirements refer to the EPA FTIR Protocol (reference 2), hereafter referred to as the ''FTIR Protocol.'' This specification describes sampling and analytical procedures for quality assurance. The infrared spectrum of any absorbing compound provides a distinct signature. The infrared spectrum of a mixture contains the superimposed spectra of each mixture component. Thus, an FTIR CEM provides the capability to continuously measure multiple components in a sample using a single analyzer. The number of compounds that can be speciated in a single spectrum depends, in practice, on the specific compounds present and the test conditions.

3.0 *Definitions.* For a list of definitions related to FTIR spectroscopy refer to Appendix A of the FTIR Protocol. Unless otherwise specified, spectroscopic terms, symbols and equations in this performance specification are taken from the FTIR Protocol or from documents cited in the Protocol. Additional definitions are given below.

3.1 *FTIR Continuous Emission Monitoring System (FTIR CEM).*

3.1.1 *FTIR System.* Instrument to measure spectra in the mid-infrared spectral region (500 to 4000 cm^{-1}). It contains an infrared source, interferometer, sample gas containment cell, infrared detector, and computer. The interferometer consists of a beam splitter that divides the beam into two paths, one path a fixed distance and the other a variable distance. The computer is equipped with software to run the interferometer and store the raw digitized signal from the detector (interferogram). The software performs the mathematical conversion (the Fourier transform) of the interferogram into a spectrum showing the frequency dependent sample absorbance. All spectral data can be stored on computer media.

3.1.2 *Gas Cell.* A gas containment cell that can be evacuated. It contains the sample as the infrared beam passes from the interferometer, through the sample, and to the detector. The gas cell may have multi-pass mirrors depending on the required detection limit(s) for the application.

3.1.3 *Sampling System.* Equipment used to extract sample from the test location and transport the gas to the FTIR analyzer. Sampling system components include probe, heated line, heated non-reactive pump, gas distribution manifold and valves, flow measurement devices and any sample conditioning systems.

3.2 *Reference CEM.* An FTIR CEM, with sampling system, that can be used for comparison measurements.

3.3 *Infrared Band (also Absorbance Band or Band).* Collection of lines arising from rotational transitions superimposed on a vibrational transition. An infrared absorbance band is analyzed to determine the analyte concentration.

3.4 *Sample Analysis.* Interpreting infrared band shapes, frequencies, and intensities to obtain sample component concentrations. This is usually performed by a software routine using a classical least squares (cls), partial least squares (pls), or K- or P-matrix method.

3.5 *(Target) Analyte.* A compound whose measurement is required, usually to some established limit of detection and analytical uncertainty.

3.6 *Interferant.* A compound in the sample matrix whose infrared spectrum overlaps at least part of an analyte spectrum complicating the analyte measurement. The interferant may not prevent the analyte measurement, but could increase the analytical uncertainty in the measured

concentration. Reference spectra of interferants are used to distinguish the interferant bands from the analyte bands. An interferant for one analyte may not be an interferant for other analytes.

3.7 *Reference Spectrum.* Infrared spectra of an analyte, or interferant, prepared under controlled, documented, and reproducible laboratory conditions (see Section 4.6 of the FTIR Protocol). A suitable library of reference spectra can be used to measure target analytes in gas samples.

3.8 *Calibration Spectrum.* Infrared spectrum of a compound suitable for characterizing the FTIR instrument configuration (Section 4.5 in the FTIR Protocol).

3.9 *One hundred percent line.* A double beam transmittance spectrum obtained by combining two successive background single beam spectra. Ideally, this line is equal to 100 percent transmittance (or zero absorbance) at every point in the spectrum. The zero absorbance line is used to measure the RMS noise of the system.

3.10 *Background Deviation.* Any deviation (from 100 percent) in the one hundred percent line (or from zero absorbance). Deviations greater than ± 5 percent in any analytical region are unacceptable. Such deviations indicate a change in the instrument throughput relative to the single-beam background.

3.11 *Batch Sampling.* A gas cell is alternately filled and evacuated. A Spectrum of each filled cell (one discreet sample) is collected and saved.

3.12 *Continuous Sampling.* Sample is continuously flowing through a gas cell. Spectra of the flowing sample are collected at regular intervals.

3.13 *Continuous Operation.* In continuous operation an FTIR CEM system, without user intervention, samples flue gas, records spectra of samples, saves the spectra to a disk, analyzes the spectra for the target analytes, and prints concentrations of target analytes to a computer file. User intervention is permitted for initial set-up of sampling system, initial calibrations, and periodic maintenance.

3.14 *Sampling Time.* In batch sampling—the time required to fill the cell with flue gas. In continuous sampling—the time required to collect the infrared spectrum of the sample gas.

3.15 *PPM-Meters.* Sample concentration expressed as the concentration-path length product, ppm (molar) concentration multiplied by the path length of the FTIR gas cell. Expressing concentration in these units provides a way to directly compare measurements made using systems with different optical configurations. Another useful expression is (ppm-meters)/K, where K is the absolute temperature of the sample in the gas cell.

3.16 *CEM Measurement Time Constant.* The Time Constant (TC, minutes for one cell volume to flow through the cell) determines the minimum interval for complete removal of an analyte from the FTIR cell. It depends on the sampling rate (R_s in Lpm), the FTIR cell volume (V_{cell} in L) and the chemical and physical properties of an analyte.

$$TC = \frac{V_{cell}}{R_s} \qquad (1)$$

For example, if the sample flow rate (through the FTIR cell) is 5 Lpm and the cell volume is 7 liters, then TC is equal to 1.4 minutes (0.71 cell volumes per minute). This performance specification defines 5 * TC as the minimum interval between independent samples.

3.17 *Independent Measurement.* Two independent measurements are spectra of two independent samples. Two independent samples are separated by, at least 5 cell volumes. The interval between independent measurements depends on the cell volume and the sample flow rate (through the cell). There is no mixing of gas between two independent samples. Alternatively, estimate the analyte residence time empirically: (1) Fill cell to ambient pressure with a (known analyte concentration) gas standard, (2) measure the spectrum of the gas standard, (3) purge the cell with zero gas at the sampling rate and collect a spectrum every minute until the analyte standard is no longer detected spectroscopically. If the measured time corresponds to less than 5 cell volumes, use 5 * TC as the minimum interval between independent measurements. If the measured time is greater than 5 * TC, then use this time as the minimum interval between independent measurements.

3.18 *Test Condition.* A period of sampling where all process, and sampling conditions, and emissions remain constant and during which a single sampling technique and a single analytical program are used. One Run may include results for more than one test condition. Constant emissions means that the composition of the emissions remains approximately stable so that a single analytical program is suitable for analyzing all of the sample spectra. A greater than two-fold change in analyte or interferant concentrations or the appearance of additional compounds in the emissions, may constitute a new test condition and may require modification of the analytical program.

3.19 *Run.* A single Run consists of spectra (one spectrum each) of at least 10 independent samples over a minimum of one hour. The concentration results from the spectra can be averaged together to give a run average for each analyte measured in the test run.

4.0 *Interferences.* Several compounds, including water, carbon monoxide, and carbon dioxide, are known interferences in the infrared region in which the FTIR instrument operates. Follow the procedures in the FTIR protocol for subtracting or otherwise dealing with these and other interferences.

5.0 *Safety.* The procedures required under this performance specification may involve hazardous materials, operations, and equipment. This performance specification does not purport to address all of the safety problems associated with these procedures. It is the responsibility of the user to establish appropriate safety and health practices and determine the applicable regulatory limitations prior to performing these procedures. The CEMS users manual and materials recommended by this performance specification should be consulted for specific precautions to be taken.

6.0 *Equipment and Supplies.* 6.1 Installation of sampling equipment should follow requirements of FTIR test Methods such as references 1 and 3 and the EPA FTIR Protocol (reference 2). Select test points where the gas stream composition is representative of the process emissions. If comparing to a reference method, the probe tips for the FTIR CEM and the RM should be positioned close together using the same sample port if possible.

6.2 *FTIR Specifications.* The FTIR CEM must be equipped with reference spectra bracketing the range of path length-concentrations (absorbance intensities) to be measured for each analyte. The effective concentration range of the analyzer can be adjusted by changing the path length of the gas cell or by diluting the sample. The optical configuration of the FTIR system must be such that maximum absorbance of any target analyte is no greater than 1.0 and the minimum absorbance of any target analyte is at least 10 times the RMSD noise in the analytical region. For example, if the measured RMSD in an analytical region is equal to 10^{-3}, then the peak analyte absorbance is required to be at least 0.01. Adequate measurement of all of the target analytes may require changing path lengths during a run, conducting separate runs for different analytes, diluting the sample, or using more than one gas cell.

6.3 *Data Storage Requirements.* The system must have sufficient capacity to store all data collected in one week of routine sampling. Data must be stored to a write-protected medium, such as write-once-read-many (WORM) optical storage medium or to a password protected remote storage location. A back-up copy of all data can be temporarily saved to the computer hard drive. The following items must be stored during testing.

a. At least one sample interferogram per sampling Run or one interferogram per hour, whichever is greater. This assumes that no sampling or analytical conditions have changed during the run.

b. All sample absorbance spectra (about 12 per hr, 288 per day).

c. All background spectra and interferograms (variable, but about 5 per day).

d. All CTS spectra and interferograms (at least 2 each 24 hour period).

e. Documentation showing a record of resolution, path length, apodization, sampling time, sampling conditions, and test conditions for all sample, CTS, calibration, and background spectra.

Using a resolution of 0.5 cm^{-1}, with analytical range of 3500 cm^{-1}, assuming about 65 Kbytes per spectrum and 130 Kb per interferogram, the storage requirement is about 164 Mb for one week of continuous sampling. Lower spectral resolution requires less storage capacity. All of the above data must be stored for at least two weeks. After two weeks, storage requirements include: (1) All analytical results (calculated concentrations), (2) at least 1 sample spectrum with corresponding background and sample interferograms for each test

condition, (3) CTS and calibration spectra with at least one interferogram for CTS and all interferograms for calibrations, (4) a record of analytical input used to produce results, and (5) all other documentation. These data must be stored according to the requirements of the applicable regulation.

7.0 *Reagents and Standards.* [Reserved]

8.0 *Sample Collection, Preservation, Storage, and Transport. [Reserved]*

9.0 *Quality Control.* These procedures shall be used for periodic quarterly or semiannual QA/QC checks on the operation of the FTIR CEM. Some procedures test only the analytical program and are not intended as a test of the sampling system.

9.1 *Audit Sample.* This can serve as a check on both the sampling system and the analytical program.

9.1.1 *Sample Requirements.* The audit sample can be a mixture or a single component. It must contain target analyte(s) at approximately the expected flue gas concentration(s). If possible, each mixture component concentration should be NIST traceable (±2 percent accuracy). If a cylinder mixture standard(s) cannot be obtained, then, alternatively, a gas phase standard can be generated from a condensed phase analyte sample. Audit sample contents and concentrations are not revealed to the FTIR CEM operator until after successful completion of procedures in 5.3.2.

9.1.2 *Test Procedure.* An audit sample is obtained from the Administrator. Spike the audit sample using the analyte spike procedure in Section 11. The audit sample is measured directly by the FTIR system (undiluted) and then spiked into the effluent at a known dilution ratio. Measure a series of spiked and unspiked samples using the same procedures as those used to analyze the stack gas. Analyze the results using Sections 12.1 and 12.2. The measured concentration of each analyte must be within ±5 percent of the expected concentration (plus the uncertainty), i.e., the calculated correction factor must be within 0.93 and 1.07 for an audit with an analyte uncertainty of ±2 percent.

9.2 *Audit Spectra.* Audit spectra can be used to test the analytical program of the FTIR CEM, but provide no test of the sampling system.

9.2.1 *Definition and Requirements.* Audit spectra are absorbance spectra that: (1) Have been well characterized, and (2) contain absorbance bands of target analyte(s) and potential interferants at intensities equivalent to what is expected in the source effluent. Audit spectra are provided by the administrator without identifying information. Methods of preparing Audit spectra include: (1) Mathematically adding sample spectra or adding reference and interferant spectra, (2) obtaining sample spectra of mixtures prepared in the laboratory, or (3) they may be sample spectra collected previously at a similar source. In the last case it must be demonstrated that the analytical results are correct and reproducible. A record associated with each Audit spectrum documents its method of preparation. The documentation must be sufficient to enable an independent analyst to reproduce the Audit spectra.

9.2.2 *Test Procedure.* Audit spectra concentrations are measured using the FTIR CEM analytical program. Analytical results must be within ±5 percent of the certified audit concentration for each analyte (plus the uncertainty in the audit concentration). If the condition is not met, demonstrate how the audit spectra are unrepresentative of the sample spectra. If the audit spectra are representative, modify the FTIR CEM analytical program until the test requirement is met. Use the new analytical program in subsequent FTIR CEM analyses of effluent samples.

9.3 *Submit Spectra For Independent Analysis.* This procedure tests only the analytical program and not the FTIR CEM sampling system. The analyst can submit FTIR CEM spectra for independent analysis by EPA. Requirements for submission include: (1) Three representative absorbance spectra (and stored interferograms) for each test period to be reviewed, (2) corresponding CTS spectra, (3) corresponding background spectra and interferograms, (4) spectra of associated spiked samples if applicable, and (5) analytical results for these sample spectra. The analyst will also submit documentation of process times and conditions, sampling conditions associated with each spectrum, file names and sampling times, method of analysis and reference spectra used, optical configuration of FTIR CEM including cell path length and temperature, spectral resolution and apodization used for every spectrum. Independent analysis can also be performed on site in conjunction with the FTIR CEM sampling and analysis. Sample spectra are stored on the independent analytical system as they are collected by the FTIR CEM system. The FTIR CEM and the independent analyses are then performed separately. The two analyses will agree to within ±20 percent for each analyte using the procedure in Section 12.3. This assumes both analytical routines have properly accounted for differences in optical path length, resolution, and temperature between the sample spectra and the reference spectra.

10.0 *Calibration/Standardization.*

10.1 *Calibration Transfer Standards.* For CTS requirements see Section 4.5 of the FTIR Protocol. A well characterized absorbance band in the CTS gas is used to measure the path length and line resolution of the instrument. The CTS measurements made at the beginning of every 24 hour period must agree to within ±5 percent after correction for differences in pressure. Verify that the frequency response of the instrument and CTS absorbance intensity are correct by comparing to other CTS spectra or by referring to the literature.

10.2 *Analyte Calibration.* If EPA library reference spectra are not available, use calibration standards to prepare reference spectra according to Section 6 of the FTIR Protocol. A suitable set of analyte reference data includes spectra of at least 2 independent samples at each of at least 2 different concentrations. The concentrations bracket a range that includes the expected analyte absorbance intensities. The linear fit of the reference analyte band areas must have a fractional calibration uncertainty (FCU in Appendix F of the FTIR Protocol) of no greater than 10 percent. For requirements of analyte standards refer to Section 4.6 of the FTIR Protocol.

10.3 *System Calibration.* The calibration standard is introduced at a point on the sampling probe. The sampling system is purged with the calibration standard to verify that the absorbance measured in this way is equal to the absorbance in the analyte calibration. Note that the system calibration gives no indication of the ability of the sampling system to transport the target analyte(s) under the test conditions.

10.4 *Analyte Spike.* The target analyte(s) is spiked at the outlet of the sampling probe, upstream of the particulate filter, and combined with effluent at a ratio of about 1 part spike to 9 parts effluent. The measured absorbance of the spike is compared to the expected absorbance of the spike plus the analyte concentration already in the effluent. This measures sampling system bias, if any, as distinguished from analyzer bias. It is important that spiked sample pass through all of the sampling system components before analysis.

10.5 *Signal-to-Noise Ratio (S/N).* The measure of S/N in this performance specification is the root-mean-square (RMS) noise level as given in Appendix C of the FTIR Protocol. The RMS noise level of a contiguous segment of a spectrum is defined as the RMS difference (RMSD) between the n contiguous absorbance values (A_i) which form the segment and the mean value (A_M) of that segment.

$$\mathrm{RMSD} = \sqrt{\left(\frac{1}{n}\right)\sum_{i=1}^{n}\left(A_i - A_M\right)^2} \qquad (2)$$

A decrease in the S/N may indicate a loss in optical throughput, or detector or interferometer malfunction.

10.6 *Background Deviation.* The 100 percent baseline must be between 95 and 105 percent transmittance (absorbance of 0.02 to −0.02) in every analytical region. When background deviation exceeds this range, a new background spectrum must be collected using nitrogen or other zero gas.

10.7 *Detector Linearity.* Measure the background and CTS at three instrument aperture settings; one at the aperture setting to be used in the testing, and one each at settings one half and twice the test aperture setting. Compare the three CTS spectra. CTS band areas should agree to within the uncertainty of the cylinder standard. If test aperture is the maximum aperture, collect CTS spectrum at maximum aperture, then close the aperture to reduce the IR through-put by half. Collect a second background and CTS at the smaller aperture setting and compare the spectra as above. Instead of changing the aperture neutral density filters can be used to attenuate the infrared beam. Set up the FTIR system as it will be used in the test measurements. Collect a CTS spectrum. Use a neutral density filter to attenuate the infrared beam (either immediately after the source or the interferometer) to approximately ½ its original intensity. Collect a second CTS spectrum. Use another filter to attenuate the infrared beam to approximately ¼ its original intensity. Collect a third background

and CTS spectrum. Compare the CTS spectra as above. Another check on linearity is to observe the single beam background in frequency regions where the optical configuration is known to have a zero response. Verify that the detector response is ''flat'' and equal to zero in these regions. If detector response is not linear, decrease aperture, or attenuate the infrared beam. Repeat the linearity check until system passes the requirement.

11.0 *Analytical Procedure.*

11.1 *Initial Certification.* First, perform the evaluation procedures in Section 6.0 of the FTIR Protocol. The performance of an FTIR CEM can be certified upon installation using EPA Method 301 type validation (40 CFR, Part 63, Appendix A), or by comparison to a reference Method if one exists for the target analyte(s). Details of each procedure are given below. Validation testing is used for initial certification upon installation of a new system. Subsequent performance checks can be performed with more limited analyte spiking. Performance of the analytical program is checked initially, and periodically as required by EPA, by analyzing audit spectra or audit gases.

11.1.1 *Validation.* Use EPA Method 301 type sampling (reference 4, Section 5.3 of Method 301) to validate the FTIR CEM for measuring the target analytes. The analyte spike procedure is as follows: (1) A known concentration of analyte is mixed with a known concentration of a non-reactive tracer gas, (2) the undiluted spike gas is sent directly to the FTIR cell and a spectrum of this sample is collected, (3) pre-heat the spiked gas to at least the sample line temperature, (4) introduce spike gas at the back of the sample probe upstream of the particulate filter, (5) spiked effluent is carried through all sampling components downstream of the probe, (6) spike at a ratio of roughly 1 part spike to 9 parts flue gas (or more dilute), (7) the spike-to-flue gas ratio is estimated by comparing the spike flow to the total sample flow, and (8) the spike ratio is verified by comparing the tracer concentration in spiked flue gas to the tracer concentration in undiluted spike gas. The analyte flue gas concentration is unimportant as long as the spiked component can be measured and the sample matrix (including interferences) is similar to its composition under test conditions. Validation can be performed using a single FTIR CEM analyzing sample spectra collected sequentially. Since flue gas analyte (unspiked) concentrations can vary, it is recommended that two separate sampling lines (and pumps) are used; one line to carry unspiked flue gas and the other line to carry spiked flue gas. Even with two sampling lines the variation in unspiked concentration may be fast compared to the interval between consecutive measurements. Alternatively, two FTIR CEMs can be operated side-by-side, one measuring spiked sample, the other unspiked sample. In this arrangement spiked and unspiked measurements can be synchronized to minimize the affect of temporal variation in the unspiked analyte concentration. In either sampling arrangement, the interval between measured concentrations used in the statistical analysis should be, at least, 5 cell volumes (5 * TC in equation 1). A validation run consists of, at least, 24 independent analytical results, 12 spiked and 12 unspiked samples. See Section 3.17 for definition of an ''independent'' analytical result. The results are analyzed using Sections 12.1 and 12.2 to determine if the measurements passed the validation requirements. Several analytes can be spiked and measured in the same sampling run, but a separate statistical analysis is performed for each analyte. In lieu of 24 independent measurements, averaged results can be used in the statistical analysis. In this procedure, a series of consecutive spiked measurements are combined over a sampling period to give a single average result. The related unspiked measurements are averaged in the same way. The minimum 12 spiked and 12 unspiked result averages are obtained by averaging measurements over subsequent sampling periods of equal duration. The averaged results are grouped together and statistically analyzed using Section 12.2.

11.1.1.1 *Validation with a Single Analyzer and Sampling Line.* If one sampling line is used, connect the sampling system components and purge the entire sampling system and cell with at least 10 cell volumes of sample gas. Begin sampling by collecting spectra of 2 independent unspiked samples. Introduce the spike gas into the back of the probe, upstream of the particulate filter. Allow 10 cell volumes of spiked flue gas to purge the cell and sampling system. Collect spectra of 2 independent spiked samples. Turn off the spike flow and allow 10 cell volumes of unspiked flue gas to purge the FTIR cell and sampling system. Repeat this procedure 6 times until the 24 samples are collected. Spiked and unspiked samples can also be measured in groups of 4 instead of in pairs. Analyze the results using Sections 12.1 and 12.2. If the statistical analysis passes the validation criteria, then the validation is completed. If the results do not pass the validation, the cause may be that temporal variations in the analyte sample gas concentration are fast relative to the interval between measurements. The difficulty may be avoided by: (1) Averaging the measurements over long sampling periods and using the averaged results in the statistical analysis, (2) modifying the sampling system to reduce TC by, for example, using a smaller volume cell or increasing the sample flow rate, (3) using two sample lines (4) use two analyzers to perform synchronized measurements. This performance specification permits modifications in the sampling system to minimize TC if the other requirements of the validation sampling procedure are met.

11.1.1.2 *Validation With a Single Analyzer and Two Sampling Lines.* An alternative sampling procedure uses two separate sample lines, one carrying spiked flue gas, the other carrying unspiked gas. A valve in the gas distribution manifold allows the operator to choose either sample. A short heated line connects the FTIR cell to the 3-way valve in the manifold. Both sampling lines are continuously purged. Each sample line has a rotameter and a bypass vent line after the rotameter, immediately upstream of the valve, so that the spike and unspiked sample flows can each be continuously monitored. Begin sampling by collecting spectra of 2 independent unspiked samples. Turn the sampling valve to close off the unspiked gas flow and allow the spiked flue gas to enter the FTIR cell. Isolate and evacuate the cell and fill with the spiked sample to ambient pressure. (While the evacuated cell is filling, prevent air leaks into the cell by making sure that the spike sample rotameter always indicates that a portion of the flow is directed out the by-pass vent.) Open the cell outlet valve to allow spiked sample to continuously flow through the cell. Measure spectra of 2 independent spiked samples. Repeat this procedure until at least 24 samples are collected.

11.1.1.3 *Synchronized Measurements With Two Analyzers.* Use two FTIR analyzers, each with its own cell, to perform synchronized spiked and unspiked measurements. If possible, use a similar optical configuration for both systems. The optical configurations are compared by measuring the same CTS gas with both analyzers. Each FTIR system uses its own sampling system including a separate sampling probe and sampling line. A common gas distribution manifold can be used if the samples are never mixed. One sampling system and analyzer measures spiked effluent. The other sampling system and analyzer measures unspiked flue gas. The two systems are synchronized so that so that each measures spectra at approximately the same times. The sample flow rates are also synchronized so that both sampling rates are approximately the same (TC1~ TC2 in equation 1). Start both systems at the same time. Collect spectra of at least 12 independent samples with each (spiked and unspiked) system to obtain the minimum 24 measurements. Analyze the analytical results using Sections 12.1 and 12.2. Run averages can be used in the statistical analysis instead of individual measurements.

11.1.1.4 *Compare to a Reference Method (RM).* Obtain EPA approval that the method qualifies as an RM for the analyte(s) and the source to be tested. Follow the published procedures for the RM in preparing and setting up equipment and sampling system, performing measurements, and reporting results. Since FTIR CEMS have multicomponent capability, it is possible to perform more than one RM simultaneously, one for each target analyte. Conduct at least 9 runs where the FTIR CEM and the RM are sampling simultaneously. Each Run is at least 30 minutes long and consists of spectra of at least 5 independent FTIR CEM samples and the corresponding RM measurements. If more than 9 runs are conducted, the analyst may eliminate up to 3 runs from the analysis if at least 9 runs are used.

11.1.1.4.1 *RMs Using Integrated Sampling.* Perform the RM and FTIR CEM sampling simultaneously. The FTIR CEM can measure spectra as frequently as the analyst chooses (and should obtain measurements as frequently as possible) provided that the measurements include spectra of at least 5 independent measurements every 30 minutes. Concentration results from all of the FTIR CEM spectra within a run may be averaged for use in the statistical comparison

even if all of the measurements are not independent. When averaging the FTIR CEM concentrations within a run, it is permitted to exclude some measurements from the average provided the minimum of 5 independent measurements every 30 minutes are included: The Run average of the FTIR CEM measurements depends on both the sample flow rate and the measurement frequency (MF). The run average of the RM using the integrated sampling method depends primarily on its sampling rate. If the target analyte concentration fluctuates significantly, the contribution to the run average of a large fluctuation depends on the sampling rate and measurement frequency, and on the duration and magnitude of the fluctuation. It is, therefore, important to carefully select the sampling rate for both the FTIR CEM and the RM and the measurement frequency for the FTIR CEM. The minimum of 9 run averages can be compared according to the relative accuracy test procedure in Performance Specification 2 for SO_2 and NO_X CEMs (40 CFR part 60, Appendix B).

11.1.1.4.2 *RMs Using a Grab Sampling Technique.* Synchronize the RM and FTIR CEM measurements as closely as possible. For a grab sampling RM record the volume collected and the exact sampling period for each sample. Synchronize the FTIR CEM so that the FTIR measures a spectrum of a similar cell volume at the same time as the RM grab sample was collected. Measure at least 5 independent samples with both the FTIR CEM and the RM for each of the minimum 9 Runs. Compare the Run concentration averages by using the relative accuracy analysis procedure in 40 CFR part 60, Appendix B.

11.1.1.4.3 *Continuous Emission Monitors (CEMs) as RMs.* If the RM is a CEM, synchronize the sampling flow rates of the RM and the FTIR CEM. Each run is at least 1-hour long and consists of at least 10 FTIR CEM measurements and the corresponding 10 RM measurements (or averages). For the statistical comparison use the relative accuracy analysis procedure in 40 CFR part 60, Appendix B. If the RM time constant is < ½ the FTIR CEM time constant, brief fluctuations in analyte concentrations which are not adequately measured with the slower FTIR CEM time constant can be excluded from the run average along with the corresponding RM measurements.

However, the FTIR CEM run average must still include at least 10 measurements over a 1-hr period. 12.0 *Calculations and Data Analysis.*

12.1 *Spike Dilution Ratio, Expected Concentration.* The Method 301 bias is calculated as follows.

$B = S_m - M_m - CS$

Where

B=Bias at the spike level

S_m=Mean of the observed spiked sample concentrations

M_m=Mean of the observed unspiked sample concentrations

CS=Expected value of the spiked concentration. The CS is determined by comparing the SF_6 tracer concentration in undiluted spike gas to the SF_6 tracer concentrations in the spiked samples;

$$DF = \frac{[SF_6]\ \text{direct}}{[SF_6]\ \text{spiked}} \qquad (4)$$

The expected concentration (CS) is the measured concentration of the analyte in undiluted spike gas divided by the dilution factor

$$CS = \frac{[\text{anal}]_{\text{dir}}}{DF} \qquad (5)$$

where

$[\text{anal}]_{dir}$=The analyte concentration in undiluted spike gas measured directly by filling the FTIR cell with the spike gas. If the bias is statistically significant (Section 12.2), Method 301 requires that a correction factor, CF, be multiplied by the analytical results, and that $0.7 \le CF \le 1.3$.

$$CF = \frac{1}{1 + \frac{B}{CS}} \qquad (6)$$

12.2 *Statistical Analysis of Validation Measurements.* Arrange the independent measurements (or measurement averages) as in Table 1. More than 12 pairs of measurements can be analyzed. The statistical analysis follows EPA Method 301, Section 6.3. Section 12.1 of this performance specification shows the calculations for the bias, expected spike concentration, and correction factor. This Sections shows the determination of the statistical significance of the bias. Determine the statistical significance of the bias at the 95 percent confidence level by calculating the t-value for the set of measurements. First, calculate the differences, d_i, for each pair of spiked and each pair of unspiked measurements. Then calculate the standard deviation of the spiked pairs of measurements.

$$SD_s = \sqrt{\frac{\sum d_i^2}{2n}} \qquad (7)$$

Where

d_i=The differences between pairs of spiked measurements.

SD_s=The standard deviation in the d_i values.

n=The number of spiked pairs, 2n=12 for the minimum of 12 spiked and 12 unspiked measurements.

Calculate the relative standard deviation, RSD, using SD_s and the mean of the spiked concentrations, S_m. The RSD must be ≤ 50%.

$$RSD = \left(\frac{SD}{S_m}\right) \qquad (8)$$

Repeat the calculations in equations 7 and 8 to determine SD_u and RSD, respectively, for the unspiked samples.

Calculate the standard deviation of the mean using SD_s and SD_u from equation 7.

$$SD = \sqrt{SD_s^2 + SD_u^2} \qquad (9)$$

The t-statistic is calculated as follows to test the bias for statistical significance;

$$t = \frac{|B|}{SBM} \qquad (10)$$

Where the bias, B, and the correction factor, CF, are given in Section 12.1.

For 11 degrees of freedom, and a one-tailed distribution, Method 301 requires that t ≤ 2.201. If the t-statistic indicates the bias is statistically significant, then analytical measurements must be multiplied by the correction factor. There is no limitation on the number of measurements, but there must be at least 12 independent spiked and 12 independent unspiked measurements. Refer to the t-distribution (Table 2) at the 95 percent confidence level and appropriate degrees of freedom for the critical t-value.

13.0–15.0 *[Reserved]*

16.0 *References.*

1. Method 318, 40 CFR Part 63, Appendix A (Draft), ''Measurement of Gaseous Formaldehyde, Phenol and Methanol Emissions by FTIR Spectroscopy,'' EPA Contract No. 68D20163, Work Assignment 2–18, February, 1995.

2. ''EPA Protocol for the Use of Extractive Fourier Transform Infrared (FTIR) Spectrometry in Analyses of Gaseous Emissions from Stationary Industrial Sources,'' February, 1995.

3. ''Measurement of Gaseous Organic and Inorganic Emissions by Extractive FTIR Spectroscopy,'' EPA Contract No. 68–D2–0165, Work Assignment 3–08.

4. ''Method 301—Field Validation of Pollutant Measurement Methods from Various Waste Media,'' 40 Part CFR 63, Appendix A.

17.0 *Tables, Diagrams, Flowcharts, and Validation Data.*

TABLE 1.—ARRANGEMENT OF VALIDATION MEASUREMENTS FOR STATISTICAL ANALYSIS.

Measurement (or average)	Time	Spiked (ppm)	d_i spiked	Unspiked (ppm)	d_i unspiked
1		S_1		U_1	
2		S_2	$S_2–S_1$	U_2	$U_2–U_1$
3		S_3		U_3	
4		S_4	$S_4–S_3$	U_4	$U_4–U_3$

TABLE 1.—ARRANGEMENT OF VALIDATION MEASUREMENTS FOR STATISTICAL ANALYSIS.—Continued

Measurement (or average)	Time	Spiked (ppm)	d_i spiked	Unspiked (ppm)	d_i unspiked
5		S_5		U_5	
6		S_6	S_6–S_5	U_6	U_6–U_5
7		S_7		U_7	
8		S_8	S_8–S_7	U_8	U_8–U_7
9		S_9		U_9	
10		S_{10}	S_{10}–S_9	U_{10}	U_{10}–U_9
11		S_{11}		U_{11}	
12		S_{12}	S_{12}–S_{11}	U_{12}	U_{12}–U_{11}
Average–>		S_m		M_m	

TABLE 2.—T-VALUES

n-1[a]	t-value	n-1[a]	t-value	n-1[a]	t-value	n-1[a]	t-value
11	2.201	17	2.110	23	2.069	29	2.045
12	2.179	18	2.101	24	2.064	30	2.042
13	2.160	19	2.093	25	2.060	40	2.021
14	2.145	20	2.086	26	2.056	60	2.000
15	2.131	21	2.080	27	2.052	120	1.980
16	2.120	22	2.074	28	2.048	∞	1.960

([a]) n is the number of independent pairs of measurements (a pair consists of one spiked and its corresponding unspiked measurement). Either discreet (independent) measurements in a single run, or run averages can be used.

[FR Doc. 97–22508 Filed 8–26–97; 8:45 am]
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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300540; FRL–5739–6]

RIN 2070–AB18

Vinclozolin; Proposed Revocation of Tolerances for Deleted Uses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed Revocation of Tolerances.

SUMMARY: EPA is proposing the revocation of tolerances for uses of the fungicide vinclozolin which were recently deleted from the vinclozolin labels.

DATES: Public comments, identified by the docket control number [OPP–300540] must be received on or before October 27, 1997.

ADDRESSES: By mail, submit comments to Public Information and Records Integrity Branch, Information Resources and Services Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person deliver comments to Room 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington VA.

Comments and data may also be submitted electronically by following the instructions under Unit VII. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Mark Wilhite, Special Review Branch (7508W), Special Review and Reregistration Division, Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20046. Office location, telephone number, and e-mail: Special Review Branch, 3rd floor, 2800 Crystal Drive, Arlington, VA, (703) 308–8586; e-mail: wilhite.mark@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background Information

Vinclozolin (trade names Ronilan, Curalan, and Ornilan) is a fungicide first registered in 1981 to control various types of rot caused by *Botrytis spp.*, *Sclerotinia spp*, and other types of mold and blight causing organisms, on strawberries, lettuce (all types), stonefruit, raspberries, onions, succulent beans, and turf in recreational areas, golf courses, commercial and industrial sites. Vinclozolin is also registered for use on ornamentals in green houses and nurseries. When BASF requested amendment of its labels to include a use for succulent beans, BASF also requested deletion of several food and non-food uses from its vinclozolin registrations. These deletions were announced in the **Federal Register** Notice of August 13, 1997 (62 FR 43327).

II. Proposed Revocation of Tolerances

This notice proposes to revoke the tolerances for the food uses deleted from the vinclozolin registrations. EPA is proposing to revoke these tolerances because there are no active registrations associated with them. These revocations include the tolerances for the raw agricultural commodities tomatoes, plums, prunes, and grapes other than wine grapes, the food additive tolerances for raisins and prunes, and the animal feed tolerance for grape pomace. Revocation of the tolerances for fresh plums and prunes requires that the tolerance for stonefruits be changed to stonefruits, except plums and prunes. To revoke tolerances for grapes other than wine grapes, the tolerance will be revised to wine grapes.

III. Legal Authority

The Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 301 et seq., as amended by the Food Quality Protection Act of 1996 (FQPA), Pub. L. 104–170, authorizes the establishment of tolerances (maximum residue levels), exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods pursuant to section 408, 21 U.S.C. 346(a). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 331(a) and 342(a)).

Under FFDCA section 408(e)(A), the Administrator may issue a regulation revoking a tolerance for a pesticide

chemical residue. Before such a regulation may become final the Administrator must issue a notice of proposed rulemaking and provide a period of not less than 60 days for public comment. Abandonment of uses constitutes reasonable grounds for revoking a tolerance. [40 CFR 180.32(b)]

IV. Regulatory Background

It is EPA's general practice to propose revocation of tolerances for residues of pesticide active ingredients for which FIFRA registrations no longer exist. In accordance with FFDCA section 408, however, EPA will not revoke any tolerance or exemption proposed for revocation if any person will commit to support its retention, and if retention of the tolerance will meet the tolerance standard established under FQPA. Generally, interested parties commit to support the retention of such tolerances in order to permit treated commodities to be legally imported into the United States, since raw agricultural commodities or processed food or feed commodities containing pesticide residues not covered by a tolerance or exemption are considered to be adulterated and subject to seizure.

Tolerances and exemptions established for pesticide chemicals with FIFRA registrations cover residues in or on both domestic and imported commodities. To retain these tolerances and exemptions for import purposes only, EPA must make a finding that the tolerances and exemptions are safe. To make this safety finding, EPA needs data and information indicating that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide residues covered by the tolerances and exemptions.

EPA determines on a case-by-case basis the data required to determine that a tolerance or exemption is safe, and in general requires the same technical chemistry and toxicology data for tolerances without related U.S. registrations as are required to support U.S. food-use registrations and any resulting tolerances or exemptions. (See 40 CFR part 158 for EPA's data requirements to support domestic use of a pesticide and the establishment and maintenance of a tolerance. At a future date, EPA will announce its import tolerance policy.) In most cases, EPA also requires residue chemistry data (crop field trials) that are representative of growing conditions in exporting countries in the same manner that EPA requires representative residue chemistry data from different U.S. regions to support domestic use of a pesticide and any resulting tolerance(s) or exemption(s). Good Laboratory Practice (GLP) requirements for studies submitted in support of tolerances and exemptions for import purposes only are the same as for domestic purposes; i.e., the studies are required to either fully meet GLP standards, or have sufficient justification presented to show that deviations from GLP requirements do not significantly affect the results of the studies.

Under FFDCA section 408(f), if EPA determines that additional data are needed to support continuation of a tolerance, EPA may require that those data be submitted by registrants under FIFRA section 3(c)(2)(B), or by other persons by order after opportunity for hearing.

Section 408(f) of the FFDCA states that if EPA determines that additional data are needed to support the continuation of an existing tolerance or exemption, EPA shall issue a notice that:

1. Requests that any parties identify their interest in supporting the tolerance or exemption.
2. Solicits the submission of data and information from interested parties.
3. Describes the data and information needed to retain the tolerance or exemption.
4. Outlines how EPA will respond to the submission of supporting data.
5. Provides time frames and deadlines for the submission of such data and information.

Monitoring and enforcement of pesticide tolerances and exemptions are carried out by the U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA). This includes monitoring for pesticide residues in or on commodities imported into the United States. It is generally FDA's enforcement policy to not consider imported foods with residues adulterated until three years after the effective date of the revocation.

V. Proposed Actions

This notice proposes to revoke the tolerances listed below. EPA is proposing these revocations because EPA has deleted their uses from the registrations for the pesticide chemical associated with the tolerances, and it is EPA's general practice to propose revocation of those tolerances for residues of pesticide chemicals for which there are no active registrations.

VI. Effective Dates

These proposed revocations will become effective 30 days following the publication in the **Federal Register** of a final rule revoking the tolerances. FDA's enforcement policy is, in most cases, to not consider imported foods with residues adulterated until 3 years after the effective date of the revocation. Prior to the August 1996 amendment of the FFDCA, it was generally the practice of EPA in similar instances to establish an effective date for each tolerance revocation that took into consideration the time needed for legally treated food to pass entirely through the channels of trade. That is no longer necessary because under section 408(l)(5), food lawfully treated will not be rendered adulterated despite the lack of a tolerance, so long as the residue on the food complies with the tolerance in place at the time of treatment.

VII. Public Comment Procedures

EPA invites interested persons to submit written comments, information, or data in response to this proposed rule. Comments must be submitted by October 27, 1997. Comments must bear a docket control number. Three copies of the comments should be submitted to either location listed under ''ADDRESSES'' at the beginning of this notice.

In formation submitted as a comment concerning this notice may be claimed confidential by marking any or all that information as Confidential Business Information (CBI). EPA will not disclose information so marked, except in accordance with procedures set forth in 40 CFR part 2. A second copy of such comments, with CBI deleted, also must be submitted for inclusion in the public record. EPA may publicly disclose without prior notice information not marked confidential.

After consideration of comments, EPA will issue a final rule. Such rule will be subject to objections. Failure to file an objection within the appointed period will constitute waiver of the right to raise in future proceedings issues resolved in the final rule.

This proposal provides 60 days for any interested person to request that a tolerance be retained. If EPA receives a comment to that effect, EPA will not revoke the tolerance, but will take steps to ensure the submission of supporting data and will issue an order in the Federal Register under FFDCA section 408(f). The order would specify the data needed, the time frames for its submission, and would require that within 90 days some person or persons notify EPA that they will submit the data. Thereafter, if the data are not submitted as required, EPA will take appropriate action under FIFRA or FFDCA.

VIII. Rulemaking Record

The official record for this proposed revocation, as well as the public version, has been established for this document under docket control number [OPP–300540] (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 OPP–300540. Electronic comments on this document may be filed at many Federal Depository Libraries.

IX. Regulatory Assessment Requirements

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is ''significant'' and therefore subject to review by the Office of Management and Budget and the requirements of the Executive Order. Under section 3(f), E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities; (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in this Executive Order.

Pursuant to the terms of E.O. 12866, EPA has determined that this proposed rule is not a significant regulatory action and, since this action does not impose any information collection requirements subject to approval under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), it is not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, or contain any ''unfunded mandates'' as described in Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), or require prior consultation as specified by Executive Order 12875 (58 FR 58093, October 28, 1993), entitled Enhancing the Intergovernmental Partnership, or special considerations as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Regulatory Flexibility Act

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. Absent extraordinary circumstances, EPA believes that revocation of a tolerance after use of the pesticide becomes illegal in this country will not have a significant impact on a substantial number of small entities.

In the case of domestically grown food, the tolerance revocations proposed today will have no economic impact. The associated pesticide registered uses have already been canceled. Since U.S. growers may no longer use the pesticide in those ways, revoking the tolerance should have no effect on food grown in the United States after cancellation of the registered uses of the pesticide. As for food grown before the cancellation occurred, it will not be considered adulterated if it was treated in a way that complied with the tolerance in effect at the time of treatment.

Revocation has a greater potential to affect foreign-grown food, since the uses of the pesticide prohibited in the United States may still be lawful in other countries. If foreign growers use the pesticide in the ways prohibited in the United States, the food they grow will be considered adulterated once the tolerance is revoked. However, while revocation may have an economic effect on foreign growers that import food to the United States, the RFA is concerned only with the effect of U.S. regulations on domestic small entities.

Revocation may also have an effect on domestic importers of foreign-grown food to the extent their suppliers use pesticides in ways that result in residues no longer allowed in the United States. However, EPA believes that the effect on U.S. importers will be minimal. Theoretically, U.S. importers could face higher food prices and transactions costs. The revocation of a particular tolerance, though, is unlikely to have a significant impact on the price of a commodity on the international market. Transaction costs may occur as a result of having to find alternative suppliers of food untreated with pesticides for which tolerances were revoked. Affected importers would have the options of finding other suppliers in the same country or in other countries, or inducing the same supplier to switch to alternative pest controls. Given the existence of these options, EPA expects any price increases or transaction costs resulting from revocations will be minor. Any such impacts will be further reduced by the FDA's enforcement policy of not considering imported foods with residues adulterated until, in most cases, three years after the effective date of the revocation. EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with the revoked pesticide, generally within the same countries from which the relevant commodities are currently imported.

Moreover, whatever the effect on U.S. importers of foreign-grown food, EPA believes that it would be inappropriate and inconsistent with the purpose of the RFA to ameliorate that effect. To the extent any adverse effect occurs, it will be the result of foreign growers using pesticides in ways not allowed in the U.S. Domestic growers have no choice but to refrain from using pesticides in ways prohibited by U.S. law. U.S. growers and those who follow them in the chain of commerce— distributors and consumers—will bear the cost of complying with U.S. law. For EPA to somehow address the economic effect of the revocation on U.S. distributors of foreign-grown food would potentially give those distributors a competitive advantage over distributors of U.S.-grown food, and that advantage could potentially translate to a competitive advantage for foreign growers over domestic growers. The RFA was enacted in part to preserve competition in the marketplace, and it would be perverse to implement it in a way that creates competitive inequities, particularly between United States and foreign products.

Finally, EPA notes that potential increased costs to importers would not be cognizable as grounds for not revoking the tolerance. Because no

extraordinary circumstances exist as to the present revocation that would change EPA's above analysis, I certify that this action will not have a significant economic impact on a substantial number of small entities.

List of Subjects 40 CFR Part 180

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

Dated: August 18, 1997.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended to read as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

b. Section 180.380 is amended by revising paragraph (a) to read as follows:

§ 180.380 Vinclozolin; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide vinclozolin (3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione) and its metabolites containing the 3,5-dichloroaniline moiety in or on the food commodities in the table below. There are no U.S. registrations for Belgian endive, tops, cucumbers, grapes (wine), kiwi, pepper (bell) as of July 30, 1997. The tolerances will expire and are revoked on the date(s) listed in the following table:

Commodity	Parts per million	Expiration/Revocation Date
Beans, succulent	2.0	10/1/99
Belgian endive, tops	5.0	None
Cucumbers	1.0	None
Grapes, (wine)	6.0	None
Kiwifruit	10.0	None
Lettuce, head	10.0	None
Lettuce (leaf)	10.0	None
Onions (dry bulb)	1.0	None
Peppers (bell)	3.0	None
Raspberries	10.0	None
Stonefruits except plums/fresh prunes	25.0	None
Strawberries	10.0	None

* * * * *

[FR Doc. 97–22808 Filed 8-26-97; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[ET Docket No. 94–124; FCC 97–267]

Use of Radio Frequencies Above 40 GHz for New Radio Applications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: By this *Fourth Notice of Proposed Rule Making* (4th NPRM) the Commission proposes to amend the rules to provide a spectrum etiquette for operation of unlicensed services in the 59–64 GHz frequency. The Commission seeks comment on the proposed spectrum etiquette.

DATES: Comments must be filed on or before September 26, 1997, and reply comments must be filed October 14, 1997. Interested parties wishing to comment on the information collections should submit comments September 26, 1997.

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

FOR FURTHER INFORMATION CONTACT: John A. Reed (202) 418–2455 or Rodney P. Conway (202) 418–2904. Via electronic mail: jreed@fcc.gov or rconway@fcc.gov, Office of Engineering and Technology, Federal Communications Commission. For additional information concerning the information collections, or copies of the information collections contained in this NPRM contact Judy Boley at (202) 418–0217, or via electronic mail at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Notice of Proposed Rule Making,* ET Docket 94–124, FCC 97–267, adopted July 28, 1997, and released August 14, 1997.

This NPRM contains proposed or modified information collections subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. The general public, and other Federal agencies are invited to comment on the proposed or modified information collections contained in this proceeding.

A full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, N.W., Washington, D.C., and also may be purchased from the Commission's duplication contractor, International Transcription Service, phone (202) 857–3800, facsimile (202) 857–3805, 1231 20th Street, N.W. Washington, D.C. 20036.

Summary of the 4th NPRM

1. In the *Second Notice of Proposed Rule Making,* 61 FR 14041, March 29, 1996, the Commission requested comment regarding a spectrum etiquette for operation in the 59–64 GHz band. The Commission provided one year for a spectrum etiquette to be submitted and encouraged industry to form a working group to develop a spectrum etiquette to permit efficient use of the 59–64 GHz band. In response, the Millimeter Wave Communications Working Group (MWCWG) was formed and proposed a Spectrum Etiquette for equipment operating in the 59–64 GHz band. The MWCWG proposed Spectrum Etiquette can be accessed at [http://www.fcc.gov/oet/dockets/et94–124/]. MWCWG seeks adoption of its proposal to permit efficient use of the spectrum by enabling greater frequency reuse and lowering the probability of interference.

2. The 4th NPRM seeks comment on a proposed spectrum etiquette for unlicensed services in the 59–64 GHz frequency band. The proposed spectrum etiquette seeks to: (1) Establish a coordination channel located at 59.0–59.05 GHz to be used exclusively to establish techniques that various transmitters could use to help mitigate or eliminate interference; (2) establish a format for transmitter identification by requiring a 60 GHz transmitter with an output power of 0.1 mW or more to transmit information that contains the FCC ID number, the serial number of the transmitter, and a user definable field of up to 24 bytes of information; (3) adopt a limit for peak equivalent isotropically radiated power of 20 W for 60 GHz transmitters; (4) limit the peak transmitter output power to 500 mW; and (5) limit the peak transmitter output power for transmitters employing a 6 dB bandwidth of less than 100 MHz, as measured with a 100 kHz resolution bandwidth spectrum analyzer, according to the following formula: $P \leq 500$ [bandwidth in MHz/100] mW.

3. The Commission seeks comments on whether it should adopt the standards contained in the MWCWG proposal. The Commission is particularly interested in comments regarding the proposed transmitter identification requirements and the designation of a coordination channel. The Commission wishes to clarify, however, that the reference in the MWCWG filing for ''radiated power'' actually refers to transmitter output power.

4. Parties commenting on the proposed peak limits and measurements should be aware of the possible application of a pulse desensitization correction factor. Comments should be directed towards the specific substance contained in the proposed Spectrum Etiquette and we remind parties that the actual regulations adopted may differ from those contained in the proposed Spectrum Etiquette.

Initial Regulatory Flexibility Analysis

5. *Need for and Objective of the Rules.* This rule making proceeding is initiated to obtain comments regarding the proposed Spectrum Etiquette for general unlicensed operation in the 59–64 GHz band. The Commission seeks comment on a spectrum etiquette proposed by the Millimeter Wave Communications Working Group for the purpose of minimizing interference among general unlicensed systems operating in the 59–64 GHz band.

6. *Legal Basis.* The proposed action is authorized under Sections 4(j), 301, 302, 303(e), 303(f), 303(g), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302, 303(e), 303(f), 303(g), 303(r), 304 and 307.

7. *Reporting, Recordkeeping and Other Compliance Requirements.* We propose to establish a spectrum etiquette that would apply to and minimize interference between general unlicensed systems operating in the 59–64 GHz band. The spectrum etiquette will require measurements to be reported to the Commission as part of the normal equipment authorization process under our certification procedure.

8. *Federal Rules Which Overlap, Duplicate or Conflict With These Rules.* None.

9. *Description, Potential Impact and Number of Small Entities Involved.* We expect that multiple manufacturers will manufacture transmitters to operate in the 59–64 GHz band for fixed field disturbance sensors and high speed computer to computer transmission systems.

10. *Any Significant Alternatives Minimizing the Impact on Small Entities Consistent With Stated Objectives.* None.

List of Subjects

47 CFR Part 2

Communications equipment, Radio.

47 CFR Part 15

Communications equipment, Highway safety, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–22551 Filed 8–26–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

50 CFR Part 38

RIN 1018–AE19

Supplemental Regulations for Administration of Midway Atoll National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes supplemental regulations to provide for the administration of the Midway Islands and Midway Atoll National Wildlife Refuge. Under the provisions of Executive Order 13022 of October 31, 1996, the Midway Islands were transferred from the jurisdiction and control of the Department of the Navy to the Department of the Interior for administration as a national wildlife refuge by the Service. 61 FR 56875 (1996). The proposed regulations would supplement existing regulations in 50 CFR Parts 25–32 which also apply to Midway Atoll National Refuge.

DATES: Comments may be submitted on or before October 27, 1997.

ADDRESSES: Regional Director, Region 1, U.S. Fish and Wildlife Service, (ARW/OPR), 911 NE 11th. Ave., Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Mark Strong, U.S. Fish and Wildlife Service (ARW/OPR), Telephone (503) 231–2075.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior is authorized under the National Wildlife Refuge System Administration Act to permit uses of units of the National Wildlife Refuge System which he determines are compatible with the purposes for which the unit was established as a refuge. 16 U.S.C. 668dd(d)(1). Executive Order 13022 of October 31, 1996, vests in the Secretary of the Interior legislative and executive authority necessary for the administration of the Midway Islands as the Midway Atoll National Wildlife Refuge.

The purposes of part 38 are to provide supplemental regulations for the administration of Midway Atoll National Wildlife Refuge in addition to those contained in 50 CFR Parts 25–32; and to delegate certain powers, duties, and responsibilities to appropriate officers of the Service for the administration of Midway Atoll National Wildlife Refuge.

The National Wildlife Refuge System Administration Act (NWRSAA) of 1966, as amended (16 U.S.C. 668dd), and the Refuge Recreation Act (RRA) of 1962 (16 U.S.C. 460k) govern the administration and use of national wildlife refuges. Specifically, Section 4(d)(1)(A) of the NWRSAA authorizes the Secretary of the Interior, under such regulations as he may prescribe, to permit the use of any area within the Refuge System for any purpose, including but not limited to, fishing and public recreation, accommodations and access, whenever he determines that such uses are compatible with the major purpose(s) for which the area was established. Section 48 of the Hawaii Omnibus Act, 74 Stat. 424, provides for the civil administration of Midway Island by the agencies and officials authorized by the President. The President has authorized administration of the Midway Atoll National Wildlife Refuge by the Secretary of the Interior through the

U.S. Fish and Wildlife Service and delegated to the Secretary executive and legislative authority necessary for such administration. Executive Order 13022 (Oct. 31, 1996). The Act of June 15, 1950, 64 Stat. 217, and 48 U.S.C. 644a provide, in part, that the District Court for the District of Hawaii has jurisdiction over all civil and criminal cases arising on or within the Midway Islands.

The RRA authorizes the Secretary to administer areas within the Refuge System for public recreation as an appropriate incidental or secondary use to the extent that it is practicable and not inconsistent with the primary purpose(s) for which the areas were established. The NWRSAA and the RRA also authorizes the Secretary to issue regulations to carry out the purposes of the Acts and regulate uses.

The executive authority at the Midway Islands is vested in the Secretary of the Interior. The Director of the Service and the Refuge Manager, Midway Atoll National Wildlife Refuge, exercise the Secretary's executive authority with respect to Midway Atoll National Wildlife Refuge.

Request for Comments

The Service and Department of the Interior desire to afford the public a meaningful opportunity to participate in this rulemaking process. Accordingly, a 60-day comment period is provided to facilitate public input. Interested persons may submit written comments concerning this proposed rule to the Regional Director, Region 1, U.S. Fish and Wildlife Service, at the address provided under **ADDRESSES.**

Paperwork Reduction Act

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements.

Economic Effects/Regulatory Flexibility Act Compliance

This rulemaking was not subject to review by the Office of Management and Budget under Executive Order 12866. Under the provisions of Executive Order 13022, the Midway Islands were transferred from the jurisdiction and control of the Department of the Navy to the Department of the Interior for administration as a national wildlife refuge by the Service. There are no private businesses owned or organizations found on the Island, other than Service contractors brought in to carryout well defined contractual functions. Therefore, review under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) determined that this proposed rulemaking would not have a significant effect on a substantial number of small entities, which include businesses, organizations, and governmental jurisdictions.

Unfunded Mandates

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities.

Civil Justice Reform

The Department has determined that these proposed regulations meet the applicable standards provided in Sections 3(a) and 3 (b)(2) of Executive Order 12988.

Environmental Considerations

In accordance with 516 DM 2, Appendix 1, the Service has determined that this rule is categorically excluded from the National Environmental Policy Act (NEPA) process because it is limited to ''policies, directives, regulations and guidelines of an administrative, financial, legal, technical or procedural nature.'' 516 D.M. 2, Appendix 1, § 1.10.

Primary Author

The primary author of this rule is Mark Strong, Fish and Wildlife Service, Pacific Region (ARW/OPR).

List of Subjects 50 CFR Part 38

Authority delegations, Law enforcement, Midway Atoll, Wildlife, Wildlife refuges.

Accordingly, the service proposes to amend subchapter C of chapter I, title 50 of the Code of Federal Regulations, by adding a new part 38 to read as follows:

PART 38—MIDWAY ATOLL NATIONAL WILDLIFE REFUGE

Subpart A—General

Sec.
38.1 Applicability.
38.2 Scope.

Subpart B—Executive Authority; Authorized Powers; Emergency Authority

38.3 Executive authority; duration.
38.4 Authorized functions, powers, and duties.
38.5 Emergency authority.

Subpart C—Prohibitions

38.6 General.
38.7 Adopted offenses.
38.8 Consistency with Federal law.
38.9 Breach of the peace.
38.10 Trespass.
38.11 Prostitution and lewd behavior.
38.12 Alcoholic beverages.
38.13 Speed limits.
38.14 Miscellaneous prohibitions.
38.15 Attempt.
38.16 Penalties.

Subpart D—Civil Administration

38.17 General

Authority: 5 U.S.C. 301; 16 U.S.C. 460k *et seq.*, 664, 668dd, 742(f), 3901 *et seq.*; 48 U.S.C. 644a; P.L. 86–624, § 48 (74 Stat. 424); E.O. 13022, 61 FR 56875 (1996).

Subpart A—General

§ 38.1 Applicability.

(a) The regulations of this part apply to the Midway Atoll National Wildlife Refuge. For the purposes of this part, the Midway Atoll National Wildlife Refuge includes the Midway Islands, Hawaiian Group, between the parallels of 28°5′ and 28°25′ North latitude, and their territorial seas located approximately between the meridians of 177°10′ and 177°30′ West longitude, as were placed under the jurisdiction and control of the Interior Department by the provisions of Executive Order No. 13022 of October 31, 1996.

(b) Administration of Midway Atoll National Wildlife Refuge is governed by the regulations of this part and parts 25–32 of title 50, Code of Federal Regulations; the general principles of common law; the provisions of the criminal laws of the United States in their entirety including the provisions of 18 U.S.C. 13 and those provisions that were not specifically applied to unincorporated possessions; the laws applicable under the special maritime jurisdiction contained in 48 U.S.C. 644a; and the provisions of the criminal laws of the State of Hawaii to the extent the criminal laws of the State of Hawaii do not conflict with the criminal laws of the United States.

§ 38.2 Scope.

The provisions of part 38 are in addition to the regulations of 50 CFR parts 25–32 which also apply to Midway Atoll National Wildlife Refuge.

Subpart B—Executive Authority; Authorized Powers; Emergency Authority

§ 38.3 Executive authority, duration.

The executive authority of the Secretary of the Interior over the Midway Islands shall be exercised by the Service Regional Director. The executive authority of the Service Regional Director may be redelegated to the Refuge Manager, Midway Atoll National Wildlife Refuge.

§ 38.4 Authorized functions, powers, and duties.

The executive authority of the Regional Director concerning the Midway Islands includes:

(a) Issuance of citations for violations of this part and 50 CFR parts 25–32;

(b) Abatement of any public nuisance upon the failure of the person concerned to comply with a removal notice;

(c) Seizure of evidence;

(d) Investigation of accidents and offenses;

(e) Custody and disposal of lost or abandoned property;

(f) Regulation of aircraft and boat traffic and safety;

(g) Imposition of quarantines;

(h) Evacuation of hazardous areas;

(i) Lawful restraint, detention, confinement, and care of persons prior to their prompt transfer to the custody of the United States District Court for the District of Hawaii;

(j) Lawful removal of persons from the Midway Atoll National Wildlife Refuge for cause;

(k) Regulation of vehicle traffic and safety;

(l) Performance of other lawful acts necessary for protecting the health and safety of persons and property on Midway Atoll National Wildlife Refuge; and

(m) Issuance of lawful notices and orders necessary to the exercise of executive authority under this section.

§ 38.5 Emergency authority.

During the imminence and duration of any emergency, the Regional Director may perform any lawful acts necessary to protect life and property on Midway Atoll National Wildlife Refuge.

Subpart C—Prohibitions

§ 38.6 General.

In addition to any act prohibited by this part or 50 CFR part 27, any act committed on the Midway Atoll National Wildlife Refuge that would be a violation of the criminal laws of the United States or of the State of Hawaii as specified in subpart A, as they now appear or as they may be amended or recodified; or any act committed on the Midway Atoll National Wildlife Refuge that would be criminal if committed on board a merchant vessel or other vessel belonging to the United States pursuant to the provisions of 48 U.S.C. 644a, is prohibited and punishable, in accordance with the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd, the criminal laws of the United States or the State of Hawaii as specified in subpart A, as they now appear or as they may be amended or recodified; or according to the laws applicable on board United States vessels on the high seas pursuant to the provisions of 48 U.S.C. 644a.

§ 38.7 Adopted offenses.

Any person who commits any act or omission on Midway Atoll National Wildlife Refuge which, although not made punishable by an enactment of Congress, would be punishable if committed within the United States under the United States criminal code at the time of such act or omission, including any provisions of the United States criminal code that are not specifically applied to unincorporated possessions of the United States, shall be guilty of a like offense and subject to like punishment. Any person who commits any act or omission on Midway Atoll National Wildlife Refuge which, although not made punishable by an enactment of Congress, would be punishable if committed within the State of Hawaii by the laws thereof at the time of such act or omission, shall be guilty of a like offense and subject to like punishment to the extent the laws of the State of Hawaii do not conflict with the criminal laws of the United States.

§ 38.8 Consistency with Federal law.

Any provisions of the laws of the State of Hawaii, as they now appear or as they may be amended or recodified, which are adopted by this part shall apply only to the extent that they are not in conflict with any applicable Federal law or regulation.

§ 38.9 Breach of the peace.

No person on Midway Atoll National Wildlife Refuge shall:

(a) With intent to cause public inconvenience, annoyance, or alarm, or recklessly creating a risk thereof, engage in fighting, threatening, or other violent or tumultuous behavior; or make unreasonable noise or offensively coarse utterances, gestures, or displays, or address abusive language to any person present; or create a hazardous or physically offensive condition by any act which is not performed under any authorized license or permit;

(b) Having no legal privilege to do so, knowingly or recklessly obstruct any roadway, alley, runway, private driveway, or public passage, or interfere with or unreasonably delay any emergency vehicle or equipment or authorized vehicle, boat, vessel, or plane, or any peace officer, fireman, or other public official engaged in or attempting to discharge any lawful duty or office, whether alone or with others. ''Obstruction'' as used in this paragraph means rendering impassable without unreasonable inconvenience or hazard;

(c) When in a gathering, refuse to obey a reasonable request or order by a peace officer, fireman, or other public official to move;

(1) To prevent an obstruction of any public road or passage;

(2) To maintain public safety by dispersing those gathered in dangerous proximity to a public hazard; or

(d) With intent to arouse or gratify sexual desire of any other person, expose one's genitals under circumstances in which one's conduct is likely to cause affront or alarm.

§ 38.10 Trespass.

No person on Midway Atoll National Wildlife Refuge shall:

(a) Loiter, prowl, or wander upon or near the assigned living quarters and adjacent property of another without lawful purpose, or, while being upon or near the assigned living quarters and adjacent property of another, peek in any door or window of an inhabited building or structure located thereon without lawful purpose;

(b) Enter upon any assigned residential quarters or areas immediately adjacent thereto, without permission of the assigned occupant;

(c) Enter or remain in, without lawful purpose, any office building, warehouse, plant, theater, club, school, or other building after normal operating hours for that building; or

(d) Enter or remain in any area or building designated and posted as ''restricted'' unless authorized by proper authority to be there.

§ 38.11 Prostitution and lewd behavior.

No person on Midway Atoll National Wildlife Refuge shall:

(a) Engage in prostitution. ''Prostitution'' means the giving or receiving of the body for sexual intercourse for hire or for indiscriminate sexual intercourse with or without hire; or

(b) Commit any lewd act in a public place which is likely to be observed by others who would be affronted or alarmed.

§ 38.12 Alcholic beverages.

No person on Midway Atoll National Wildlife Refuge shall:

(a) Sell any alcoholic beverages to any person who, because of age, would be prohibited from purchasing that beverage in a civilian establishment in Hawaii.

(b) Present or have in possession any fraudulent evidence of age for the purpose of obtaining alcoholic beverages in violation of this paragraph.

(c) Be substantially intoxicated on any street, road, beach, theater, club, or other public place from the voluntary use of intoxicating liquor, drugs or other substance. As used in this paragraph, ''substantially intoxicated'' is defined as an actual impairment of mental or physical capacities.

§ 38.13 Speed limits.

No person on Midway Atoll National Wildlife Refuge shall exceed the speed limit for automobiles, trucks, bicycles, motorcycles, or other vehicles. Unless otherwise posted, the speed limit throughout the Midway Atoll National Wildlife Refuge is 15 miles per hour.

§ 38.14 Miscellaneous prohibitions.

No person on Midway Atoll National Wildlife Refuge shall:

(a) Smoke or ignite any fire in any designated and posted ''No Smoking'' area, or in the immediate proximity of any aircraft, fueling pit, or hazardous material storage area;

(b) Knowingly report or cause to be reported to any public official, or willfully activate or cause to be activated, any alarm, that an emergency exists, knowing that such report or alarm is false. ''Emergency,'' as used herein, includes any condition which results, or could result, in the response of a public official in an emergency vehicle, or any condition which jeopardizes, or could jeopardize, public lives or safety, or results or could result in the evacuation of an area, building, structure, vehicle, aircraft, or boat or other vessel, or any other place by its occupants; or

(c) Intentionally report to any public official authorized to issue a warrant of arrest or make an arrest, that a crime has been committed, or make any oral or written statement to any of the above officials concerning a crime or alleged crime or other matter, knowing such report or statement to be false.

§ 38.15 Attempt.

No person on Midway Atoll National Wildlife Refuge shall attempt to commit any offense prohibited by this part.

§ 38.16 Penalties.

Any person who violates any provision of this part shall be fined or imprisoned in accordance with 16 U.S.C. 668dd(e) and Title 18, U.S. Code.

Subpart D—Civil Administration

§ 38.17 General.

Civil administration of Midway Atoll National Wildlife Refuge shall be governed by the provisions of this part 38, 50 CFR parts 25–32, and the general principles of common law.

Dated: July 27, 1997.

Donald J. Barry,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 97–22714 Filed 8–26–97; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 082097D]

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Scoping Process for Atlantic Sea Herring

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) and notice of scoping process; request for comments.

SUMMARY: The New England Fishery Management Council (Council) announces its intent to prepare a Fishery Management Plan (FMP) for Atlantic sea herring (*Clupea harengus*) and stocks, and to prepare an SEIS to analyze the impacts of any proposed management measures, while the Atlantic States Marine Fisheries Commission (Commission) develops a complementary amendment to its Atlantic Herring FMP under the authority of the Atlantic Coastal Fisheries Cooperative Management Act. The Council and Commission also formally announce a public process to determine the scope of issues to be addressed in the environmental impact analysis. The purpose of this notification is to alert the interested public of the commencement of the scoping process, and to provide for public participation in compliance with environmental documentation requirements.

DATES: The Council will discuss and take scoping comments at public meeetings in September 1997. See SUPPLEMENTARY INFORMATION for specific dates and times. Written scoping comments may be submitted until September 15, 1997.

ADDRESSES: The Council will discuss and take scoping comments at public meetings in Massachusetts, Maine, Rhode Island, and New Jersey. See SUPPLEMENTARY INFORMATION for specific locations. Written comments and requests for copies of the scoping document and other information can be obtained from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906, Telephone (617) 231–0422.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, (617) 231–0422.

SUPPLEMENTARY INFORMATION:

Background

The Atlantic herring fishery is currently managed as one stock along the East Coast from Maine to Cape Hatteras although there is evidence to suggest there are two separate biological stocks. Generally, the resource has been divided into an inshore Gulf of Maine (GOM) and an offshore Georges Bank (GB) component. The most recent stock assessment (1995) concluded that the abundance of the coastal stock complex is currently at a record high level of 3.6 million metric tons (mt), while the most recent estimate of spawning stock biomass (SSB) is 2.1 million mt. The current level of abundance has generated great interest in new and expanded sectors of the herring fishery, including: (1) Maintaining traditional use patterns in the fishery; (2) increasing the bait fishery; (3) increasing participation in cooperative ventures with foreign vessels (Internal Water Processing (IWP) and Joint Venture Processing (JV)); (4) providing a viable alternative fishery to vessels currently in the groundfish fishery; (5) providing opportunities for increased development of U.S. shore-side processing capacity; (6) interest in participating in the fishery from Pacific Coast fishing operations; (7) maintaining high stock abundance for ecological reasons (i.e., maintaining a forage base for base for other species); and (8) providing opportunities for modernization and improvement of the existing East coast vessels to be able to compete in supplying human food export markets.

These potentially competing interests have generated different views on how the herring fishery should be managed in the future. Additionally, the interest in rapid expansion of the fishery has raised concerns about potential overharvest, locally or on the entire stock. In the late 1960s and the early 1970s, excessive foreign fishing led to the collapse of the GB stock. The stock has collapsed a number of times in the past due to over harvesting. There is currently great concern over the condition of the GOM component of the herring population but existing data are insufficient to separate individual

components such as the GOM into distinct stocks.

Current interest in expanding the fishery, from many sectors, has raised the issues of: (1) Appropriate harvest levels overall and by sub-unit; (2) appropriate end uses of herring (food, meal, roe, and bait); (3) appropriate expansions in the fishery (IWP, JV, and use of large factory trawlers); and (4) how to best cooperate with Canadian herring interests.

Current management

The Commission FMP

The goal of the current Herring FMP is to: ''manage Atlantic herring as an interjurisdictional resource in U.S. Atlantic coast waters for sustained optimum utilization while conserving the resource through complimentary management between the New England and Mid-Atlantic Fishery Management Councils, the U.S. Atlantic coastal states, and Canada in a manner which will provide the greatest benefit to the nation.''

To accomplish this goal, the Commission FMP identifies the following eight management objectives:

(1) Maintain the herring resource at or above 20 percent of its maximum spawning potential, while reducing the risk of stock collapse;

(2) promote U.S./Canada cooperation to improve herring stock assessments and establish complementary management practices;

(3) promote research, improve data collection, and improve assessment procedures;

(4) provide adequate protection for spawning herring, prevent damage to egg beds;

(5) avoid patterns of fishing mortality by age which are inconsistent with the goal;

(6) establish complementary management throughout the species range;

(7) promote utilization of the resource which maximizes social and economic benefits to the nation; and

(8) promote recovery of herring on GB and control development of the fishery.

The current Commission FMP imposes no restrictions on domestic fishing or processing activities and because there is not yet a Federal FMP, it does not permit joint venture fishing or processing activities involving foreign owned vessels in federal waters.

Preliminary Management Plan (PMP)

In 1995 a Preliminary Management Plan (PMP) was prepared by NMFS, in cooperation with the Commission and the Council. The purpose of the PMP was to allow joint venture operations for herring in the EEZ. The allocation of fish for joint ventures must take into account current harvesting levels of herring by the domestic, IWP, and Canadian sectors.

Proposed contents of the new Commission FMP Amendment/Federal FMP

A. Additional management objectives

The Council and Commission are considering the following management objectives:

(1) Achieve, on a continuing basis, optimum yield (OY) for the United States fishing industry and to prevent overfishing of the Atlantic sea herring resource;

(2) prevent the overfishing of discrete stock units consistent with the national standards;

(3) provide opportunities for fishermen and vessels displaced by fishing restrictions in other fisheries in the northeast;

(4) implement management measures in close coordination with other federal and state FMPs;

(5) take into account the viability of current participants in the fishery;

(6) provide for the orderly development of the offshore fishery;

(7) maximize shore-side utilization and value-added product; and

(8) achieve full utilization from the catch of herring (minimize the waste from discards in the fishery);

B. Overfishing, OY, and corresponding stock size levels

To achieve the management objectives, the FMP will contain the following:

(1) An overfishing definition;

(2) An estimate of maximum sustainable yield (MSY) and maximum level of fishing mortality which would produce MSY in the long run;

(3) An MSY control rule - a hypothetical harvest strategy which would produce long-term catch approximating MSY;

(4) An estimate of the MSY stock size - the long-term average size of the stock that would be achieved under an MSY control rule in which the fishing mortality rate is constant;

(5) Stock status determination criteria which would allow the Council and the Commission to determine whether the herring resource is overfished or whether overfishing is occurring;

(6) A specification of OY;

(7) Total Allowable Catch (TAC) levels for appropriate stock areas;

(8) Fishery sector allocations including JV and IWP allocations;

(9) Estimates of U.S. harvesting and processing capacity; and

(10) Data reporting requirements for permit holders and processors.

C. Management unit

The management unit for this FMP is defined as the Atlantic herring resource throughout the range of the species within U.S. waters of the northwest Atlantic Ocean from the shoreline to the seaward boundary of the EEZ. This definition is consistent with recent stock assessments which treated the entire resource in U.S. waters of the northwest Atlantic as a single stock. It is also recognized that the herring resource, as defined here, is a transboundary one and that effective assessment and management can be enhanced through cooperative efforts with Canadian scientists and managers.

D. Catch control measures

To ensure the achievement of OY and to prevent overfishing, the Council and the Commission will consider a range of alternatives for limiting the potential catch of herring. Management measures would be consistent throughout the range of the species to the extent practicable. There may, however, be different measures by region if justified.

(1) Target Total Allowable Catch (TAC) levels with effort controls. The Council and the Commission could restrict fishing levels through the following measures to achieve target TACs: (a) Limited entry; (b) closed seasons; (c) closed areas; (d) limits on the amount of fishing time (days-at-sea limits); (e) gear controls including vessel size limits and horsepower restrictions; (f) trip limits; (g) minimum sizes for adults, juveniles or both; and (h) a prohibition on the harvest of herring primarily for the production of fish meal.

(2) Catch quotas. The FMP could close the fishery when target TACs are reached through the following types of quotas: (a) Fleet quota (options include allocating quota annually, seasonally, by vessel category, etc.); (b) vessel catch limits; (c) management area quotas; and (d) sector quotas.

E. Potential habitat protection and stock enhancement measures

(1) Spawning and juvenile protection area closures;

(2) Allowance for predation by other fish and marine mammals;

(3) Gear impact assessments;

(4) Essential fish habitat description and recommendations. NMFS, together with the Council's Habitat PDT, will provide the Council and the ASMFC information about and draft recommendations for the enhancement and protection of the essential fish habitat for herring.

F. Potential bycatch minimization measures

(1) Gear modifications; and

(2) Area closures.

G. Recommendations for future research

(1) Natural mortality (current estimates assume an 18 percent natural mortality rate for herring, including predation by other species); and

(2) Other recommendations.

H. Fishing community considerations

(1) Protection of traditional uses of inshore stocks; and

(2) Description and analysis of impacts on fishing communities.

I. An analysis of the impacts of proposed measures on safety at sea

J. Administrative provisions

(1) A requirement for vessel fishing permits;

(2) A requirement for fishing vessel operator permits;

(3) Dealer permits; and

(4) Requirement to provide end-use information on IWP permits.

K. Data needs

(1) Reporting of landings from stock components;

(2) Mandatory observer coverage; and

(3) Data on end-products and uses.

L. The Commission/Council process for allocating herring among JV and IWP operations

Scoping Process

All persons affected by or otherwise interested in herring fisheries management are invited to participate in determining the scope and significance of issues to be analyzed by submitting written comments (see **ADDRESSES**) or attending one of the scoping hearings. Scope consists of the range of actions, alternatives, and impacts to be considered. Alternatives include not developing a management plan (taking no action), developing amendments to existing plans or other reasonable courses of action. Impacts may be direct, indirect, individual or cumulative. The scoping process also will identify and eliminate from detailed study issues that are not significant. Once a draft management plan and an Environmental Impact Statement or Environmental Assessment is developed, the Council and Commission will hold public hearings to receive comments.

Public Meeting Schedule

The Council will discuss and take scoping comment at public meetings as follows:

(1) September 2, 1:00 p.m, Gloucester House Restaurant, Seven Seas Wharf, Gloucester, MA, (508) 283–1812;

(2) September 3, 1:00 p.m., Maine Dept. of Marine Resources Fisheries Laboratory, 194 McKown Point Road, Boothbay Harbor, ME, (207) 633–9500;

(3) September 9, 1:00 p.m., Holiday Inn, Route 1, South Kingston, RI, (401) 789–1051; and

(4) September 11, 7:00 p.m., Rutgers Marine Advisory Service, Cape May County Extension Office, Dennisville Road, Rt. 657, Cape May Courthouse, NJ, (609) 465–5115.

Additional scoping meetings may be scheduled as needed.

Special Accommodations

The meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see ADDRESSES) at least 5 days prior to the meeting date.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 21, 1997.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–22838 Filed 8-26-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 081997A]

License Limitation Program; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of meetings.

SUMMARY: NMFS announces two meetings to discuss the proposed rule that would implement Amendments 39, 41, and 5 to the fishery management plans for groundfish off Alaska and crab in and off Alaska (License Limitation Program). The purpose of these meetings is to explain provisions of the proposed rule and to answer questions presented at the meetings by members of the affected fishing industry and other interested parties.

DATES: The meetings are scheduled as follows:

1. September 5, 1997, 1 p.m. to 4 p.m., PDT, Seattle, WA.

2. September 12, 1997, 1 p.m. to 4 p.m., ADT, Anchorage, AK.

ADDRESSES: The meetings will be held at the following locations:

1. Seattle—7600 Sand Point Way, NE, Building 4 (Room 1055, Observer Training Room), Seattle, WA 98115.

2. Anchorage—707 ''A'' Street (Suite 210), Anchorage, AK 99501.

FOR FURTHER INFORMATION CONTACT: John Lepore, 907-586-7228.

SUPPLEMENTARY INFORMATION: These meetings are scheduled by NMFS in response to requests by the affected fishing industry to discuss particular aspects of the License Limitation Program as found in the proposed rule published on August 15, 1997 (62 FR 43866). These meetings will be held while the public comment period for the proposed rule is open; however, these meetings are informative only and will not be used to obtain public comment on the proposed rule. For comments to be considered in the development of the final rule, they must be in writing and received prior to September 29, 1997. Written comments on the proposed rule must be sent to Chief, Fisheries Management Division, Alaska Region, NMFS, 709 W. 9th Street, Room 453, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

Dated: August 20, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–22616 Filed 6–26–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 166
Wednesday, August 27, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent to grant exclusive license.

SUMMARY: Notice is hereby given that a Federally owned cultivar, Plant Variety Protection Certificate Application Serial Number 96–00–341, entitled ''Bannock Thickspike Wheatgrass,'' is available for licensing and that the U.S. Department of Agriculture, Natural Resources Conservation Service, intends to grant an exclusive license for this variety to the Idaho Agricultural Experiment Station.

DATES: Comments must be received within 90 calendar days from the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, MWA, Office of the Director, National Center for Agricultural Utilization Research, 1815 N. University Street, Peoria, Illinois 61604.

FOR FURTHER INFORMATION CONTACT: Andrew Watkins, Technology Development Manager at the Peoria address given above; telephone: 309–681–6545.

SUPPLEMENTARY INFORMATION: The Federal Government's plant variety protection rights to this variety are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention, for the Idaho Agricultural Experiment Station has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety days from the date of this published Notice, ARS receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

R.M. Parry,

Assistant Administrator.

[FR Doc. 97–22758 Filed 8–26–97; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 97–067–1]

Bejo Zaden BV; Receipt of Petition for Determination of Nonregulated Status for Genetically Engineered Radicchio Rosso

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Bejo Zaden BV seeking a determination of nonregulated status for Radicchio rosso lines designated as RM3–3, RM3–4, and RM3–6, which have been genetically engineered for male sterility and tolerance to the herbicide glufosinate as a marker. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting public comments on whether these Radicchio rosso lines present a plant pest risk.

DATES: Written comments must be received on or before October 27, 1997.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–067–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 97–067–1. A copy of the petition and any comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing access to that room to inspect the petition or comments are asked to call in advance of visiting at (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Subhash Gupta, Biotechnology Evaluation, BSS, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–8761. To obtain a copy of the petition, contact Ms. Kay Peterson at (301) 734–4885; e-mail: mkpeterson@aphis.usda.gov.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for determination of nonregulated status must take and the information that must be included in the petition.

On May 28, 1997, APHIS received a petition (APHIS Petition No. 97–148–01p) from Bejo Zaden BV (Bejo) of Warmenhuizen, The Netherlands, requesting a determination of nonregulated status under 7 CFR part 340 for male sterile, glufosinate-tolerant Radicchio rosso (red-hearted chicory) lines designated as RM3–3, RM3–4, and RM3–6. The Bejo petition states that the subject Radicchio rosso lines should not be regulated by APHIS because they do not present a plant pest risk.

As described in the petition, Radicchio rosso (*Cichorium intybus L.*) lines RM3–3, RM3–4, and RM3–6, have been genetically engineered with a *barnase* gene from *Bacillus amyloliquefaciens* encoding a ribonuclease which inhibits pollen

formation and results in male sterility of the transformed plants. The subject Radicchio rosso lines also contain the *nptII* selectable marker gene and the *bar* gene isolated from the bacterium *Streptomyces hygroscopicus.* The *bar* gene encodes a phosphinothricin acetyltransferase (PAT) enzyme, which, when introduced into a plant cell, inactivates glufosinate. Linkage of the *barnase* gene, which induces male sterility, with the *bar* gene, a glufosinate tolerance gene used as a marker, enables identification of the male sterile line for use in the production of pure hybrid seed. The subject Radicchio rosso lines were transformed by the *Agrobacterium tumefaciens* method, and expression of the introduced genes is controlled in part by gene sequences derived from the plant pathogen *A. tumefaciens.*

Radicchio rosso lines RM3–3, RM3–4, and RM3–6 are currently considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences derived from the plant pathogen *A. tumefaciens.* The subject Radicchio rosso lines have been evaluated in field trials conducted since 1993 in Europe, and since 1995 in the United States. In the process of reviewing the permit applications for the U.S. field trials of these Radicchio rosso lines, APHIS determined that the trials, which were conducted under conditions of reproductive and physical containment or isolation, would not present a risk of plant pest introduction or dissemination.

In the Federal Plant Pest Act, as amended (7 U.S.C. 150aa *et seq.*), ''plant pest'' is defined as ''any living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured or other products of plants.'' APHIS views this definition very broadly. The definition covers direct or indirect injury, disease, or damage not just to agricultural crops, but also to plants in general, for example, native species, as well as to organisms that may be beneficial to plants, for example, honeybees, rhizobia, etc.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt by EPA regulation. In cases in which the genetically modified plants allow for a new use of an herbicide or involve a different use pattern for the herbicide, the EPA must approve the new or different use. In conducting such an approval, the EPA considers the possibility of adverse effects to human health and the environment from the use of this herbicide. When the use of the herbicide on the genetically modified plant would result in an increase in the residues of the herbicide in a food or feed crop for which the herbicide is currently registered, or in new residues in a crop for which the herbicide is not currently registered, establishment of a new tolerance or a revision of the existing tolerance would be required. Residue tolerances for pesticides are established by the EPA under the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 301 *et seq.*), and the Food and Drug Administration (FDA) enforces tolerances set by the EPA under the FFDCA.

The FDA published a statement of policy on foods derived from new plant varieties in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). The FDA statement of policy includes a discussion of the FDA's authority for ensuring food safety under the FFDCA, and provides guidance to industry on the scientific considerations associated with the development of foods derived from new plant varieties, including those plants developed through the techniques of genetic engineering. Bejo has begun consultation with FDA on the subject Radicchio rosso lines.

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the Petition for Determination of Nonregulated Status from any interested person for a period of 60 days from the date of this notice. The petition and any comments received are available for public review, and copies of the petition may be ordered (see the **ADDRESSES** section of this notice).

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. Based on the available information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of the Bejo Zaden BV Radicchio rosso lines RM3–3, RM3–4, and RM3–6 and the availability of APHIS' written decision.

Authority: 7 U.S.C. 150aa-150jj, 151–167, and 1622n; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(c).

Done in Washington, DC, this 21st day of August 1997.

Terry L. Medley,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–22760 Filed 8–26–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Information Collection To Improve Methods of Measuring Public Benefits of Natural Resource Management and Agency Communication

AGENCY: Forest Service, USDA.

ACTION: Notice of intent; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to establish a new information collection. The new collection will provide information that will help Forest Service personnel better identify and measure the benefits that the public perceives and demands from public lands. The agency also will use the information collection to evaluate and improve its methods of communicating with the public about Forest Service programs and services. Respondents will be randomly selected members of the general public, both users and non-users of National Forest System lands and grasslands. Data gathered in this information collection is not available from other sources.

DATES: Comments must be received in writing on or before October 27, 1997.

ADDRESSES: All comments should be addressed to George Peterson, Rocky Mountain Forest and Range Experiment Station, Forest Service, USDA, 3825 East Mulberry, Fort Collins, CO 80524.

FOR FURTHER INFORMATION CONTACT: George Peterson, Rocky Mountain Forest and Range Experiment Station, at (970) 498–1885.

SUPPLEMENTARY INFORMATION:

Background

The mission of the Forest Service is ''caring for the land and serving the people.'' As the U.S. population grows and diversifies, demands on natural resources from the public lands are increasing. Public perceptions of forests seem to be changing from the forest as a source of products to the forest as a source of services. Currently, the agency is unable to accurately identify and

measure the services and benefits the public perceives, needs, expects, or demands from the land. Research is needed to develop more accurate measures of what the public wants in order for the agency to meet these wants. So, Forest Service research personnel will ask members of the public to help the agency develop more effective methods of evaluating and measuring their needs and expectations.

The agency will use a two-phase information collection approach which includes focus groups and experimental applications. During Phase I, the focus group phase, the agency will ask small groups of people, selected to represent a diverse cross-section of the public, to identify benefits that they perceive from the land resource. The goal of this phase will be to determine a baseline of information on what members of the public know about the land, its natural resources, the benefits available therefrom, and the terminology they use to describe these benefits. The agency also will ask focus groups to construct alternative question formats that will allow the determination and measurement of preferences, values, concerns, expectations, and sources of conflict related to perceived benefits.

In Phase II, Forest Service personnel will use the results of the focus groups to design, test, and apply information collection measures and methods, including interactive computerized interviews, personal interviews, and mail-in questionnaires. Using these alternative formats, Forest Service personnel will conduct surveys of users and non-users of National Forest System lands and grasslands to obtain rankings, weightings, values, or other measures of benefits that people receive, perceive to be available, expect, or demand from natural resources on the public lands.

Results of this research, and subsequent application of the experimental measures and methods developed, will help the agency better understand public demands for its programs and services, how well it communicates its programs and services to the public, and how well it meets the needs and expectations of the public.

Once the research project has been completed, the Forest Service will publish the results of the data collection in Forest Service Research Station papers for agency use and will submit articles to scientific journals, such as the ''Journal of Environmental Management,'' the ''Journal of Environmental Psychology,'' or the ''Journal of Leisure Research.''

Description of Information Collection

Title: Phase I—Focus Groups to Improve Methods to Measure Public Benefits of Forest Service Communication and Natural Resource Management.

OMB Number: New.

Expiration Date of Approval: New.

Type of Request: The following describes Phase I of a new collection requirement and has not received approval from the Office of Management and Budget.

Abstract: The agency will use a series of small focus groups to identify, using the focus groups' own terminology and understandings, benefits that members of the public perceive from the public lands. The focus groups also will be asked to design alternative question formats to identify and measure preferences, values, concerns, expectations, and sources of conflict related to their perceived benefits.

The focus group phase of the research will be sequential and developmental; that is, each focus group will build on the results of the previous group. The first group will be asked to identify and discuss benefits from natural resources and public lands. Ideas, terms, issues, concerns, and other information that surface from this group will become the baseline from which the next focus group will begin. Successive groups will develop, discuss, and refine alternative question formats. In this way, the agency will learn how people describe, measure, and rank benefits. The number of individuals in each focus group, the issues addressed, and the time required will vary from group to group, depending on what is learned as the focus group phase of the research progresses.

Forest Service research personnel and/or professional facilitators will facilitate focus group discussions.

Data gathered in this information collection are not available from other sources.

Estimated Burden per Respondent: 2 hours.

Type of Respondents: Voluntarily responding individuals chosen to represent a diverse cross section of the general public, including both visitors and non-visitors to National Forest System lands and grasslands.

Estimated Number of Respondents: 72.

Estimated Number of Responses per Respondent: 1.

Estimated total burden on respondents: 144 hours.

Description of Information Collection

Title: Phase II—Experimental Applications to Improve Methods to Measure Public Benefits of Forest Service Communication and Natural Resource Management.

OMB Number: New.

Expiration Date of Approval: New.

Type of Request: The following describes Phase II of a new collection requirement and has not received approval from the Office of Management and Budget.

Abstract: Forest Service research personnel will use the issues and methods developed by the focus groups to design, test, and apply information collection methods and measures, including interactive computerized interviews, personal interviews, and mail-in questionnaires. These will be used to collect information from the public to obtain rankings, weightings, values, or other measures of benefits that people receive, perceive to be available, expect, or demand from natural resources on the public lands.

Forest Service personnel will use the results to evaluate whether the agency's land management programs produce the benefits desired by the public and to evaluate agency information dissemination to the public about Forest Service programs and the benefits they are designed to deliver.

Data gathered in this information collection are not available from other sources.

Estimated Burden per Respondent: 30 minutes.

Type of respondents: Voluntarily responding individuals selected from the general public using random processes; these will include users of and visitors on National Forest System lands and grasslands, as well as non-users and non-visitors.

Estimated Number of Respondents: 1,900.

Number of Responses per Respondent: 1.

Estimated Total Burden on Respondents: 950 hours.

Comments Are Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical or scientific utility; (b) the accuracy of the estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated, mechanical, or other

technological collection techniques or other forms of information technology.

Use of Comments

All comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval. Those who submit comments should be aware that all comments, including names and addresses when provided, are placed in the record and are available for public inspection.

Dated: August 20, 1997.

Ronald E. Stewart,

Acting Associate Chief.

[FR Doc. 97–22732 Filed 8–26–97; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

California Spotted Owl Federal Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Spotted Owl Federal Advisory Committee will meet on September 11–13, 1997, in Visalia, California. This is the third meeting of the committee. The three day meeting will be a working session for the advisory committee; the public is invited to observe.

Those needing California Spotted Owl RDEIS documents should contact Mike Skinner at (415) 705–1870.

DATES: The meeting will be held September 11–13, 1997, as follows: Thursday, September 11, 8:00 A.M.–5:00 P.M., 7:00–10:00 P.M.; Friday, September 12, 8:00 A.M.–5:00 P.M., 7:00–10:00 P.M.; Saturday, September 13, 8:00 A.M.–3:00 P.M.

ADDRESSES: The meeting will be held at the Radisson Hotel, 300 South Court, Visalia, California, 93291, phone (209) 636–1111.

FOR FURTHER INFORMATION CONTACT:

Charles Philpot, Committee Chair, (503) 808–2113; or Jonathan Stephens, Forest Service, (202) 205–0948; or Katherine Clement, (415) 705–1834.

Dated: August 21, 1997.

Michael D. Srago,

Acting Assistant Regional Forester, Ecosystem Conservation.

[FR Doc. 97–22727 Filed 8–26–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Housing Service, USDA.

ACTION: Proposed collection, comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service's (RHS) intention to request an extension for a currently approved information collection in support of the program for Fire and Rescue Loans.

DATES: Comments on this notice must be received by October 27, 1997 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Yoonie MacDonald, Loan Specialist, Community Programs Division, RHS, U.S. Department of Agriculture, Stop 3222, 1400 Independence, SW., Washington, DC 20250–3222. Telephone (202) 720–1501.

SUPPLEMENTARY INFORMATION:

Title: Fire and Rescue Loans.

OMB Number: 0575–0120.

Expiration Date of Approval: January 31, 1998.

Type of Request: Extension of a currently approved information collection.

Abstract: The Fire and Rescue Loan program is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public entities, nonprofit corporations, and Indian tribes for the development of community facilities for public use in rural areas and is covered by 7 CFR 1942–C. The primary regulation for administering the Community Facilities program is 7 CFR 1942–A (OMB Number 0575–0015) which outlines eligibility, project feasibility, security, and monitoring requirements.

The Community Facilities fire and rescue program has been in existence for many years. This program has financed a wide range of fire and rescue projects varying in size and complexity from construction of a fire station with firefighting and rescue equipment to financing a 911 emergency system. These facilities are designed to provide fire protection and emergency rescue services to rural communities.

Information will be collected by the field offices from applicants, borrowers, and consultants. This information will be used to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use funds for authorized purposes. Failure to collect proper information could result in improper determination of eligibility, improper use of funds, and/or unsound loans.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 2.16 hours per response.

Respondents: Not-for-profit institutions, state, local or Tribal governments.

Estimated Number of Respondents: 1,130.

Estimated Number of Responses per Respondent: 2.73.

Estimated Total Annual Burden on Respondents: 6,695.

Copies of this information collection can be obtained from Barbara Williams, Regulations and Paperwork Management Branch, (202) 720–9734.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of RHS, including whether the information will have practical utility; (b) the accuracy of RHS's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Barbara Williams, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, 1400 Independence Ave., SW., STOP 0743, Washington, DC 20250–0743. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: August 19, 1997.

Jan E. Shadburn,

Acting Administrator, Rural Housing Service.

[FR Doc. 97–22711 Filed 8–26–97; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Submission for OMB; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for

clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act of 1995, Pub.L. 104–13.

Agency: International Trade Administration (ITA).

Title: Trade Events/Mission Application and Participation Agreement.

Form Number: ITA–4008P, ITA–4008P–1 and ITA–4008P–A.

OMB Number: 0625–0147.

Type of Review: Revision—Regular Submission.

Burden: 2,625 hours.

Number of Respondents: 7,500.

Avg. Hour Per Response: 20–50 minutes.

Needs and Uses: The ITA–4008P ''Participation Agreement,'' is the vehicle by which individual firms agree to participate in any of ITA's trade promotion programs, and record their required participation fee to the U.S. Department of Commerce (DOC). Together with the relevant ITA–4008P ''Conditions of Participation,'' it forms a contract between an individual firm and the DOC. The Trade Mission Application is used to solicit information from firms seeking to participate in DOC overseas trade missions covered by the Statement of Policy Governing Overseas Trade Missions of the Department of Commerce issued by Secretary Daley on March 3, 1997. The Secretary's statement of policy provides that each company seeking to take part in overseas trade missions must certify that:

(a) the export of the products and services that the company wishes to sell would be in compliance with U.S. export controls and regulations;

(b) the company has identified to the Department of Commerce for its evaluation any business pending before the Department of Commerce that may present the appearance of a conflict of interest;

(c) the company has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and

(d) the company agrees that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with the applicant's involvement in this event, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

The revisions to Form 4008P involve the collection of additional information about the products or services that a company wishes to export, and modification of several questions based on comments received from DOC trade event managers and participants. In April 1997, ITA obtained OMB approval for a combined trade mission application and participation agreement form which would be used for all trade events and ITA services. Since that time, ITA has determined that it is more appropriate and effective to have two separate forms—a one-page Participation Agreement and a separate ITA–4008P–1 ''Trade Mission Application,'' form. In addition the Participation Agreement and Trade Mission Application collection of information is being simplified to ask only for information that is absolutely necessary to provide the requested service and collect the participation fee. Trade mission participants will be required to complete the Forms ITA–4008P, ITA–4008P–1 and ITA–4008P–A. Other DOC trade event participants will complete Forms ITA–4008P and ITA–4008P–A.

Affected Public: Companies seeking to apply to participate in overseas Commerce Department trade promotion events and missions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Victoria Baecher-Wassmer, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days to Victoria Baecher-Wassmer, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: August 21, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 97–22745 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration.

Title: Bluefin Tuna Statistical Document.

Agency Form Number: None.

OMB Control Number: 0648–0040.

Type of Request: Revision of a currently approved collection.

Burden: 315 hours.

Avg. Hours Per Response: 20 minutes for Bluefin Tuna Statistical Document and 2 hours for validation authority.

Needs and Uses: U.S. tuna dealers who import or export bluefin tuna are required to complete and transmit to the National Marine Fisheries Service a Bluefin Tuna Statistical Document (BSD) as required by the International Commission for the Conservation of Atlantic tunas (ICAAT). Foreign tuna deals who export to the United States must ensure that an original validated BSD accompanies imports.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion, recordkeeping.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: August 21, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer.

[FR Doc. 97–22813 Filed 8–26–97; 8:45 am]

BILLING CODE: 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology.

Title: Manufacturing Extension Partnership Program Evaluation Survey.

Agency Form Number: None.

OMB Approval Number: 0693–0021.

Type of Request: Extension of a currently approved collection.

Burden: 1,800 hours.

Avg. Hours Per Response: Approximately 10 minutes

Needs and Uses: The goal of the Manufacturing Extension Partnership program is to improve global competitiveness of U.S. manufacturing establishment. A variety of services are provided by over 70 centers. This collection, conducted in partnership with the U.S. Census Bureau, measures the impacts of those services on the nation's manufacturers.

Affected Public: Businesses or other for-profit organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Virginia Huth, (202) 395–6929.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Virginia Huth, OMB Desk Officer, Room 10236, New Executive Office Building, 725 17th Street, N.W., Washington, D.C. 20503.

Dated: August 21, 1997.

Linda Engelmeier,

Departmental Forms Clearance Officer.

[FR Doc. 97–22814 Filed 8–26–97; 8:45 am]

BILLING CODE: 3510–13–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility to Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 07/23/97–08/20/97

Firm name	Address	Date petition accepted	Product
Penley Corporation	P.O. Box 277, West Paris, ME 04289.	07/30/97	Wooden Clothespins, Lumber, Wood Craft Products, and Toothpicks.
Mechanism Design, Inc	4325 Sarellen Road, Richmond, VA 23231.	07/30/97	Precision Machined Parts for Various End Uses, Primarily Tobacco Processing Equipment and Escalator.
Mountain Woods, Inc	20631 Highway 2, East Glacier Park, MT 59434.	08/01/97	Cutlery.
Jonco Diversified's, L.L.C	P.O. Box 515, Waynesville, MO 65583.	08/04/97	Walnut Wood Trophies.
Plastic Craft Jewelry Co., Inc	12 Dunham Street, Attleboro, MA 02703.	08/04/97	Ladies Costume Jewelry and Giftware—Pewter and Metal Statutes, and Keyrings.
Trooper, Inc	2804 Wilco Avenue, Augusta, GA 30904.	08/04/97	Men's and Boy's Trousers and Shirts.
Key Industries, Inc	400 Marble Road, Fort Scott, KS 66701.	08/06/97	Workpants, Overalls, Coveralls, Jackets and Shirts.
Quick Cast Ltd	P.O. Box 1055, 5500 Peru Street, Plattsburgh, NY 12901.	08/06/97	Zinc Die Cast Buckles.
Service Manufacturing Group, Inc. (The).	601 Northland Avenue, Buffalo, NY 14211.	08/06/97	Large Metal Enclosures, Industrial Control Systems and Machined Metal Parts.
Circuit Connect, Inc	4 State Street, Nashua, NH 03063.	08/08/97	Printed Circuit Boards.
Cirque Works, L.L.C	1650 SW Highland Parkway, Portland, OR 97221.	08/12/97	Sporting Goods.
NTR, Inc., dba Blue Water Ltd.	209 Lovvorn Road, Carrollton, GA 30117.	08/15/97	Ropes and Harnesses of Nylon, Carbiners and Hardware for Recreational Climbing.
Seattle Gear, Inc	2245 First Avenue South, Seattle, WA 98134.	08/15/97	Women's Designer Sprotswear.
HNL, Inc	3250 Victor Street, Building C, Santa Clara, CA 95054.	08/15/97	Precision Microwave Components.
Cranston Print Works Company	1381 Cranston Street, Cranston, RI 02920.	08/20/97	Printed Textile Fabric.
Gold Seal Tank Co	27 Lowell Street, Fall River, MA 02722.	08/20/97	Above Ground Oil Storage Tanks.
Shuttle-Tex, Inc	5821 Adams Street, West New York, NJ 07093.	08/20/97	Schiffli Embroidery and Venise Lace.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than the close of business of the

tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: August 19, 1997.

Anthony J. Meyer,

Coordinator, Trade Adjustment and Technical Assistance.

[FR Doc. 97–22839 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–24–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, U.S. Department of Commerce.

ACTION: Notice of request for public comments on the potential market impact of proposed new material disposals and proposed revisions to current disposal levels of certain National Defense Stockpile commodities under the Fiscal Year (FY) 1998 Annual Materials Plan (AMP).

SUMMARY: This notice is to advise the public that the interagency National Defense Stockpile Market Impact Committee is seeking public comment on the potential market impact of Department of Defense proposed new material disposals for Beryllium Copper Master Alloy, Chromium (Metal), Columbium (Carbide), Columbium (Minerals), Titanium Sponge, Tungsten (Ores & Concentrates), Tungsten (Carbide), Tungsten (Metal Powder), and Tungsten (Ferro) under a revised FY 1998 AMP. In addition, the revised AMP proposal includes raising the current FY 1998 disposal levels for Palladium, Platinum, and Bauxite (Surinam).

DATES: Comments must be received by September 26, 1997.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Richard Watkins, International Commodities Division, U.S. Department of State, (202) 647–2871; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended (50 U.S.C. 98 *et seq.*) (the Act), the Department of Defense (as National Defense Stockpile Manager) maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense. The Act (50 U.S.C. 98h–1) formally established a Market Impact Committee (the Committee) to ''advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposals of materials from the stockpile * * *.'' The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury and the Federal Emergency Management Agency and is co-chaired by the Departments of Commerce and State. The Act directs the Committee to ''consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile.''

The Committee is now considering Defense's proposed new National Defense Stockpile material disposal levels and revisions to current Stockpile material disposal levels under the FY 1998 AMP. These materials are currently under Congressional consideration for disposal in FY 1998. The Committee is seeking public comment on the potential market impact of the sale of these materials in the event that Congress does grant such disposal authority.

The new materials list identified below is proposed for inclusion in the FY 1998 AMP:

PROPOSED NEW MATERIAL DISPOSAL AUTHORITY FOR FY 1998

Material	Units	Current FY 1998 quantity	Revised FY 1998 quantity
Beryllium Copper Master Alloy	ST	0	1,250
Chromium (Metal)	ST	0	500
Columbium (Carbide)	LBS Cb	0	21,372
Columbium (Minerals)	LBS Cb	0	200,000
Titanium Sponge	ST	0	4,000
Tungsten (Ores & Concentrates)	LBS W	0	2,000,000
Tungsten (Carbide)	LBS W	0	100,000
Tungsten (Metal Powder)	LBS W	0	100,000
Tungsten (Ferro)	LBS W	0	100,000

The following list of materials are presently included in the FY 1998 AMP. However, DNSC proposes to increase the maximum disposal authority for these materials.

PROPOSED REVISIONS TO FY 1998 AMP

Material	Units	Current FY 1998 quantity	Revised FY 1998 quantity
Palladium	Tr Oz	15,000	300,000
Platinum	Tr Oz	10,000	125,000
Bauxite (Surinam)	LDT	300,000	800,000

The proposed FY 1998 disposal quantity for each listed material is the maximum amount of material that may be sold in a particular fiscal year. Please note that these quantities are not sales targets. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time of the offering. It will also depend on the maximum quantity of each material approved for disposal by the Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of any commodity in the above lists. Although comments in response to this Notice must be received by September 26, 1997 to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of the commodities. Public comment is an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified or business confidential will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: August 21, 1997.

Karen A. Swasey,

Director, Economic Analysis Division.

[FR Doc. 97–22708 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 916]

Grant of Authority for Subzone Status; Minnesota Mining & Manufacturing Company; (Pharmaceutical Products) Los Angeles, California

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Board of Harbor Commissioners of the City of Los Angeles, California, grantee of Foreign-Trade Zone 202, for authority to establish special-purpose subzone status at the pharmaceutical manufacturing plant of the Minnesota Mining & Manufacturing Company, in Los Angeles, California, was filed by the Board on May 15, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 41–96, 61 FR 26157, 5–24–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, Therefore, the Board hereby grants authority for subzone status at the pharmaceutical manufacturing plant of the Minnesota Mining & Manufacturing Company, located in Los Angeles, California (Subzone 202A), at the location described in the application, and subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 20th day of August 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–22818 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket A(32b1)–3–97]

Foreign-Trade Zone No. 143—Sacramento, CA Area, Request for Manufacturing Authority (Computers and Related Electronic Products), Lincoln, California

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Zytec Services and Logistics (ZSL), an operator of FTZ 143, pursuant to § 400.32(b)(1) of the Board's regulations (15 CFR part 400), requesting authority on behalf of ZSL to manufacture and assemble computers and related electronic products and subassemblies within FTZ 143. It was formally filed on August 19, 1997.

ZSL operates a facility (800 employees) within FTZ 143 (Site 2 (6 acres, 2 bldgs.) at the Lincoln Airport Business Park) for the manufacture, assembly, distribution, repair and final systems integration of computers and related electronic products and components. Most of ZSL's manufacturing and assembly activity at this site involves contract work for computer and electronic product manufacturers, and includes contract service and repair activity. The manufacturing activity that ZSL proposes to conduct under FTZ procedures at the outset would primarily involve the manufacture/assembly of personal computers, monitors, printers and peripherals such as optical scanners and digital imaging cameras.

A number of components are purchased from abroad (an estimated 70% of total material value), including: Printed circuit boards, silicon wafers, rectifiers, integrated circuits, memory modules, CD-ROM drives, disk drives, scanners, hard drives, keyboards, monitors/displays (CRT and LCD type), LEDs, speakers, microphones, belts, valves, bearings, plastic materials, industrial chemicals, sensors, filters, resistors, transducers, fuses, plugs, relays, ink cartridges, toner cartridges, switches, fasteners, cards, transformers, DC/electric motors, magnets, modems, batteries, cabinets, power supplies,

cables, copper wire, power cords, optical fiber, casters, cases, labels, and packaging materials (1997 duty range: Free—9.2%). Some 30 percent of the finished products are exported.

Zone procedures would exempt ZSL from Customs duty payments on foreign components used in export production. On its domestic sales, ZSL would be able to choose the lower duty rate that applies to the finished products (free—6.6%) for the foreign components noted above. The application indicates that the savings from zone 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 27, 1997. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to November 10, 1997).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: August 20, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–22821 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 73–96]

Withdrawal of Application; Foreign-Trade Zone 198—Volusia County, Florida; Request for Manufacturing Authority, Capo, Inc. (Sunglasses/Reading Glasses)

Notice is hereby given of the withdrawal of the application submitted by the County of Volusia, Florida, grantee of FTZ 198, requesting authority on behalf of Capo, Inc., to manufacture sunglasses/reading glasses (HTS #9004.10) under FTZ procedures. The application was formally filed on October 9, 1996 (61 FR 54765, 10/22/96).

The withdrawal was requested by the applicant because of changed circumstances, and the case has been closed without prejudice.

Dated: August 20, 1997.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 97–22820 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 915]

Grant of Authority for Subzone Status; Fujitsu Ten Corp. of America; (Automotive Audio Products, Electronic Components) Rushville, Indiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act ''To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' as amended (19 U.S.C. 81a–81u) (the FTZ Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, for authority to establish special-purpose subzone status for the automotive audio products and electronic components manufacturing plant of Fujitsu Ten Corp. of America, in Rushville, Indiana, was filed by the Board on August 19, 1996, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 64–96, 61 FR 45399, 8–29–96); and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status at the Fujitsu Ten Corp. of America plant in Rushville, Indiana (Subzone 72M), at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 20th day of August 1997.

Robert S. LaRussa,

Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

[FR Doc. 97–22819 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–506]

Porcelain-on-Steel Cooking Ware From the People's Republic of China: Initiation of Changed Circumstances Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of changed circumstances Antidumping Duty Administrative Review.

SUMMARY: In response to a request from Clover Enamelware Enterprises Ltd. (Clover) and Lucky Enamelware Factory Ltd. (Lucky), the Department of Commerce (the Department) is initiating a changed circumstances administrative review of the antidumping duty order on porcelain-on-steel (POS) cooking ware from the People's Republic of China (PRC) to determine whether to revoke the order, in part, with respect to tea kettles. Clover and Lucky (Clover/Lucky) assert that the sole U.S. producer of POS cooking ware, General Housewares Corporation (GHC), affirmatively stated in its request for a changed circumstances review of the antidumping order on POS cooking ware from Taiwan that it no longer manufactures POS tea kettles and thus has no interest in the importation or sale of POS tea kettles. See Porcelain-on-Steel Cooking Ware from Taiwan: Final Results of Changed Circumstances Antidumping Administrative Review, and Revocation in Part of Antidumping Duty Order 62 FR 10024 (March 5, 1997) (Taiwan: Final Results of Changed Circumstances Review). According to Clover/Lucky, GHC's statements in the Taiwan case should be the basis for revoking, in part, the PRC order on POS cooking ware, with respect to tea kettles.

EFFECTIVE DATE: August 27, 1997.

FOR FURTHER INFORMATION CONTACT: Suzanne King or Lorenza Olivas, Office

of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as set forth at 19 CFR 353.1, *et seq.*, as amended by the interim regulations published in the **Federal Register** on May 11, 1995 (60 FR 25130), which were applicable on May 30, 1997, the date of Clover/Lucky's request for a changed circumstances administrative review of the antidumping duty order on POS cooking ware from the PRC.

Background

On May 30, 1997, Clover/Lucky requested that the Department conduct a changed circumstances administrative review to determine pursuant to 19 CFR 353.25(d) whether to revoke, in part, the antidumping duty order on POS cooking ware from the PRC with regard to tea kettles. The basis for this request is that GHC, the sole U.S. producer of POS cooking ware, affirmatively stated in its request for a changed circumstances review of the antidumping order on POS cooking ware from Taiwan that it no longer manufactures POS tea kettles and thus has no interest in the importation or sale of POS tea kettles. Based on GHC's affirmative statement of no interest, with respect to tea kettles, submitted in the proceeding on the antidumping duty order on POS cooking ware from Taiwan, the Department revoked the antidumping order on POS cooking ware from Taiwan, in part, with respect to tea kettles. See Taiwan: Final Results of Changed Circumstances Review. Clover/Lucky assert that GHC's broad statements in the Taiwan case should be the basis for revoking, in part, the order with respect to tea kettles in the PRC case.

On May 30, 1997, Clover/Lucky also requested that the Department publish concurrently its notice of initiation and preliminary results of changed circumstances review, pursuant to 19 CFR 353.25(d)(2). Clover/Lucky assert that GHC's affirmative statement of no interest in the importation or sale of POS tea kettles submitted by it in the Taiwan case should be considered a statement of no interest in the importation or sale of POS cooking ware from the PRC. Thus, Clover/Lucky argue that expedited treatment of their request for a changed circumstances review of the PRC antidumping duty order is warranted.

Scope of Review

The products covered by this antidumping order are POS cooking ware, including tea kettles, which do not have self-contained electric heating elements. All of the foregoing are constructed of steel and are enameled or glazed with vitreous glasses. Kitchenware is not subject to this order. See Antidumping Duty Order: Porcelain-on-Steel Cooking Ware from the People's Republic of China, 51 FR 43414 (December 2, 1986).

The products covered by this changed circumstances review are tea kettles from the PRC. Imports of tea kettles are currently classifiable under the harmonized tariff schedule (HTS) subheading 7323.94.00.10. The HTS subheading is provided for convenience and U.S. Customs purposes. Our written description of the scope of this proceeding is dispositive. The order with regard to imports of other POS cooking ware is not affected by this request.

Initiation of Changed Circumstances Antidumping Duty Administrative Review

Pursuant to section 751(d) of the Act, the Department may partially revoke an antidumping duty order based on a review under section 751(b) of the Act. Pursuant to section 751(b) of the Act, the Department will conduct a changed circumstances administrative review upon receipt of information concerning, or a request from an interested party for a review of, an antidumping duty order which shows changed circumstances sufficient to warrant a review of the order. See section 751(b)(1) of the Act.

The Department's regulations at 19 CFR 353.25(d)(2) permit the Department to conduct a changed circumstances administrative review under section 353.22(f) based upon the existence of changed circumstances sufficient to warrant a review. Section 782(h) of the Act and 19 CFR 353.25(d)(1) further provide that the Department may revoke an order, or revoke an order, in part, if it determines that changed circumstances sufficient to warrant revocation of the order, or part of the order, exist. In addition, in the event the Department determines expedited action is warranted, section 353.22(f)(4) of the regulations permits the Department to combine the notices of initiation and preliminary results.

Therefore, in accordance with section 751(b)(1) and 751(d) of the Act and 19 CFR 353.25(d) and 353.22(f)(1)(i), we are initiating a changed circumstances administrative review based upon the information contained in Clover/Lucky's May 30, 1997 request for this review. The Department concludes that it would be inappropriate to expedite this action pursuant to 19 CFR 353.25(f)(4) by issuing a preliminary determination prior to conducting an investigation in the instant case because the orders on POS cooking ware from Taiwan and the PRC are separate and distinct. As such, a decision on one order cannot automatically be assumed to be applicable to another order involving a different country. Therefore, the Department is not issuing preliminary results of its changed circumstances antidumping duty administrative review at this time.

The Department will publish in the **Federal Register** a notice of preliminary results of changed circumstances antidumping duty administrative review, in accordance with 19 CFR 353.22(f)(1)(v), which will set forth the factual and legal conclusions upon which our preliminary results are based. The Department will also issue final results of review, and will publish these results in the **Federal Register**. All written comments must be submitted in accordance with 19 CFR 353.31(e) and must be served on all interested parties on the Department's service list in accordance with 19 CFR 353.31(g).

If final revocation, in part, occurs, we will instruct the U.S. Customs Service to end the suspension of liquidation and to refund, with interest, any estimated antidumping duties collected for all unliquidated entries of tea kettles that are not subject to a final results of administrative review. The current requirement for a cash deposit of estimated antidumping duties on all subject merchandise, including tea kettles, will continue unless and until it is modified pursuant to the final results of this changed circumstances review.

This notice is in accordance with sections 751(b)(1) and (d) of the Act and section 353.22(f)(1)(i) of the Department's regulations.

Dated: August 20, 1997.

Jeffrey P. Bialos,

Principal Deputy Assistant Secretary for Import Administration.

[FR Doc. 97–22817 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–008]

Stainless Steel Plate From Sweden Antidumping Duty Administrative Review; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the final results of the review of the antidumping finding on stainless steel plate from Sweden. The review covers two manufacturers/exporters of the subject merchandise to the United States and the period June 1, 1995 through May 31, 1996.

Prior to the extension of the time limit, the deadline for making a final determination was November 5, 1997. The Department has determined, however, that it is not practicable to complete the review within the foregoing time limit. Therefore, in accordance with Section 751(a)(3)(A) of the Tariff Act of 1930, as amended, the Department is extending the time limit and the new deadline for making a final determination is January 5, 1998.

EFFECTIVE DATE: August 27, 1997.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475 or 482–0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

Because it is not practicable to complete this review within the time limits mandated by the Uruguay Round Agreements Act (120 days from publication of the preliminary results of review), pursuant to Section 751(a)(3)(A) of the Tariff Act of 1930, as amended, the Department is extending the time limit for completion of the final results until January 5, 1998. See Decision Memorandum to Robert S. LaRussa dated August 14, 1997.

This extension is in accordance with section 751(a) (3) (A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)(3)(A)).

Dated: August 19, 1997.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 97–22816 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with 15 CFR 301.5 (a)(3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–069. *Applicant:* University of California, Los Angeles, 405 Hilgard Avenue, Los Angeles, CA 90095–1569.

Instrument: Stopped-Flow Reaction Analyzer, Model SX.18MV.

Manufacturer: Applied Photophysics Ltd., United Kingdom.

Intended Use: The instrument will be used in the study of inorganic, bioinorganic and organometallic reaction mechanisms by monitoring kinetics and detecting and identifying intermediates. The main area of research interest is the activation of 0_2 in nonheme monoxygenases and inorganic model complexes. These studies are aimed toward understanding the role of the metal and its ligand environment in facilitating 0–0 bond cleavage and giving specific oxidation products. Application accepted by Commissioner of Customs: August 5, 1997.

Docket Number: 97–070. *Applicant:* Yale University, P.O. Box 208202, New Haven, CT 06520–8202. *Instrument:* Signal Conditional Processor, Model SIGMA–5–DF. Manufacturer: CardioDynamics BV, The Netherlands. *Intended Use:* The instrument will be used to determine ventricular volume based on the measurement of the electrical conductance of the blood in a ventricular cavity during the study of the effects of milrinone on left and right ventricular contractility using load-independent indices. In addition, the instrument will be used in another project involving the assessment of the effects of two low dose infusion rates of adenosine on right ventricular contractility in patients with pulmonary hypertension undergoing cardiac surgery. Application accepted by Commissioner of Customs: August 5, 1997.

Docket Number: 97–071. *Applicant:* Colorado School of Mines, Golden, CO 80401. Instrument: Mass Spectrometer, Model JMS–700T. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used for the study of pyrolysis products from bacteria using resolution tandem mass spectrometry required to identify the products and their associated electron ionization chemistry. In addition, the instrument will be used for educational purposes in the courses CHGN 311 Integrated Laboratory and CHGN 602 Special Topics in Mass Spectrometry. The object of both of these courses will be to expose both the undergraduate and graduate students to a state-of-the-art mass spectrometer. *Application accepted by Commissioner of Customs:* August 12, 1997.

Docket Number: 97–072. *Applicant:* Harvard Medical School, New England Regional Primate Research Center, One Pine Hill Drive, Southborough, MA 01772–9102. *Instrument:* Electron Microscope, Model JEM–1010. *Manufacturer:* JEOL, Ltd., Japan. *Intended Use:* The instrument will be used for studies of tissues and cells from animals and cell lines of animal origin which will involve examination for changes in cell morphology and localization of cellular or parasitic (viral, bacterial, fungal, etc.) antigens or nucleic acid and ultrastructural effects of infectious diseases such as AIDS. The article will also be used for teaching theory and practical application of electron microscopy to graduate students and post-doctoral fellows. Application accepted by Commissioner of Customs: August 13, 1997.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 97–22692 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081997B]

Gulf of Maine Aquaculture-Pinniped Interaction Task Force

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of report.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), NMFS submitted a report to Congress regarding pinnipeds interacting in a dangerous or damaging manner with aquaculture resources in the Gulf of Maine. The report, which addressed public comments on an earlier draft, is available to the public upon request.

ADDRESSES: Copies of the report are available from Chief, Habitat and Protected Resources Division, NMFS, One Blackburn Drive, Gloucester, MA 01930, or Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Scott Sandorf (508)281–9388 or Tom Eagle (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Pursuant to section 120(h) of the MMPA, NMFS convened a Task Force to examine the issues and problems associated with pinniped-aquaculture interactions in the Gulf of Maine. Task Force members were selected from the aquaculture industry, state government, the scientific community, and conservation organizations. The Task Force convened three times for multi-day meetings, visited pen-sites, conducted public hearings, met with salmon growers, conducted surveys, and reviewed literature related to the issue, prior to completion of its report. The report contained Task Force recommendations to mitigate the seal predation, all of which represented the consensus of the Task Force.

NMFS considered the recommendations from the Task Force and prepared a draft report to Congress recommending options available to mitigate the interaction. NMFS published a notice of availability of the draft report and solicited public comments on it (62 FR 12602, March 17, 1997).

NMFS used the public comments in preparing a final report to Congress and forwarded the report to the Department of Commerce. The Secretary of Commerce transmitted the report to Congress on August 1, 1997. Copies of the report are now available to the public (see **ADDRESSES**).

Dated: August 21, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–22843 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 081997C]

International Whaling Commission: Environmental Assessment and Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce

ACTION: Notice of availability of an Environmental Assessment (EA) and change in meeting location.

SUMMARY: The Makah Tribe (Tribe) has indicated that it wishes to harvest up to five gray whales per year for subsistence and ceremonial purposes. Within the U.S. Government, whaling is managed by the Department of Commerce, which must therefore consider whether to support the Makah interest in continuing its tradition of whaling. NOAA has prepared a draft EA which weighs the impacts of supporting the Makah interest in whaling and considers alternatives to concurrence. This notice also announces a change in the room where the next IWC Interagency Committee will meet. The first notice of this meeting was published on June 26, 1997 (62 FR 34441).

DATES: Written comments must be received on or before September 22, 1997.

ADDRESSES: Copies of the draft EA be obtained from the Office of Protected Resources, NMFS, 1315 East West Highway, Silver Spring, MD 20910; telephone: 301–713–2332. Comments should be submitted in writing to the same address.

FOR FURTHER INFORMATION CONTACT: Angela Somma, Office of Protected Resources, NMFS, 1315 East West Highway, Silver Spring, MD 20910. Phone: (301) 713–2319.

SUPPLEMENTARY INFORMATION: The Tribe has indicated that it wishes to harvest up to five gray whales per year for subsistence and ceremonial purposes. Within the U.S. Government, whaling is managed by the Department of Commerce, which must therefore consider whether to support the Makah interest in continuing its tradition of whaling. This EA weighs the impacts of supporting the Makah interest in whaling and considers alternatives to concurrence. The EA analyzes alternatives, including the proposed action. The alternatives are: 1) Support the Tribe's decision to whale after receiving approval from the International Whaling Commission (IWC) [proposed action]; 2) delay consideration of support until after the five-year monitoring program of the eastern Pacific stock of gray whales is complete; 3) persuade the Tribe to engage in alternative activities such as ecotourism instead of whaling; and 4) no action.

NMFS also announces that the Interagency Committee meeting for the IWC will be held September 9, 1997, at 2:00 pm in Room 5215, Herbert C. Hoover Building, Department of Commerce, 14th and Constitution, Washington, DC. The room will be opened at 12:00 pm to permit viewing of U.S. positions papers for the 49th Annual Meeting of the IWC. The Interagency Committee meeting will review recent events relating to the IWC and will review U.S. positions for the 1997 IWC meetings.

Dated: August 20, 1997.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–22841 Filed 8-26-97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 080697G]

ICCAT Advisory Committee; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Advisory Committee to the U.S. Section to the International Commission for the Conservation of Atlantic Tunas (ICCAT) and the Highly Migratory Species Management Division of National Marine Fisheries Service announces the schedule of regional public meetings to be held this fall.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times of the hearings.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations of the meetings.

FOR FURTHER INFORMATION CONTACT: Jonathon Krieger -International issues (301) 713-2276 and/or Sarah McLaughlin -Domestic issues, (301) 713–2347.

SUPPLEMENTARY INFORMATION: The meetings are scheduled as follows:

1. Wednesday, September 10, 1997, 7 to 10 p.m., Parkwood Inn, Route 24 at Cooks Corner, Brunswick, ME 04011;
2. Thursday, September 11, 1997, 7 to 10 p.m., Best Western Sovereign Hotel, 9 Whitehill Avenue, Mystic, CT 06340;
3. Friday, September 12, 1997, 7 to 10 p.m., Holiday Inn, Crown Plaza, 333 Poydras Street, New Orleans, LA 70130;
4. Wednesday, September 17, 1997, 7 to 10 p.m., Westin Resort Miami Beach, 4833 Collins Avenue, Miami Beach, FL 33140;
5. Wednesday, October 1, 1997, 7 to 10 p.m., Holiday Inn, 290 State Highway 37 East, Toms River, NJ 08753;
6. Friday , October 3, 1997, 7 to 10 p.m., North Carolina Aquarium, Airport Road, Manteo, NC 27954;
7. The annual ICCAT Advisory Committee Meeting will be held in the Silver Spring, MD, November 2–4, 1997. There will be opportunity for public comment on the international issues on Sunday, November 2 from 2–6 p.m. at NOAA Building 3, room 4527, 1315 East-West Highway, Silver Spring, MD 20910.

The following topics may be presented to the public for discussion at the ICCAT/HMS Regional Advisory Committee Meetings:

International Issues:

(1) Background on ICCAT
(2) Information on the Advisory Committee and Commissioners
(3) Status of Highly Migratory Species Managed by ICCAT
(4) Topics for the 1997 ICCAT Annual Meeting

Domestic Issues:

(1) Highly Migratory Species Rulemaking Actions
(2) HMS Activities under the Magnuson-Stevens Act
(3) Regional Concerns/Issues

Representatives from the U.S. ICCAT Advisory Committee and NMFS will be in attendance. The first half of each regional meeting will be dedicated to international issues, followed by domestic issues. There will be an opportunity for public comment on each issue. The meetings may be lengthened or shortened based on the progress of the discussions. The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Jonathon Krieger at (301) 713–2276 at least 5 days prior to the meeting date.

Dated: August 21, 1997.

George Darcy

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–22842 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082197B]

Mid-Atlantic Fishery Management Council; Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Summer Flounder, Scup, and Black Sea Bass Monitoring Committees will hold a public meeting.

DATES: The meeting will be held on September 4–5, 1997. On Thursday, September 4, the Summer Flounder Monitoring Committee will meet from 10:00 a.m. until 1:00 p.m. The Scup Monitoring Committee will meet from 2:00–5:00 p.m. On Friday, September 5, 1997, the Black Sea Monitoring Committee will meet from 8:00–11:00 a.m.

ADDRESSES: These meetings will be held at the Radisson Hotel Philadelphia Airport, 500 Stevens Drive, Philadelphia, PA; telephone: 610–521–5900.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to set the summer flounder, scup, and black sea bass quotas for 1998.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) least 5 days prior to the meeting date.

Dated: August 21, 1997.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–22844 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Technology Administration

Technology Administration Performance Review Board Membership, September 1997

The Technology Administration Performance Review Board reviews performance appraisals, agreements, and recommended actions pertaining to employees in the Senior Executive Service and reviews performance-related pay increases for ST–3104 employees. The Board makes recommendations to the appropriate Appointing Authority concerning such matters so as to ensure the fair and equitable treatment of these individuals.

The following is the full membership of the Board:

Kelly H. Carnes (NC), Deputy Assistant Secretary for Technology Policy, Technology Administration, Washington, DC 20230, Appointment Expires: 12/31/98

Karl E. Bell (C), Deputy Director of Administration, Office of the Director of Administration, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/99

Elaine Bunten-Mines (C), Director, Program Office, Office of the Director, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/99

Andrew J. Fowell (C), Associate Director for Construction and Building, Building and Fire Research Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/97

Stephen W. Freiman (C), Chief, Ceramics Division, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/99

Kent Hughes, Associate Deputy Secretary of Commerce, U.S. Department of Commerce, Washington, DC 20230, Appointment Expires: 12/31/99

Richard F. Kayser (C), Chief, Physical and Chemical Properties Division, Chemical Science and Technology Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/98

Ronald E. Lawson (C), Associate Director for Financial and Administrative Management, National Technical Information Service, Springfield, VA 22161, Appointment Expires: 12/31/99

Harry I. McHenry (C), Chief, Materials Reliability Division, Materials Science and Engineering Laboratory, National Institute of Standards and Technology, Boulder, CO 80303, Appointment Expires: 12/31/97

Rosalie T. Ruegg (C), Director, Economic Assessment Office, Advanced Technology Program, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/99

Robert I. Scace, Chair (C), Director, Office of Microelectronics Programs, Electronics and Electrical Engineering Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899, Appointment Expires: 12/31/97

Samuel P. Williamson (C), Deputy Director, Office of Systems Development, National Weather Service, National Oceanic and Atmospheric Administration, Silver Spring, MD 20910, Appointment Expires: 12/31/98

Graham R. Mitchell,

Assistant Secretary for Technology Policy, Technology Administration, Department of Commerce.

[FR Doc. 97–22681 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–18–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Bangladesh

August 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 27, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482094212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927095850. For information on embargoes and quota re-openings, call (202) 482093715.

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); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing and 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 61 FR 68241, published on December 27, 1996.

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 Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 22, 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 December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on August 27, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit1A[1]
341	2,304,795 dozen.
634	505,335 dozen.
635	327,397 dozen.
641	951,772 dozen.
647/648	1,425,132 dozen.
847	309,580 dozen.

[1]1AThe limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall 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. 97–22847 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

August 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: August 27, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, 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); Uruguay Round Agreements Act.

The current limits for certain categories are being increased for carryover.

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 61 FR 68241, published on December 27, 1996.

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 Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 22, 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 December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on August 27, 1997, you are directed to increase the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
237	487,670 dozen.
334	135,211 dozen.
336/636	450,395 dozen.
341	2,419,121 dozen.
352/652	9,917,940 dozen.
641	1,045,638 dozen.
645/646	390,491 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall 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. 97–22848 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in India

August 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 27, 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 these limits, 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); Uruguay Round Agreements Act.

The current limits for certain categories are being adjusted, variously, for swing and 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 61 FR 68143, published on December 27, 1996.

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 Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 22, 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 December 20, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on August 27, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month level [1]
314	5,935,313 square meters.
326	9,710,305 square meters.
347/348	625,719 dozen.
369–D [2]	1,294,620 kilograms.
647/648	751,469 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall 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. 97–22845 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Oman

August 22, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 28, 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 these limits, 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 limits for certain categories are being adjusted, variously, for swing, carryover, and recrediting of unused 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 61 FR 58388, published on November 14, 1996.

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 agreement, but are designed to assist only in the implementation of certain of its provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 22, 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 November 7, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Oman and exported during the twelve-month period which began on January 1, 1997 and extends through December 31, 1997.

Effective on August 28, 1997, you are directed to adjust the limits for the following categories, as provided for under the terms of the bilateral agreement between the Governments of the United States and the Sultanate of Oman, effected by exchange of notes dated December 13, 1993 and January 15, 1994, as amended and extended:

Category	Adjusted twelve-month limit [1]
334/634	160,483 dozen.
335/635	254,691 dozen.
338/339	528,871 dozen.
340/640	254,877 dozen.
341/641	198,304 dozen.
347/348	1,004,859 dozen.
647/648/847	345,729 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall 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.97–22846 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Thailand

August 21, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: August 27, 1997.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, 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); Uruguay Round Agreements Act.

The limits for certain categories are being adjusted, variously, for swing, carryforward, carryforward used and recrediting of unused 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 61 FR 58044, published on November 12, 1996.

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 Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing, but are designed to assist only in the implementation of certain of their provisions.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

August 21, 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 November 4, 1996, 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, produced or manufactured in Thailand and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997.

Effective on August 27, 1997, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreements Act and the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	1,031,741 kilograms.
219	5,370,557 square meters.
620	7,130,162 square meters.
Sublevel in Group II	
347/348/847	758,178 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1996.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–22721 Filed 8–26–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

DOE Response to Recommendation 97–1 of the Defense Nuclear Facilities Safety Board, Safe Storage of Uranium-233

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 97–1, concerning the safe storage of uranium-233, on March 11, 1997 (62 FR 11160). Under section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e), the Department of Energy must transmit an implementation plan on Recommendation 97–1 to the Defense Nuclear Facilities Safety Board by August 11, 1997, or submit a notification of extension for an additional 45 days. The Secretary's notification of extension for an additional 45 days follows.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's notification to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Stallman, Deputy Assistant Manager for Facility Operations, Department of Energy, Idaho Operations Office, 850 Energy Drive, Idaho Falls, Idaho, 83401–1563.

Issued in Washington, D.C., on August 22, 1997.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

August 11, 1997.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, N.W., Suite 700, Washington, D.C. 20004.

Dear Mr. Chairman: This is to notify you, pursuant to 42 U.S.C. 2286d(e), that the Department of Energy will require an additional 45 days to transmit the implementation plan for addressing the issues raised in the Defense Nuclear Facilities Safety Board's Recommendation 97–1 concerning the safe storage of uranium-233 material. A draft implementation plan was prepared by a Task Team (reporting to the Assistant Secretaries for Defense Programs and Environmental Management, in coordination with other affected Headquarters and Field offices) but requires more detail.

Working with your staff, we have planned a workshop later this month to develop the next level of details for an integrated program to safely manage uranium-233. Together, we can then determine the appropriate commitments for incorporation into the implementation plan for Recommendation 97–1. The implementation plan will be provided to the Board by September 25, 1997.

Sincerely,

Federico Peña.

[FR Doc. 97–22782 Filed 8–26–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Floodplain Involvement for the St. Louis Airport Site, St. Louis, Missouri

AGENCY: Former Sites Restoration Division, Department of Energy (DOE).

ACTION: Notice of floodplain involvement.

SUMMARY: DOE proposes to remove soil containing elevated levels of uranium-238, radium-226, and thorium-230 from a floodplain in St. Louis County, Missouri. In accordance with 10 CFR 1022, DOE will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain resource.

DATES: Comments are due to the address below no later than September 11, 1997.

FOR FURTHER INFORMATION ON THIS PROPOSED ACTION OR TO COMMENT ON THE ACTION, CONTACT: Mr. Steve McCracken, St. Louis Site Manager, U.S. Department of Energy, 9170 Latty Avenue, Berkeley, MO 63134, Phone: (314) 524–4083, FAX: (314) 524–6044.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Carol Borgstrom, Director, Office of NEPA Oversight, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: From 1942–1967, the St. Louis Airport Site (SLAPS) was used to store process by-products from the Mallinckrodt Chemical Plant in downtown St. Louis. These radioactive by-products were created during uranium and thorium extraction processes performed from 1942 to 1957 for the Manhattan Engineer District (MED) and Atomic Energy Commission (AEC). DOE has authority at the site for the remediation of media containing elevated levels of radionuclides associated with MED/AEC activities; however, activities are being coordinated with the U.S. Environmental Protection Agency (EPA) Region VII and the Missouri Department of Natural Resources (MDNR). The proposed removal action will serve to provide a clean buffer zone adjacent to Coldwater Creek and to protect the creek by further controlling surface water migration of contaminants. Coldwater Creek flows approximately 0.6 miles along the western boundary of SLAPS and flows into the Missouri River approximately 20 miles downstream.

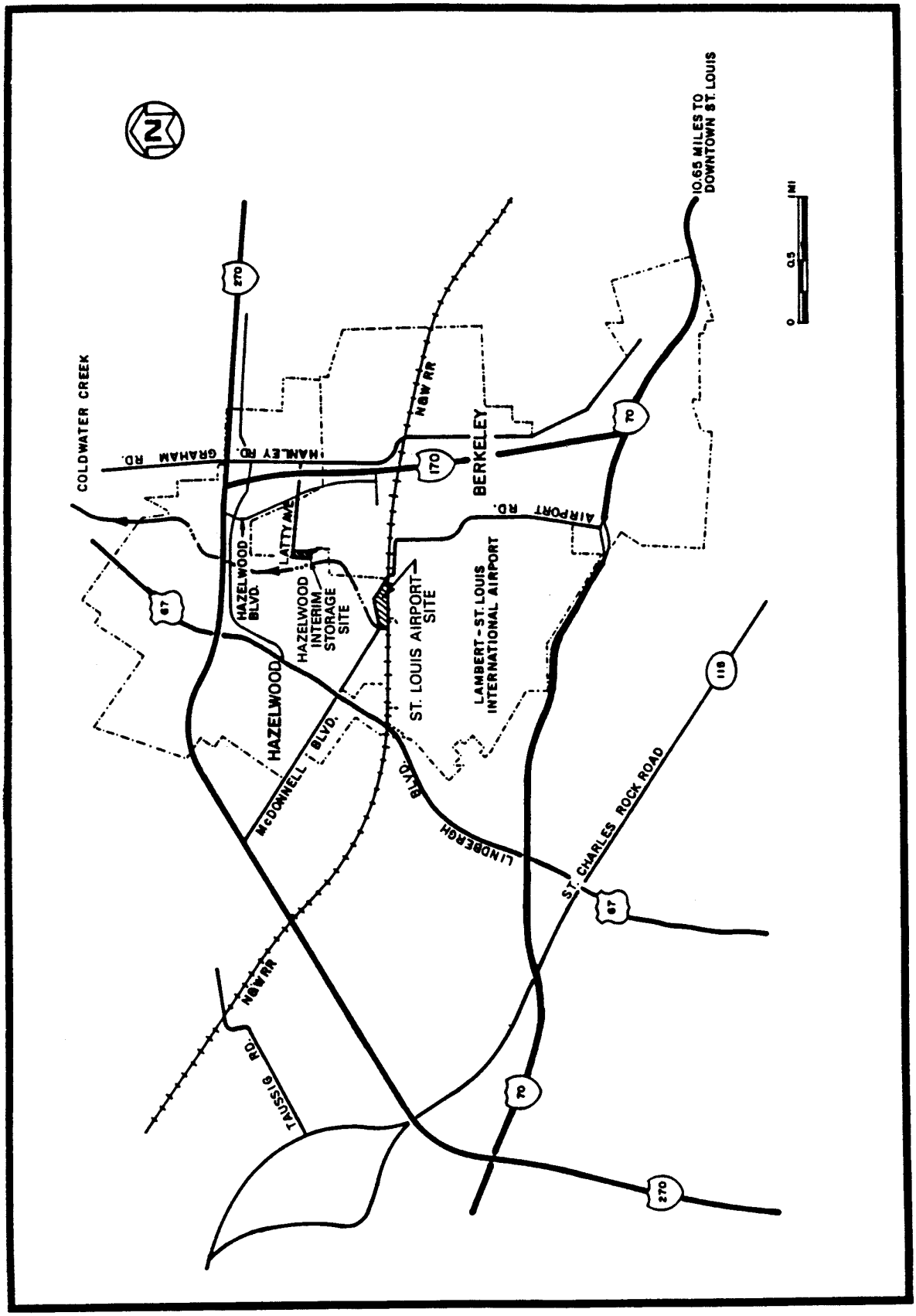
The removal actions would involve activity in the Coldwater Creek 100-year floodplain at SLAPS. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements (10 CFR 1022), DOE will prepare a floodplain and wetlands assessment for this proposed DOE action. Remedial actions may include: no action, or removal of soil at SLAPS between McDonnell Boulevard and Banshee Road, behind the gabion wall which extends along that portion of Coldwater Creek. This excavation would extend approximately 70 feet to the east and approximately one foot below original grade (approximately 2–4 ft. below the existing land surface). The excavated area would be backfilled with clean soil and a berm would be constructed on the eastern edge of the excavation to minimize runoff into the excavated area. Sediments in the ditch between the SLAPS fence and McDonnell Boulevard would be removed from the confluence with the creek to 70 feet east of the confluence in order to provide a clean buffer zone between SLAPS runoff and the creek. Drainage on the northern end of SLAPS would be rerouted through an engineered channel to prevent mobilizing sediment in the ditches during storm events prior to discharge into Coldwater Creek. DOE would temporarily store excavated material near the southeast corner of SLAPS prior to transport to an off-site, licensed waste disposal facility. A floodplain and wetlands assessment that incorporates the values of the National Environmental Policy Act will be included in the final engineering evaluation and cost analysis (EE/CA) being prepared for the proposed project. Upon completion and approval of the assessment, DOE will publish a floodplain statement of findings in the **Federal Register** that describes the proposed action and measures that DOE would implement to prevent environmental damage to floodplain resources at SLAPS.

Issued in Oak Ridge, Tennessee on August 17, 1997.

James L. Elmore,

Alternate NEPA Compliance Officer.

BILLING CODE 6450–01–P



LOCATION OF THE SLAPS

[FR Doc. 97–22781 Filed 8–26–97; 8:45 am]

BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats.

DATES: Thursday, September 4, 1997, 6:00 p.m.–9:30 p.m.

ADDRESSES: Westminster City Hall (Lower-level Multi-purpose Room), 4800 West 92nd Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, EM SSAB-Rocky Flats, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021, phone: (303) 420–7855, fax: (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

1. Identify projects and issues of importance to the neighbors of Rocky Flats, as part of the development of the 1998 work plan.

2. Review and finalize a recommendation to DOE which comments on DOE's draft document, *Accelerating Cleanup: Focus on 2006* (formerly known as the Ten Year Plan). Consider draft recommendations on nuclear waste transportation issues and the Actinide Migration Study.

3. Discuss two proposed letters—one regarding the Nuclear Regulatory Commission's proposed cleanup standards, and the second concerning safeguards and security issues.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. and 4:00 p.m. on Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the Board's office address or telephone number listed above.

Issued at Washington, DC on August 22, 1997.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–22783 Filed 8–26–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Research

High Energy Physics Advisory Panel

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is given of a meeting of the High Energy Physics Advisory Panel.

DATES: Tuesday, October 14, 1997; 9:00 a.m. to 6:00 p.m.; and Wednesday, October 15, 1997; 9:00 a.m. to 4:00 p.m.

ADDRESSES: Cornell University, Clark Hall, 7th Floor, Ithaca, New York 14853.

FURTHER INFORMATION CONTACT: Dr. Robert Diebold, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–22, GTN, Germantown, Maryland 20874, Telephone: (301) 903–4801.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice and guidance on a continuing basis with respect to the high energy physics research program

Tentative Agenda

Tuesday, October 14, 1997 and Wednesday, October 15, 1997

Discussion of Department of Energy High Energy Physics Programs
Discussion of National Science Foundation Elementary Particle Physics Programs
Discussion of the Status of the Large Hadron Collider Project and U.S. Participation
Discussion of University-based High Energy Physics Programs
Status of Subpanel on Planning for the Future of U.S. High Energy Physics
Presentations and Discussions of CESR/CLEO Programs at Cornell University
Reports on and Discussions of Topics of General Interest in High Energy Physics
Public Comment (10 minute rule)

Public Participation: The two-day meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C. on August 22, 1997.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 97–22761 Filed 8–26–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3975–000]

Cinergy Services, Inc.; Notice of Filing

August 21, 1997.

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 entered into between Cinergy and Carolina Power & Light Company (CP&L).

Cinergy and CP&L are requesting an effective date of July 1, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211

and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 385.214). All such motions or protests should be filed on or before September 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22778 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3232–000]

The Cleveland Electric Illuminating Company; Notice of Filing

August 21, 1997.

Take notice that on August 8, 1997, The Cleveland Electric Illuminating 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 NE., Washington, DC 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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22773 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–972–000 and ER97–973–000]

Cleveland Electric Illuminating Company; Notice of Filing

August 21, 1997.

Take notice that on July 28, 1997, Cleveland Electric Illuminating 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 September 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22776 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3955–000]

Commonwealth Edison Company; Notice of Filing

August 21, 1997.

Take notice that on July 29, 1997, Commonwealth Edison Company (ComEd), tendered for filing revised tariff sheets under ComEd's Open Access Transmission Service Tariff (ComEd OATT). ComEd seeks authority to waive, under certain circumstances and on a non-discriminatory basis, the deposit required to accompany applications for firm point-to-point transmission service.

ComEd requests an effective date of July 30, 1997, and has therefore requested that the Commission waive the Commission's notice requirements. ComEd has served copies of the filing on the Illinois Commerce Commission and all customers served under ComEd's OATT.

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 September 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22770 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3969–000]

Connecticut Light & Power Company; Notice of Filing

August 21, 1997.

Take notice that on July 29, 1997, Connecticut Light & Power 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 September 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22769 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER96–2372–001]

Enova Energy, Inc.; Notice of Filing

August 21, 1997.

Take notice that on December 6, 1996, Enova Energy, Inc., tendered for filing a second revision of its code of conduct for affiliate relations.

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.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22775 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–147–003]

Equitrans, L.P.; Notice of Proposed Changes in FERC Gas Tariff

August 21, 1997.

Take notice that on August 19, 1997, Equitrans, L.P. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following pro forma tariff sheets, with a proposed effective date of September 1, 1997:

Third Revised Sheet No. 220
Second Revised Sheet No. 220A
Second Revised Sheet No. 220B
Second Revised Sheet No. 220C

Equitrans states that the proposed tariff sheets are submitted in compliance with the Letter Order issued by the Commission on August 4, 1997 in Docket No. RP96–147–001. Equitrans states that the Commission required Equitrans to refile the tariff sheets to apply ratchets across all peaking storage Rate Schedules. Equitrans states that the proposed tariff sheets incorporate these revisions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22763 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1218]

Georgia Power Company; Notice of Agency Meeting for Relicensing the Flint River Project

August 21, 1997.

Pursuant to the Energy Policy Act of 1992, Georgia Power Company is preparing a License Application and a Draft Environmental Assessment (DEA) for the Flint River Project (No. 1218). The project is located on the Flint River, near the City of Albany, Lee and Dougherty Counties, Georgia. The DEA is being prepared as part of a collaborative effort among Georgia Power Company and a group of representatives from various federal, state and local agencies, and other interested entities. The DEA and license application will be filed with the Commission no later than September 30, 1999.

Georgia Power Company mailed copies of several environmental study reports to all interested participants between March 12, 1997 and July 17, 1997, including those related to water quality, fisheries, vegetation and wildlife, recreation and land-use, and cultural resources. The Commission received copies of these study reports during this same period. Commission staff has reviewed the study reports, and will attend an agency meeting, as follows, to discuss the environmental issues, potential recommendations, and preliminary DEA.

Meeting Date: September 11, 1997 from 8:30 am to 4:30 pm.

Location: Georgia Power Company, Operations Center, 101 Georgia Power Rd., Albany, Georgia 31701.

Interested parties are welcome to attend this meeting. For further information please contact the following individuals:

Mike Phillips, Georgia Power Company, 333 Piedmont Avenue, NE., Atlanta, GA 30308–3374, (404) 526–2392

Allan Creamer, Federal Energy Reg. Comm., 888 First Street, NE., Mail Stop HL–11.3, Washington, DC 20426, (202) 219–0365

In addition, Commission staff will tour the Flint River Project, and its facilities, on September 11, 1997, at the conclusion of the agency meeting. Individuals interested in attending the site visit are asked to notify Mike Phillips, with Georgia Power Company, by September 5, 1997 of their intent to attend the site visit. Site visit participants should meet at Georgia Power Company's Operations Center in Albany, Georgia, no later than 4:30 pm.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22765 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–63–004]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

August 21, 1997.

Take notice that on August 18, 1997, Iroquois Gas Transmission System, L.P. (Iroquois) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet to become effective September 17, 1997:

Third Revised Sheet No. 38

Iroquois states that this sheet was submitted in compliance with the provisions of the Commission's August 6, 1997 Order On Rehearing, 80 FERC ¶ 61,213 (August 6, 1997) (Order). In its Order, the Commission denied the request for rehearing of Long Island Lighting Company and the Brooklyn Union Gas Company except to the limited extent of ruling that Iroquois should credit net cash-out proceeds received by Iroquois pursuant to Sections 6.2 and 6.3 of its PAL (Park and Loan) Rate Schedule to firm transportation customers. The tariff

sheet included herewith reflects the inclusion of a new provision consistent with the Commission's ruling.

Iroquois also states that copies of this filing were served upon all customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22764 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR97–12–000]

Lakehead Pipe Line Company Limited Partnership; Notice of Petition for Declaratory Order

August 21, 1997.

Take notice that on August 12, 1997, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, and Section 15(13) of the Interstate Commerce Act (ICA), Lakehead Pipe Line Company, Limited Partnership (Lakehead), filed a petition with the Commission for a declaratory order authorizing Lakehead to disclose on a limited basis certain information regarding shipments of natural gas liquids (NGL) through its system.

Lakehead states that the purpose of this disclosure is to facilitate provision of NGL transportation service to multiple shippers in keeping with orders issued by this Commission and the National Energy Board of Canada (NEB).

Lakehead states that it and Interprovincial Pipe Line Inc. (IPL) (which delivers natural gas liquids to Lakehead) anticipate that more complicated patterns of receipt and delivery will soon develop, such that their current tracking system will not be sufficient to take into account differences in quality and composition among the various NGL streams being tendered for shipment. In particular, it may in the near future be necessary for Lakehead to begin measuring and tracking NGL components delivered out of its system at intermediate destinations, and the results of those measurements would be made available to IPL for disclosure to the respective NGL shippers.

Lakehead states that the difficulty this poses for Lakehead relates to the provision of the ICA that makes unauthorized disclosure of shipper information unlawful in certain circumstances. 49 U.S.C. app. section 15(13) (1988). Lakehead is concerned that its participation in any system of component tracking or component balancing requiring disclosure of the composition of a shipper's NGL stream could subject it to civil, and possibly criminal, liability under ICA section 15(13). At the same time, Lakehead states that a component balancing or component tracking system that does not take account of the U.S. destination points on the Lakehead system would likely be ineffective in many circumstances as a means of keeping the NGL shippers whole. Accordingly, Lakehead submits this petition to seek the Commission's authorization for the necessary disclosures to permit IPL and Lakehead to implement a workable component balancing or component tracking system.

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 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before September 5, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22766 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–398–001]

National Fuel Gas Supply Corporation; Notice of Compliance Filing

August 21, 1997.

Take notice that on August 13, 1997, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the tariff sheets listed in Appendix A to the filing, to be effective August 1, 1997.

National Fuel states that the purpose of this filing is to comply with the Commission's letter order issued July 29, 1997, in Docket No. RP97–398–000.

National Fuel states that it is serving copies of the filing with its firm customers, interested state commissions and each party designated on the official service list compiled by the Secretary. National Fuel also states that its copies are also being served on all interruptible customers.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22762 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3329–000]

NEPOOL Executive Committee; Notice of Filing

August 21, 1997.

Take notice that on August 18, 1997, the NEPOOL Executive Committee 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 September 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22772 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–701–000]

NorAm Gas Transmission Company; Notice of Request Under Blanket Authorization

August 21, 1997.

Take notice that on August 18, 1997, NorAm Gas Transmission Company (NGT), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP97–701–000 a request pursuant to Sections 157.205 and 157.211, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for approval to continue to operate an existing one-inch tap originally installed solely to provide service authorized under Section 311 of the Natural Gas Policy Act (NGPA) and Subpart B, Part 284 of the Commission's Regulations under Subpart G of Part 284 of the Commission's Regulations, under NGT's blanket certificates issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NGT states that the facilities, which consist of a one-inch tap, valve, and first-cut regulator, are located on NGT's Line TM–10 in Arkansas County, Arkansas. NGT asserts that the estimated volumes of natural gas to be delivered through these facilities are approximately 85 MMBtu annually and 1 MMBtu on a peak day. NGT further asserts that the tap was constructed in July, 1997 at an estimated cost of $2,838 and $2,135 will be reimbursed to NGT by ARKLA, a local distribution company.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities 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 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22767 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP97–685–001]

Northern Natural Gas Company; Notice of Amendment of Application

August 21, 1997.

Take notice that on August 20, 1997, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP97–685–001 an application pursuant to Section 7(c) of the Natural Gas Act (NGA) for authorization to amend its original prior notice application pending Commission approval in Docket No. CP97–685–000, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern is amending its original prior notice application requesting the application be converted to a case-specific Section 7(c) in order to meet its customer's requirements for natural gas service on an expedited basis. It is asserted that the Rippey Co-Op has requested expedited consideration as it has installed a larger grain dryer which must be tested prior to undertaking grain drying activities for the 1997 crop. It is stated that the Rippey Co-Op is concerned that due to the weather, it will be unable to meet its requirements regarding grain drying if it has to wait for the 45-day notice to expire in Northern's original application.

Northern proposes to upgrade the Rippey #2, an existing delivery point located in Greene County, Iowa, to accommodate increased interruptible natural gas deliveries to UtiliCorp United, Inc. (UCU) for redelivery to the Rippey Co-Op.

Northern states that the proposed increase in volumes to be delivered to UCU at the Rippey #2 are 910 MMBtu on a peak day and 48,500 MMBtu on an annual basis. Northern estimates a cost of $56,000 for upgrading and UCU will be reimbursing Northern.

Any person desiring to be heard or any person desiring to make any protest with reference to said application should on or before August 28, 1997, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Northern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22768 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER97–2836–001 and ER97–3016–001]

Oklahoma Gas and Electric Company; Notice of Filing

August 21, 1997.

Take notice that on July 24, 1997, Oklahoma Gas and Electric Company tendered for filing its compliance filing in the above-referenced dockets.

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 September 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22774 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3974–000]

Pacific Gas and Electric Company; Notice of Filing

August 21, 1997.

Take notice that on July 30, 1997, Pacific Gas and Electric Company (PG&E) tendered for filing (1) an agreement dated February 5, 1997, by and between PG&E and Pan Energy Trading and Market Services, L.L.C. (Pan Energy) entitled Service Agreement for Firm Point-to-Point Transmission Service (Firm Transmission Service Agreement); and (2) an agreement dated October 21, 1996, by and between PG&E and Pan Energy, entitled Service Agreement for Non-Firm Point-to-Point Transmission Service (Non-firm Service Agreement); and (3) a Notice of Termination for the Firm Transmission Service Agreement.

The Firm Transmission Service Agreement was entered into for the purpose of providing firm point-to-point transmission service for 50 MW of power delivered to Pan Energy or its customers at Los Angeles Department of Water and Power's Sylmar 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	Term	Requested effective date for termination
February 5, 1997—Service Agreement under FERC Electric Tariff, Original Volume No. 3.	July 1, 1997 through September 30, 1997.	September 30, 1997.

PG&E proposes the Non Firm Transmission Service Agreement become effective on July 1, 1997. Copies of this filing have been served upon the California Public Utilities Commission and Pan Energy.

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 September 2, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22777 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3738–000]

Tucson Electric Power; Notice of Filing

August 21, 1997.

Take notice that on August 5, 1997, Tucson Electric Power 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 September 3, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–22771 Filed 8–26–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5883–6]

Agency Information Collection Activities Up for Renewal; Comment Request, Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval: ''Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures,'' OMB Control Number 2050–0068, EPA ICR Number 1360.05. ICR Number 1360.05 replaces EPA ICR Number 1360.04, which will

expire on March 31, 1998. Before submitting this ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the continuing information collections as described below.

DATES: Comments must be submitted on or before October 27, 1997.

ADDRESSES: Commenters should send an original and two copies of their comments referencing docket number UST–9 to: OUST Docket, c/o RCRA Docket Information Center, Office of Solid Waste (5305G), U.S. Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Hand deliveries of comments should be made to OUST Docket c/o RCRA Docket Information Center, Crystal Gateway One, First Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202. Comments may also be submitted electronically by sending electronic mail through the Internet to: rcra-docket@epamail.epa.gov. Comments in electronic form should also be identified by the docket number (UST–9). All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Copies of the draft ICR, supporting materials, and public comments are available for viewing in the RCRA Information Center (RIC), located at the Arlington, VA address listed above. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling 703–603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

The official record for this action will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in **"ADDRESSES"** stated above.

EPA responses to comments, whether the comments are written or electronic, will be in a notice in the **Federal Register** or in a response to comments document placed in the official record for this action. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

FOR FURTHER INFORMATION CONTACT: Sammy Ng; Office of Underground Storage Tanks, U.S. Environmental Protection Agency, 401 M St., SW, Washington DC 20460, (703)–603–7166, ng.sammy@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those facilities that own and operate Underground Storage Tanks (USTs) and those states that implement the UST programs.

Title: ''Underground Storage Tanks: Technical and Financial Requirements, and State Program Approval Procedures,'' OMB Control Number 2050–0068, EPA ICR Number 1360.05. This ICR replaces ICR number 1360.04, which will expire on March 31, 1998. This is a request for extension of a currently approved collection.

Abstract: Subtitle I of the Resource Conservation and Recovery Act (RCRA), as amended, requires that the EPA develop standards for USTs and procedures for approval of state programs as may be necessary to protect human health and the environment. EPA promulgated technical and financial requirements for owners and operators of USTs at 40 CFR part 280 and state program approval procedures at 40 CFR part 281. This ICR is a comprehensive presentation of all information collection requirements contained at 40 CFR parts 280 and 281.

All 40 CFR part 280 requirements are presented in this ICR under the heading ''Technical and Financial Requirements;'' this section applies to owners and operators of USTs. Part 280 contains requirements covering:

- Program Scope and Interim Prohibition;
- UST Systems: Design, Construction, Installation, and Notification;
- General Operating Requirements;
- Release Detection;
- Release Reporting, Investigation, and Confirmation;
- Release Response and Corrective Action;
- Out-of-Service UST Systems and Closure; and
- Financial Responsibility.

All 40 CFR part 281 requirements are presented in this ICR under the heading ''State Program Approval Procedures''; this section applies to states operating a delegated UST program. EPA promulgated regulations at 40 CFR part 281 in the following subparts:

- Components of a Program Application;
- Adequate Enforcement Compliance;
- Approval Procedures; and
- Withdrawal of Approval of State Programs.

EPA would also like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: This ICR is a comprehensive description of the total respondent burden for all information collection activities related to the UST program. EPA has revised its respondent universe and burden estimates based on updated data from the Office of Underground Storage Tanks, and State and industry sources. The burden estimates have been greatly affected by the requirements of the Paperwork Reduction Act of 1995 (PRA) which emphasized the need to separate the listing of (1) capital and (2) operational and maintenance (O&M) costs. EPA estimates that around 95% of the overall burden reflected in this proposed ICR can be attributed to changes in definition in the PRA. Furthermore, these estimates were affected by shifting the services provided by outside contractors (''purchased services'') from the labor category to the O&M category; this accounting change reduced the ''hours'' burden and increased the ''financial'' burden. The reviewer is reminded to keep these factors in mind in reviewing both this document and the Supporting Statement.

EPA estimates that the total annual respondent burden for all activities covered by this proposed ICR is 2,649,923 hours; this compares to the current burden of 7,769,586 hours. The total estimated annual financial burden is $4.1 billion dollars ($1.1 billion in capital/startup costs and $3 billion in O&M costs); the financial burden under the current ICR is $418.5 million. Most of this increase is due to the reporting of capital and O&M costs (unreported in previous ICRs) and the shifting of contractor services from the labor category to the O&M category. It should be noted that most of these costs were included in the Regulatory Impact Analyses for these requirements but had

not been explicitly accounted for in previous ICRs. The Agency estimates that the average total annual number of respondents will be 317,094 and the frequency of their response will depend upon the individual reporting and recordkeeping requirements.

Based on this analysis, the public reporting burden for UST facilities is estimated to average 1.8 hours per respondent per year. This estimate includes time for preparing and submitting notices, preparing and submitting demonstrations and applications, reporting releases, gathering information, and preparing and submitting reports. The recordkeeping burden for UST facilities is estimated to average 6.5 hours per respondent per year. This estimate includes time for gathering information, and developing and maintaining records.

For states applying for program approval, the public reporting burden is estimated to average 329.2 hours per respondent per year. This estimate includes time for preparing and submitting an application and associated information. The recordkeeping burden is estimated to be 31.0 hours per respondent per year. This estimate includes time for maintaining application files.

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.

Dated: August 20, 1997.

Anna Hopkins Virbick,

Director, Office of Underground Storage Tanks.

[FR Doc. 97–22809 Filed 8–26–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00493; FRL–5736–3]

Armstrong Data Service, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Armstrong Data Service, Inc. (ADS) and its subcontractor, Labat Anderson, have been awarded a contract to perform work for the EPA Office of Pesticide Programs and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. Access to information will be made available to ADS and Labat Anderson in accordance with 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), and will enable ADS and Labat Anderson to fulfill the obligations of the contract.

DATES: ADS and Labat Anderson will be given access to this information no sooner than September 2, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda Alexander, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 700N, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259, e-mail: alexander.bewanda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W5–0024, ADS and Labat Anderson will perform records management support to the Office of Pesticide Programs (OPP) by assisting OPP's Records Officer to conduct a baseline assessment of OPP's records holdings and information collections. The assessments are to facilitate timely disposition of records according to approved records control schedules and to adequately document OPP's records holdings by conducting inventories to properly schedule records for disposition.

OPP has determined that access by ADS and Labat Anderson to information on pesticide data is necessary for the performance of the contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with ADS and Labat Anderson prohibits use of the information for any purpose other than specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor and subcontractor will be maintained by the Project Officer for this contract in the EPA OPP. All information supplied to ADS and Labat Anderson by EPA for use in connection with this contract will be returned to EPA when ADS and Labat Anderson have completed their work.

Dated: August 7, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–22804 Filed 8-26-97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00494; FRL–5736–4]

Cadmus Group, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Cadmus Group, Inc. has been awarded a contract to perform work for the EPA Office of Water, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to Cadmus Group, Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), and will enable Cadmus

Group, Inc. to fulfill the obligations of the contract.

DATES: Cadmus Group, Inc. will be given access to this information no sooner than September 2, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda Alexander, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 700N, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259, e-mail: alexander.bewanda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–C7–0002, Cadmus Group, Inc. will provide technical support to the EPA Office of Water to conduct laboratory and field studies and derive from published literature detailed and comprehensive data bases for chemical and microbiological pollutants encountered in drinking water, ambient water, wastewater/sewages sludge, sediment/dredge spoils, fish, and wildlife. Cadmus Group, Inc. will also provide technical guidance based on studies and data base analyses concerning the following areas: (1) The toxicokinetics, human and ecological exposure, occurrence, environmental fate and effects of chemicals; and (2) infectivity, occurrence and environmental fate of microbial contaminants. No subcontractors will be given access to CBI under this contract.

The Office of Water and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Cadmus Group, Inc., prohibits use of the information for any purpose other than specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Cadmus Group, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Water. All information supplied by EPA for use in connection with this contract will be returned to EPA when Cadmus Group, Inc. has completed its work.

Dated: August 7, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–22805 Filed 8-26-97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00497; FRL–5736–7]

Science Application International Corporation and DynCorp Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Science Application International Corporation (SAIC) and its subcontractor, DynCorp Inc., have been awarded a contract to perform work for the EPA Office of Compliance, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SAIC and DynCorp Inc. consistent with the requirements of 40 CFR 2.307(h)(3) and 40 CFR 2.308(i)(2), and will enable SAIC and DynCorp Inc. to fulfill the obligations of the contract.

DATES: SAIC and DynCorp Inc. will be given access to this information no sooner than September 2, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda Alexander, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 700N, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259, e-mail: alexander.bewanda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W1–0055, SAIC and DynCorp Inc. will provide development and enhancement support to the Office of Enforcement and Compliance Assurance's (OECA) pesticides and toxics automated data systems. OECA and its Regional office utilize these data systems to support field implementation of OECA's compliance and enforcement policies and priorities.

The Office of Compliance and the Office of Pesticide Programs have jointly determined that the contract herein described involves work that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with SAIC and DynCorp Inc. prohibits use of the information for any purpose other than specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SAIC and DynCorp Inc. are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor and subcontractor will be maintained by the Project Officer for this contract in the EPA Office of Compliance. All information supplied to SAIC and DynCorp Inc. by EPA for use in connection with this contract will be returned to EPA when SAIC and DynCorp Inc. have completed their work.

Dated: August 7, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–22806 Filed 8–26–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00495; FRL–5736–5]

Syracuse Research Corporation; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This is a notice to certain persons who have submitted information to EPA in connection with pesticide information requirements imposed under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Syracuse Research Corporation (SRC) has been awarded a contract to perform work for the EPA Office of Pesticide Programs, and will be provided access to certain information submitted to EPA under FIFRA and FFDCA. Some of this information may have been claimed to be confidential business information (CBI) by submitters. This information will be transferred to SRC consistent with the requirements of 40 CFR 2.307(h)(2) and 40 CFR 2.308(i)(2), and will enable SRC to fulfill the obligations of the contract.

DATES: SRC will be given access to this information no sooner than September 2, 1997.

FOR FURTHER INFORMATION CONTACT: By mail: BeWanda Alexander, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 700N, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5259, e-mail: alexander.bewanda@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Under Contract No. 68–W6–0047, work assignment number 1–08, SRC will assist the Product Chemistry Review Group of the Office of Pesticide Programs perform source pollution assessments (SPAs) for manufacturer's process descriptions for pesticide chemicals active ingredients (food and non-food use) and for integrated manufacturing use products. SRC will also assist develop assessment methodology for the review of formulated pesticides.

The Office of Pesticide Programs has determined that access by SRC to information on all pesticide chemicals is necessary for the performance of this contract. Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with SRC prohibits use of the information for any purpose other than specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, SRC is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to this contractor until the above requirements have been fully satisfied. Records of information provided to this contractor will be maintained by the Project Officer for this contract in the EPA Office of Pesticide Programs. All information supplied to SRC by EPA for use in connection with the contract will be returned to EPA when SRC has completed its work.

Dated: August 7, 1997.

Daniel M. Barolo,

Director, Office of Pesticide Programs.

[FR Doc. 97–22807 Filed 8-26-97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34115; FRL 5737–5]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on February 23, 1998.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 38 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names, active ingredients and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before February 23, 1998 to discuss withdrawal of the applications for amendment. This 180–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion. (Note: ** indicate a 30–day comment period).

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000004–00029	Bonide Vegetable-Floral Dust or Spray	Carbaryl; Cupric Sulfate; Rotenone; Resins)	Use on trees
000004–00143	Bonide Sevin 5% Dust	Carbaryl	Use on trees
000070–00165	Kill-Ko 10% Sevin Dust	Carbaryl	Ornamentals

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
000070–00166	Kill-Ko 5% Sevin Dust	Carbaryl	Ornamentals
000192–00070	Dexol Sevin 5% Garden Dust	Carbaryl	Use on dogs & cats
000239–01513	ORTHO Sevin 10 Dust	Carbaryl	Use on trees
000572–00107	Sevin Brand Carbaryl Insecticide Dust	Carbaryl	Shade trees
000769–00229	10% Sevin Dust		Ornamentals
000769–00559	Royal Gard 5% Sevin	Carbaryl	Ornamentals
000769–00611	R&M Garden & Kennel Dust 5%	Carbaryl	Ornamentals
000769–00612	R&M Garden & Kennel Dust 10%	Carbaryl	Ornamentals
000769–00613	R&M Flea & Tick Powder 5%	Carbaryl; Pyrethrins; Piperonyl butoxide	Ornamentals
000769–00614	R&M Flea & Tick Powder #2	Carbaryl; Pyrethrins; Piperonyl butoxide)	Ornamentals
000769–00642	SMCP Flea Scat	Carbaryl	Ornamentals
000769–00647	SMCP Sevin 5% Dust	Carbaryl	Ornamentals
000769–00665	SMCP Sevin 10% Dust	Carbaryl	Ornamentals
000769–00835	Miller 1.75% Sevin Dust	Carbaryl	Ornamentals
000769–00906	Science 5% Sevin Dust	Carbaryl	Ornamentals
000869–00180	Green Light Sevin 10% Dust	Carbaryl	Trees
002935–00193	Sevin 5 Dust	Carbaryl	Trees (filberts, apples, cherries, peaches, pears, plums, prunes)
002935–00320	Sevin 10 Dust	Carbaryl	Trees (filberts, apricots, peaches, plums, nectarines)
005887–00102	Black Leaf Liquid Flowable 2 Lb. Sevin	Carbaryl	Ornamentals
005887–00162	Black Leaf Liquid Fruit Tree Spray	Carbaryl; Malathion; Captan; Methoxychlor)	Ornamentals
008590–00257	Agway Sevin Garden Dust	Carbaryl	Trees
008764–00009	Freshgard 20	Sodium *o*-phenyl- phenate	Use on apples
009198–00147	Anderson's Pest Arrest 5% Dust	Carbaryl	Use on dogs & cats
009198–00148	Anderson's Pest Arrest 10% Dust	Carbaryl	Use on dogs & cats
010370–00115	Ford's Sevin 5% Dust	Carbaryl	Use on trees
010370–00129	Ford's Sevin 10% Dust	Carbaryl	Use on trees
011715–00292	Security Brand Big 10 Dust	Carbaryl	Use on trees (food crop or ornamental)
011715–00294	Security Brand 5% Sevin Garden Dust	Carbaryl	Use on trees (food crop or ornamental)
033955–00270	Acme 1% Rotenone Garden Guard	Rotenone	Terrestrial food crops
042519–00013**	Dorsan Insecticide	Chlorpyrifos	Pest Control Indoors (Indoor): Indoor broadcast use; total release foggers for indoor residential and nonresidential (except greenhouse) use; coating products intended for large indoor surface areas such as floors, walls, and ceilings inside residential dwellings, offices, schools, or health institutions including, but not limited to, houses, apartments nursing homes and patient rooms in hospitals. Pets and Domestic Animals (Indoor): Animal dips, sprays, shampoos, dusts. Aquatic Uses (Aquatic Food Crop) (Aquatic Non- Food): Any aquatic use, including mosquito larvicide. Pest Control Indoors or Outdoors (Domestic Indoor or Outdoor): Paint additives; application in sewer manholes
051036–00013	Sevin 10% Dust	Carbaryl	Use on trees

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

EPA Reg No.	Product Name	Active Ingredient	Delete From Label
051036–00048	Sevin Dust–5	Use on trees	
059639–00019	DIBROM Concentrate	Naled	Rangeland use (use for horn fly control on range cattle)
067517–00031	General Sevin–5 Insecticide	Carbaryl	Use on trees
067517–00032	General Sevin–10 Insecticide	Carbaryl	Use on trees

(Note: ** indicate a 30–day comment period).

The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurtz Avenue, Yorkville, NY 13495.
000070	SureCo Inc., 10012 N. Dale Mabry Hwy., Tampa, FL 33618.
000192	Dexol Industries, 1450 W. 228th Street, Torrance, CA 90501.
000239	The Solaris Group of Monsanto Company, P.O. Box 5006, San Ramon, CA 94583.
000572	Rockland Corporation, P.O. Box 809, 686 Passaic Avenue, West Caldwell, NJ 07007.
000769	SureCo Inc., 10012 N. Dale Mabry Hwy., Suite 221, Tampa, FL 33618.
000869	Green Light Home & Garden Products, P.O. Box 17985, San Antonio, TX 78217.
002935	Wilbur-Ellis Company, 191 W. Shaw Avenue, Fresno, CA 93704.
005887	SureCo Inc., 10012 N. Dale Mabry Hwy., Suite 221, Tampa, FL 33618.
008590	Agway Inc., P.O. Box 4746, Syracuse, NY 13221.
008764	FMC Corporation, Citrus Systems Division, 1540 Linden St., Riverside, CA 92507.
009198	The Andersons, Inc., P.O. Box 119, Maumee, OH 43537.
010370	AgrEvo Environmental Health, 95 Chestnut Ridge Road, Montvale, NJ 07645.
011715	Speer Products, Inc., P.O. Box 18993, Memphis, TN 38181.
033955	PBI/Gordon Corporation, P.O. Box 14090, 1217 West 12th Street, Kansas City, MO 64101.
042519	Luxembourg-Pamol, Inc., 5100 Poplar Ave., Suite 2746, Memphis, TN 38137.
051036	Micro Flo Company, P.O. Box 5948, Lakeland, FL 33807.
059639	Valent U.S.A. Corporation, 1333 N. California Blvd., P.O. Box 8025, Suite 600, Walnut Creek, CA 94596.
067517	PM Resources, Inc., 13001 St. Charles Rock Road, Bridgeton, MO 63044.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 11, 1997.

Linda A. Travers,

Director, Information Resources Services Division, Office of Pesticide Programs.

[FR Doc. 97–22668 Filed 8–26–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–66244; FRL 5737–4]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by February 23, 1998, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location for commercial courier, delivery, telephone number and e-mail: Rm. 216, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761; e-mail: hollins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time,

request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This Notice announces receipt by the Agency of requests to cancel some 45 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000100–00495	Caparol & MSMA with Surfactant Herbicide	Monosodium acid methanearsonate
		2,4-Bis(isopropylamino)-6-(methylthio)-*s*-triazine
000100–00757	Caparol Accu-Pak	2,4-Bis(isopropylamino)-6-(methylthio)-*s*-triazine
000100–00782	Basus Outdoor Flea Treatment	Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
000100–00809	Fenoxycarb MG2E	Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
000100 NJ–95–0010	D.Z.N Diazinon 14g	*O,O*-Diethyl *O*-(2-isopropyl-6-methyl-4-pyrimidinyl)phosphorothioate
000228–00151	Riverdale MCPP LV 4 Ester	Isooctyl 2-(2-methyl-4-chlorophenoxy)propionate
000352 CA–88–0014	Du Pont Lannate Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 FL–78–0055	Du Pont Lannate Methomyl Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 IL–83–0019	Dupont Lannate LV Insecticide	*S*-Methyl *N*-((methylcarbamoyl)oxy)thioacetimidate
000352 NJ–96–0003	Du Pont Vydate L Insecticide/nematicide	Oxamimidic acid, *N',N'*-dimethyl-*N*-((methylcarbamoyl)oxy)-1-thio-methyl ester
000499–00266	Whitmire Regulator PT 410	Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
000499–00271	Whitmire PT 400 Ultraban Brand Flea Killer & Insect Growth	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
000499–00279	Whitmire Regulator PT 421	*d-trans*-Chrysanthemum monocarboxylic acid ester of *d*-2-allyl-4-hydroxy-3-
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
000499–00365	Whitmire PT 412 Ultraguard Flea Growth Regulator	Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
000499–00386	PT 400 HO Ultraban Brand Flea Killer & Insect Growth R	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
000499–00397	Whitmire PT 422 Total Release Insect Fogger	*N*-Octyl bicycloheptene dicarboximide
		Pyrethrins
		Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
000499–00435	Whitmire TC–167 HO	*O,O*-Diethyl *O*-(3,5,6-trichloro-2-pyridyl)phosphorothioate
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
000572–00295	Rockland Rabon Livestock Dust	2-Chloro-1-(2,4,5-trichlorophenyl)vinyl dimethylphosphate
003125–00117	Morestan 25% Wettable Powder Miticide, Fungicide, Insecticide	6-Methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate
003125–00302	Morestan 25% Wettable Powder In Water Soluble Packets	6-Methyl-2,3-quinoxalinedithiol cyclic *S,S*-dithiocarbonate
004691–00143	Ectogard House & Carpet Spray with Insect Growth Regulator	*N*-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl- ,
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
004691–00144	Ectogard Fogger with Tenocide Insect Growth Regulator	*N*-Octyl bicycloheptene dicarboximide

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Pyrethrins
		Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
004691–00146	Ectogard Pet Spray with Tenocide Insect Growth Regulator	*d-trans*-Chrysanthemum monocarboxylic acid ester of *d*-2-allyl-4-hydroxy-3-
		Dipropyl isocinchomeronate
		N-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
004691–00147	Ectogard Aerosol House & Carpet Spray with Tenocide Insect	*d-trans*-Chrysanthemum monocarboxylic acid ester of *d*-2-allyl-4-hydroxy-3-
		N-Octyl bicycloheptene dicarboximide
		(Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20%
		Cyclopropanecarboxylic acid, 3-(2,2-dichloroethenyl)-2,2-dimethyl-,
		Ethyl 2-(*p*-phenoxyphenoxy)ethyl carbamate
004787 TX–96–0013	Methyl Parathion 4EC	*O,O*-Dimethyl *O-p*-nitrophenyl phosphorothioate
005481–00276	Royal Brand Beetle Buster	*O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate
		Xylene
005905–00108	Helena ''Clean-Up'' Weed and Brush Killer	5-Bromo-3-sec-butyl-6-methyluracil
		Sodium chlorate
005905–00490	Setre Simazine-Bromacil 90 W.P.	5-Bromo-3-sec-butyl-6-methyluracil
		2-Chloro-4,6-bis(ethylamino)-*s*-triazine
008378–00022	Shaw's Premium Green Weed and Feed 32–4–4	Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester
		Isooctyl 2-(2-methyl-4-chlorophenoxy)propionate
008378–00025	Shaw's Premium Weed and Feed Formula 3	2-Ethylhexyl 2-methyl-4-chlorophenoxyacetate
		Isooctyl 2-(2-methyl-4-chlorophenoxy)propionate
008378–00030	Shaw's Premium Weed and Feed-Formula 4	Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester
		Isooctyl 2-(2-methyl-4-chlorophenoxy)propionate
008660–00034	Vertagreen Weed and Feed	Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester
		Isooctyl 2-(2-methyl-4-chlorophenoxy)propionate
009367–00013	Sk–368 Weed Killer	5-Bromo-3-sec-butyl-6-methyluracil
		Acetic acid, (2,4-dichlorophenoxy)-, 2-ethylhexyl ester
009619–00011	Microbicide #51	Potassium *N*-methyldithiocarbamate
		Disodium cyanodithioimidocarbonate
010182–00156	Dormant Spray Oil	Aliphatic petroleum hydrocarbons
011556–00025	CO-Ral (Coumaphos) Cattle Insecticide Pour-On	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011556–00040	K.R.S with CO-Ral (Coumaphos) Spray Foam Insecticide	*O,O*-Diethyl *O*-(3-chloro-4-methyl-2-oxo-2*H*-1-benzopyran-7-yl) phosphorothioate
011599–00002	Finnaren and Haley Stain and Wood Preservative	3-Iodo-2-propynyl butylcarbamate
032802–00014	Garden Weed Preventer 2.5–G Dacthal Granules	Dimethyl tetrachloroterephthalate
034704 WA–96–0007	Clean Crop Dimethoate 400	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
034704 WA–96–0026	Clean Crop Dimethoate 400	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
045639–00061	Mitac WP	*N'*-(2,4-Dimethylphenyl)-*N*-(((2,4-dimethylphenyl)imino)methyl)-*N*-methylmethanimidamide

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
047371–00163	MTP Phenolic Germicidal Detergent	2-Benzyl-4-chlorophenol
		4-tert-Amylphenol
		o-Phenylphenol
069421–00063	Insecticide Aerosol D-Phenothrin, 2%	(3-Phenoxyphenyl)methyl*d-cis* and *trans** 2,2-dimethyl-3-(2-methylpropenyl)cyclopro

Unless a request is withdrawn by the registrant within 180 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 180–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000100	Novartis Crop Protection, Inc., Box 18300, Greensboro, NC 27419.
000228	Riverdale Chemical Co., 425 W. 194th St., Glenwood, IL 60425.
000352	E. I. Du Pont De Nemours & Co., Inc., Barley Mill Plaza, Walker's Mill, Wilmington, DE 19880.
000499	Whitmire Micro-Gen Research Laboratories Inc., 3568 Tree Ct, Industrial Blvd, St Louis, MO 63122.
000572	Rockland Corp., 686 Passaic Ave., Box 809, West Caldwell, NJ 07007.
003125	Bayer Corp., Agriculture Division, 8400 Hawthorn Rd., Box 4913, Kansas City, MO 64120.
004691	Boehringer Ingelheim Animal Health Inc., Anchor Div., 2621 North Belt Highway, St Joseph, MO 64506.
004787	Cheminova Agro A/S, 1700 Route 23, Suite 210, Wayne, NJ 07470.
005481	Amvac Chemical Corp., Attn: W. F. Millar, 2110 Davie Ave., Commerce, CA 90040.
005905	Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
008378	H R Mclane, Agent For: Knox Fertilizer Co Inc., 7210 S.W., 57th Ave., Suite 212A, Miami, FL 33143.
008660	H. R. Mclane Inc., Agent For: Pursell Industries Inc., 7210 Red Rd., Suite 206, Miami, FL 33143.
009367	Theochem Laboratories, Inc., 7373 Rowlett Park Drive, Tampa, FL 33610.
009619	Synthetic Labs Inc., 24 Victory Lane, Dracut, MA 01826.
010182	Zeneca Ag Products, Box 15458, Wilmington, DE 19850.
011556	Bayer Corp., Agriculture Division, Animal Health, Box 390, Shawnee Mission, KS 66201.
011599	Finnaren & Haley Inc., 901 Washington Street, Conshohocken, PA 19428.
032802	Howard Johnson's Enterprises Inc., 700 W. Virginia St., Ste 222, Milwaukee, WI 53204.
034704	Cherie Garner, Agent For: Platte Chemical Co Inc., Box 667, Greeley, CO 80632.
045639	Agrevo USA Co., Little Falls Centre One, 2711 Centerville Rd., Wilmington, DE 19808.
047371	H & S Chemicals Division, c/o Lonza Inc., 17–17 Route 208, Fair Lawn, NJ 07410.
069421	Black Flag Insect Control Systems, c/o PS & RC, Box 493, Pleasanton, CA 94566.

III. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before February 23, 1998. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice. If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

IV. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** (56 FR 29362) June 26, 1991; [FRL 3846–4]. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until

they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: August 11, 1997.

Linda A. Travers,

Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 97–22669 Filed 8–26–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

August 19, 1997.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before September 26, 1997. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 234, 1919 M St., N.W., Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval Number: 3060–0544.

Title: Section 76.701, Commercial Leased Access Channels.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Time Per Response: 8 hours per response (avg.).

Cost to Respondents: N/A.

Total Annual Burden: 800 hours.

Needs and Uses: On May 7, 1997, the Commission released Memorandum Opinion and Order (MO&O), FCC 97–156, in MM Docket No. 92–258, to conform the Commission's rules pertaining to indecency and obscenity on leased access and Public, Educational and Government (PEG) channels to the Supreme Court's decision in *Denver Area Educational Telecommunications Consortium, Inc.* v. *FCC.* In that decision, the Supreme Court found that the PEG access channel provision permitting the refusal to transmit indecency and the leased access channel provision requiring segregation and blocking were unconstitutional. The Commission's MO&O in this matter adopts rule changes responsive to the Supreme Court's decision.

Particularly, the rule changes adopted in the MO&O modify Sections 76.701 and 76.702 of the Commission's rules. The only information collection requirement remaining in these rule sections is contained in Section 76.701(a), which continues to state that a cable operator may adopt and enforce prospectively a written and published policy of prohibiting programming which, it reasonably believes, describes or depicts sexual or excretory activities or organs in a patently offensive manner as measured by contemporary community standards. Permitting cable operators to adopt policies regarding offensive programming gives operators alternatives to banning broadcasts; for example, by adopting policies to rearrange broadcast times so as to accommodate adult audiences while lessening the risks of harm to children.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 97–22700 Filed 8–26–97; 8:45 am]

BILLING CODE 6712–01–P

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 10, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. ALBANK, FSB Incentive Savings and Employee Stock Ownership Plan, Albany, New York; to retain ALBANK Financial Corporation, Albany, New York, and thereby retain shares of ALBANK Commercial, Albany, New York, a *de novo* bank, and ALBANK, FSB, Albany, New York, a federal savings association.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Imogene Metcalf, and Charles W. Butler, both of Hooker, Oklahoma; to acquire voting shares of Hooker National Bancshares, Inc., Hooker, Oklahoma, and thereby indirectly acquire First National Bank, Hooker, Oklahoma.

2. Michael D. Platt, Hardtner, Kansas, James L. Molz, Kiowa, Kansas, David C. Collins, and Roland C. Pederson, both of Burlington, Oklahoma; to acquire voting shares of B-K Agency, Inc. Hardtner, Kansas, and thereby indirectly acquire The Farmers State Bank, Hardtner, Kansas.

Board of Governors of the Federal Reserve System, August 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–22723 Filed 8-26-97; 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 19, 1997.

A. Federal Reserve Bank of Richmond (A. Linwood Gill III, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261-4528:

1. First Union Corporation, Charlotte, North Carolina; to merge with Signet Banking Corporation, Richmond, Virginia, and thereby indirectly acquire Signet Bank, Richmond, Virginia.

In connection with this application, Applicant has also applied to acquire Signet Commercial Credit Corporation, Richmond, Virginia, and thereby engage in making loans that are typically secured by inventory, accounts receivable or like security and are generally structured on a revolving basis, pursuant to § 225.28(b)(1) of the Board's Regulation Y; Signet Insurance Services, Inc., Richmond, Virginia, and thereby engage in acting as an insurance agency that provides an extensive line of life and property/casualty insurance coverage as agent for both individuals and businesses, pursuant to § 225.28(b)(11)(iv) of the Board's Regulation Y; Signet Financial Services, Inc., Richmond, Virginia, and thereby engage in providing discount brokerage services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; Signet Trust Company, Richmond, Virginia, and thereby engage in trust company activities, pursuant to § 225.28(b)(5) of the Board's Regulation Y; Signet Strategic Capital Corporation, Richmond, Virginia, and thereby engage in providing investment advice as a commodity trading advisor with respect to the purchase and sale of financial futures contracts and options on financial futures contracts and providing foreign exchange advisory and transactional services, pursuant to §§ 225.28(b)(7) and (b)(8) of the Board's Regulation Y; and Virtus Capital Management, Inc., Baltimore, Maryland, and thereby engage in acting as an investment advisor of various registered open-end management investment companies, mutual funds, etc., and sponsor of mutual funds, pursuant to § 225.28(b)(6) 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. Landmark Bancorp, Inc., Margate, Florida; to become a bank holding company by acquiring 50.1 percent of the voting shares of Sunniland Bank, Fort Lauderdale, Florida.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. FirstBank Holding Company of Colorado, Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank of Parker, Parker, Colorado, a *de novo* bank.

D. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Olympic Bancorp, Port Orchard, Washington; to become a bank holding company by acquiring 100 percent of the voting shares of Kitsap Bank, Port Orchard, Washington.

E. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. First Financial Bankshares, Inc., Abilene, Texas; to merge with Southlake Bancshares, Inc., Southlake, Texas, and thereby indirectly acquire Texas National Bank, Southlake, Texas.

F. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Saehan Bancorp, Los Angeles, California; to become a bank holding company by acquiring 100 percent of the voting shares of Saehan Bank, Los Angeles, California.

Board of Governors of the Federal Reserve System, August 21, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–22724 Filed 8-26-97; 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 22, 1997.

A. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Zions Bancorporation, Salt Lake City, Utah; to merge with GB Bancorporation, San Diego, California, and thereby indirectly acquire Grossmont Bank, San Diego, California, and up to 24.9 percent of the voting shares of Rancho Vista National Bank, Vista, California, and up to 24.9 percent of the voting shares of Pacific Commerce Bank, Chula Vista, California.

Board of Governors of the Federal Reserve System, August 22, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–22788 Filed 8-26-97; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Policy Division, FAR Secretariat, Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Federal Acquisition Regulations eliminated the need for Standard Form 119, Statement of Contingent or Other Fees removing the regulations that required its use. Therefore, SF 119 is cancelled.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano, (202) 501–1758.

EFFECTIVE DATE: August 27, 1997.

Dated: August 21, 1997.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 97–22815 Filed 8–26–97; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR) intention to request the Office of Management and Budget (OMB) to allow a proposed information collection project of ''A Survey of Clinical Decision Support Systems (CDSS).'' In accordance with the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)), AHCPR invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by September 26, 1997.

ADDRESSES: Written comments should be submitted to the OMB Desk Officer at the following address: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB; New Executive Office Building, Room 10235; Washington, 20503.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594–1406, ext. 1497.

SUPPLEMENTARY INFORMATION:

Proposed Project

''A Survey of Clinical Decision Support Systems (CDSS).'' The AHCPR intends to conduct a survey to gather the opinions of front-line physicians, nurses, and medical information systems personnel regarding the use, appropriateness, and effectiveness of clinical decision support systems (CDSS); and to determine how well clinical practice guidelines are integrated into these systems.

This proposed study is a part of a larger project to identify and describe CDSS currently available in the health market, and to assess the use of CDSS by health care providers in diagnosing and treating patients as well as identifying barriers to using CDSS. It will assess if, and how, clinical practice guidelines are being successfully integrated into CDSS and will identify any changes needed for the guidelines to play a more significant role in future systems.

The information collected will indicate:

- If, and how, CDSS and clinical practice guidelines impact the treatment and outcome of patient care;
- What, if any, are the barriers to CDSS and the guidelines from being accepted by health care providers;
- What types of health care personnel are utilizing guidelines in the treatment of their patients and what types of health care personnel could benefit from such products; and
- Assess how successfully guidelines are being integrated into CDSS and their effectiveness when accessed as part of CDSS; and what needs to be modified/changed to facilitate the use of guidelines in CDSS.

The respondents' comments will provide AHCPR with information on (1) if and how CDSS may improve the quality and outcome of care and promote cost-containment, and (2) whether and how to better incorporate guidelines into the development and use of CDSS.

Method of Collection

The survey will be conducted using a computerized telephone interview system (CATI). Burden estimates follow:

Number of Respondents: 80.

Number of Surveys Per Respondent: 1.

Average Burden Per Respondent: 25–30 minutes.

Estimated Total Burden: 40 hours.

Request for Comments

Comments are invited on: (a) The necessity of the proposed collection; (b) the accuracy of the Agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Copies of these proposed collection plans and instruments can be obtained from the AHCPR Reports Clearance Officer (see above).

Dated: August 13, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–22315 Filed 8–26–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Contract Review Meeting

In accordance with Section 10(a) of the Federal Advisory Committee Act (5 U.S.C. Appendix 2), announcement is made of the following technical review committee to meet during the month of September 1997:

Name: Committee on the Agency for Health Care Policy and Research, Small Business Innovation Research (SBIR) Program—Phase II.

Date and Time: September 5, 1997, 9:00 a.m.—3:00 p.m.

Place: Agency for Health Care Policy and Research, 2101 East Jefferson Street, 5th Floor, Conference Room, Rockville, MD 20852.

This meeting will be closed to the public.

Purpose: The Technical Review Committee's charge is to provide, on behalf

of the Agency for Health Care Policy and Research (AHCPR) Contracts Review Committee, recommendations to the Administrator, AHCPR, regarding the technical merit of contract proposals submitted in response to a specific Request for Proposals regarding the Small Business Innovation Research (SBIR) Program.

The purpose of this contract is to continue the research that was initiated in Phase I of these SBIR contracts.

Agenda: The Committee meeting will be devoted entirely to the technical review and evaluation of contract proposals submitted in response to the above referenced Request for Proposals. The Administrator, AHCPR, has made a formal determination that this meeting will not be open to the public. This action is necessary to protect the free and full exchange of views in the contract evaluation process and safeguard confidential proprietary information, and personal information concerning individuals associated with the proposals that may be revealed during the meeting. This action is taken in accordance with section 10(d) of the Federal Advisory Committee Act, 5 U.S.C., Appendix 2, 5 U.S.C. 522(b)(c)(6), 41 CFR 101–6.1023 and Department procurement regulations, 48 CFR 315.604(d).

Anyone wishing to obtain information regarding this meeting should contact Charles Darby, Center for Quality Measurement and Improvement, Agency for Health Care Policy and Research, 2101 East Jefferson Street, Suite 502, Rockville, Maryland 20852, 301/594–1349, X1316.

Dated: August 20, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–22785 Filed 8–26–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0071]

Amirul Islam; Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the act) permanently debarring Mr. Amirul Islam, 120 Adams St., Deer Park, NY 11729, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Islam was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Mr. Islam has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: August 27, 1997.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Leanne Cusumano, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Mr. Amirul Islam, a former vice president of technical services for Halsey Drug Co., Inc., (Halsey) and supervisor of Halsey's Quality Control Laboratory, pled guilty to, and on October 19, 1994, was sentenced for, obstructing an agency proceeding, a Federal felony under 18 U.S.C. 1505. The basis for this conviction was as follows: On or about August 29, 1989, Mr. Islam gave FDA inspectors a raw material inventory card for fenoprofen calcium which he knew to be false. The inventory card stated that Halsey had received 50 kilograms of fenoprofen calcium on September 11, 1987. In fact, Halsey had received only half that amount. Mr. Islam knew that the purpose of the falsified inventory card was to conceal from FDA the fact that Halsey did not have enough raw material from the September 11, 1987, shipment to manufacture pilot batches in the sizes represented in abbreviated new drug applications (ANDA's) for fenoprofen calcium 200 milligram (mg) capsules, fenoprofen calcium 300 mg capsules, and fenoprofen calcium 600 mg tablets.

Mr. Islam is subject to debarment based on a finding, under section 306(a) of the act (21 U.S.C. 355a(a)), that he was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Mr. Islam's conduct related to the regulation of a drug product because, in presenting false raw material inventory records, he obstructed FDA's regulation of generic drugs by representing that the ANDA's submitted by Halsey were true in all material respects.

FDA initiated debarment proceedings against Mr. Islam on or about May 15, 1995. A person subject to debarment is entitled to an opportunity for an agency hearing on disputed issues of material fact under section 306(i) of the act, but Mr. Islam waived his opportunity for a hearing and any contentions concerning his debarment by letter received by FDA on April 22, 1997.

II. Findings and Order

Therefore, the Director, Center for Drug Evaluation and Research, under section 306(a)(2)(B) of the act, and under authority delegated to her (21 CFR 5.99), finds that Mr. Amirul Islam has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product.

As a result of the foregoing findings and based on his notification of acquiescence, Mr. Amirul Islam is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective August 27, 1997 (sections 306(c)(1)(B) and (c)(2)(A)(ii) and 201(dd) of the act (21 U.S.C. 321(dd))). Any person with an approved or pending drug product application who knowingly uses the services of Mr. Islam, in any capacity, during his period of debarment, will be subject to civil money penalties (section 307(a)(6) of the act (21 U.S.C. 335b(a)(6))). If Mr. Islam, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (section 307(a)(7) of the act). In addition, FDA will not accept or review any ANDA's or abbreviated antibiotic drug applications submitted by or with the assistance of Mr. Islam during his period of debarment.

Any application by Mr. Islam for termination of debarment under section 306(d) of the act should be identified with Docket No. 95N–0071 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 19, 1997.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 97–22704 Filed 8–26–97; 8:45 am]

BILLING CODE 4160–01–F

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: Biological Response Modifiers 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 17, 1997, 5 p.m. to 7 p.m. by teleconference.

Location: Food and Drug Administration, Bldg. 29, conference room 121, 8800 Rockville Pike, Rockville, MD. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting.

Contact Person: Gail M. Dapolito or Rosanna L. Harvey, Center for Biologics Evaluation and Research (HFM–21), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852, 301–827–0314, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12388. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss the intramural scientific programs of the Laboratory of Molecular and Developmental Immunology and an individual in the Molecular Immunology Laboratory.

Procedure: On September 17, 1997, from 5 p.m. to 6 p.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 September 10, 1997. Oral presentations from the public will be scheduled between approximately 5 p.m. and 6 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before September 10, 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 17, 1997, from 6 p.m. to 7 p.m., the meeting will be closed to permit discussion where disclosure would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)). The meeting will be closed to discuss personal information concerning individuals associated with the research programs.

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. 97–22705 Filed 8–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Food Safety—Everybody's Business; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing the following public workshop: Food Safety—Everybody's Business. The topics to be discussed are: An overview of FDA's food safety initiatives; the problems of Federal, State, and city agencies in dealing with food safety; and why food safety is everybody's business. Education of food handlers and consumers about the causes of foodborne illnesses and how to prevent them should result in safer foods and less illness among the consuming public.

Date and Time: The public workshop will be held on Thursday, September 18, 1997, 8 a.m. to 4 p.m.

Location: The public workshop will be held at St. Josephs's University, Professional Conference Center, 5600 City Line Ave., Philadelphia, PA 19131.

Contact Person: Theresa A. Holmes, Philadelphia District Office (HFR–MA 145), Food and Drug Administration, 900 U.S. Customhouse, Second and Chestnut Sts., Philadelphia, PA 19106, 215–597–4390, ext. 4202, FAX 215–597–6649.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number), to the contact person by Wednesday, September 10, 1997. There is no registration fee for this public workshop. Space is limited, therefore interested parties are encouraged to register early.

If you need special accommodations due to a disability, please contact Theresa A. Holmes at least 7 days in advance.

SUPPLEMENTARY INFORMATION: This public workshop will be held jointly by the FDA Philadelphia District Office; United States Department of Agriculture (USDA) Food Safety and Inspection Service; Philadelphia Department of Health; St. Joseph's University; Drexel University; and Penn State Cooperative Extension Service. Of special interest will be a video on the Ten Causes of Foodborne Illness and discussion of a ''sample menu'': From appetizer to dessert. There will be four breakout sessions in the afternoon as follows: (1) Food Allergens—''Hidden Ingredients;'' (2) Raw Food: ''Market to Plate;'' (3) Foodborne Illness—''More Than a Bellyache;'' and (4) Prepared Foods: ''Too Hot to Handle.''

Dated: August 21, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22789 Filed 8-26-97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Quality System GMP Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

SUMMARY: The Food and Drug Administration's (FDA's) Office of Regulatory Affairs (ORA), Southeast Region is announcing a public workshop entitled ''Quality System GMP Workshop''. FDA is cosponsoring this public workshop with the Association of Food and Drug Officials (AFDO). This public workshop will focus on the new medical device quality system regulation, medical device reporting, premarket notification and other related good manufacturing practice (GMP) topics.

DATES: The public workshop will be held on Wednesday, September 17, 1997, from 8:30 a.m. until 4 p.m., and on Thursday, September 18, 1997, from 8 a.m. until 4 p.m. The deadline for registration is September 5, 1997.

ADDRESSES: The public workshop will be held at the Four Points Sheraton, 1850 Cotillion Dr., Atlanta, GA.

Attendees requiring overnight accommodations may contact the hotel at 770–394–5000.

FOR FURTHER INFORMATION CONTACT:

For information regarding this notice: JoAnn Pittman, Food and Drug Administration, Atlanta District Office, 60 Eighth St. NE., Atlanta, GA 30309, 404–347–7355.

For information regarding registration and the workshop: Denise Rooney, AFDO, P.O. Box 3425, York, PA 17402, 717–757–2888, FAX 717–755–8089.

SUPPLEMENTARY INFORMATION: This workshop is cosponsored with AFDO. AFDO will be assisting with the agenda and administrative functions for the meeting. Representatives from FDA's Center for Devices and Radiological Health and ORA Southeast Region and other FDA representatives will be participating.

AFDO is charging a registration fee of $200 for the public workshop that includes training materials, breaks, and lunch for 2 days. Those persons interested in attending this public workshop should send their registration fee including name(s), firm name, address, telephone number, and FAX number to Denise Rooney (address above) by September 5, 1997. Make checks payable to AFDO. Space is limited and all interested parties are encouraged to register early.

Dated: August 21, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22791 Filed 8–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Regulatory Partnership Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA) is announcing the following public workshop: Regulatory Partnership Workshop. The topic to be discussed is medical device reporting for user facilities. FDA is holding this public workshop to promote the President's initiative for a partnership approach between front-line regulators and the people affected by the work of this agency, and specifically to develop a device reporting partnership among the Federal, manufacturing, and medical communities.

Date and Time: The public workshop will be held on Thursday, September 11, 1997, 9 a.m. to 12 m.

Location: The public workshop will be held at Cavanaugh's Inn at the Park, 303 West North River Dr., Spokane, WA 99201, 509–326–8000.

Contact:

In Seattle: Sue J. Hutchcroft, Food and Drug Administration (HFR–PA 300), P.O. Box 3012, Bothell, WA 98041–3012, 425–483–4953, FAX 425–483–4996.

In Spokane: Dolores E. Price, Food and Drug Administration (HFR–PA 3520), 1000 North Argonne, suite 105, Spokane, WA 99212, 509–353–2470, FAX 509–353–2746.

In Oakland: Mark S. Roh, Food and Drug Administration, 1301 Clay St., suite 1180N, Oakland, CA 94612–5217, 510–637–3980, FAX 510–637–3977.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to one of the contact persons by Thursday, September 4, 1997. There is no registration fee for this public workshop. Space is limited, therefore interested parties are encouraged to register early.

If you need special accommodations due to a disability, please contact one of the listed contact persons at least 7 days in advance.

Dated: August 21, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22792 Filed 8–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that published in the **Federal Register** of August 22, 1997 (62 FR 44700). The notice announced a meeting of the General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee, which is scheduled for September 15 and 16, 1997. The notice published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: LaJuana D. Caldwell, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2994.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 22, 1997 (62 FR 44700), in FR Doc. 97–22556, FDA announced that a meeting of the General Hospital and Personal Use Devices Panel of the Medical Devices Advisory Committee would be held on September 15 and 16, 1997. The notice incorrectly published the dates for submissions to the contact person as August 9, 1997. The correct date should be August 29, 1997.

Beginning on page 44700, in column 3, under the ''*Procedure*:'' portion of the meeting, the date ''August 9, 1997'' should be corrected to read ''August 29, 1997'' both places that it appears.

Dated: August 22, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–22858 Filed 8-22-97; 4:20 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0345]

Guidance for Industry on Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report.'' The purpose of this guidance document is to clarify requirements for postmarketing safety reporting. This guidance document is intended to improve the quality of safety reports submitted to FDA while streamlining the postmarketing surveillance of human drug and licensed biological products.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance for industry ''Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report'' to the

Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

For information concerning human drug products: Audrey A. Thomas, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5625.

For information concerning human licensed biological products: Marcel E. Salive, Center for Biologics Evaluation and Research (HFM–220), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3974.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled ''Postmarketing Adverse Experience Reporting for Human Drug and Licensed Biological Products: Clarification of What to Report.'' FDA has undertaken a major effort to clarify and revise its regulations regarding pre- and postmarketing safety reporting requirements for human drug and biological products. With regard to the postmarketing safety reporting regulations for human drug and licensed biological products, the agency published a proposed rule in the **Federal Register** of October 27, 1994 (59 FR 54046), to amend these requirements, as well as others, to implement international standards, and to facilitate the reporting of adverse experiences. FDA is still considering comments submitted in response to this proposed rule and will be finalizing the proposed amendments based on those comments as well as on recommendations developed by the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH) and by the World Health Organization's Council for International Organizations of Medical Sciences (CIOMS). In addition, in response to the President's regulatory reinvention initiative, which directed departments and agencies to eliminate or modify regulations that are outdated or otherwise in need of reform, FDA recently published a final rule in the **Federal Register** (62 FR 34166, June 25, 1997) that revokes the postmarketing safety reporting requirement to submit expedited increased frequency reports for human drug and licensed biological products.

At this time, the agency is considering recommendations recently developed by ICH and plans to propose additional amendments to its postmarketing safety reporting regulations. Throughout this effort, the agency intends to develop guidances for industry to provide recommendations on how industry can best fulfill the postmarketing safety reporting requirements. FDA plans to prepare a single consolidated guidance document on this topic once the process is concluded.

This guidance document: (1) Describes the information that should be obtained before an individual case of an adverse experience should be considered for submission to FDA in an expedited or periodic report; (2) clarifies how safety information from solicited contacts with patients should be handled; and (3) informs applicants and licensed manufacturers that FDA will entertain waiver requests for periodic submission of individual case reports for adverse experiences that are determined to be nonserious and labeled. The guidance for industry should be used in conjunction with CDER's ''Guideline for Postmarketing Reporting of Adverse Drug Experiences'' (March 1992) and CBER's ''Guideline for Adverse Experience Reporting for Licensed Biological Products'' (October 1993).

This guidance document represents the agency's current thinking on reporting of certain postmarketing adverse experiences for human drug and licensed biological products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments and requests on the guidance document to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

An electronic version of this guidance is also available on the Internet at http://www.fda.gov/cder/guidance.htm or http://www.fda.gov/cber/guidelines.htm.

Dated: August 21, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–22790 Filed 8–26–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA 901, 1–3]

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: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Qualification Application for Competitive Medical Plan, Medicare Contract Application for Federally Qualified Health Maintenance Organization (HMO) and supporting regulations 42 CFR 417.143, and 417.408; *Form No.:* HCFA–901, 1–3 OMB # 0938–0470; *Use:* Prepaid health plans must meet certain regulatory requirements which are captured in these applications, before they are considered a Federally qualified HMO that is eligible for a Medicare § 1876 contract. Section 1876 of the Social Security Act authorizes compensation to

eligible organizations either on a reasonable cost or a risk basis for services provided under the Medicare program. *Frequency:* one time; *Affected Public:* Business or other for-profit, Not-for-profit institutions, and State, Local or Tribal Government; *Number of Respondents:* 65; *Total Annual Responses:* 65; *Total Annual Hours:* 6,500.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, or to obtain the supporting statement and any related forms, E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: August 21, 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. 97–22744 Filed 8–26–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Council on Graduate Medical Education Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of September 1997:

Name: Council on Graduate Medical Education.

Date and Time: September 24, 1997, 1:00 p.m.–5:00 p.m. September 25, 1997, 8:30 a.m.–1:00 p.m.

Place: The Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting is open to the Public.

Agenda: The agenda will include Geographic Distribution ''1'' Report final review and action. Discussions of Draft Minorities in Medicine Report and public comments. Congressional staff presentations. Pew Commission Physician Workforce task force activities. Work plan and activities for the year.

Anyone requiring information regarding the subject should contact F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Agenda items are subject to change as priorities dictate.

Date: August 21, 1997.

Jane M. Harrison,

Acting Director, Division of Policy Review and Coordination and Information Coordination.

[FR Doc. 97–22784 Filed 8–26–97; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Drug Abuse, National Institute on Drug Abuse (NIDA) on September 16–17, 1997, at the National Institutes of Health, Building 31, 9000 Rockville Pike, Bethesda, MD 20892, which was published in the **Federal Register** on August 13, 1997, Volume 62 FR 43337.

This committee was to have convened from 9 a.m. to 4 p.m. on September 16, and from 9 a.m. to 5 p.m. on September 17. On September 17 the time has been changed to 9 a.m. to 12 p.m.

Dated: August 21, 1997.

LaVeen M. Ponds,

Policy Analyst, National Institutes of Health Committee Management Officer.

[FR Doc. 97–22822 Filed 8–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting; National Arthritis and Musculoskeletal and Skin Diseases Advisory Council

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council to provide advice to the National Institute of Arthritis and Musculoskeletal and Skin Diseases (NIAMS) on September 4, 1997, in Conference Room 6, Building 31, National Institutes of Health, Bethesda, Maryland.

The meeting will be open to the public September 4 from 8:30 a.m. to 12:00 p.m. to discuss administrative details relating to Council business and special reports. Attendance by the public will be limited to space available.

The meeting of the Advisory Council will be closed to the public on September 4 from 1:00 p.m. to adjournment in accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These deliberations could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal property.

This notice is being published less than 15 days prior to the above meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Steven Hausman, Executive Secretary, National Arthritis and Musculoskeletal and Skin Diseases Advisory Council, NIAMS, Natcher Building, Room 5AS–13, Bethesda, Maryland 20892; (301) 594–2463.

A summary of the meeting and roster of the members may be obtained from the Extramural Programs Office, NIAMS, Natcher Building, Room 5AS–13, National Institutes of Health, Bethesda, Maryland 20892; (301) 594–2463.

(Catalog of Federal Domestic Assistance Program No. 93.846, Arthritis, Bone and Skin Diseases, National Institutes of Health.)

Dated: August 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–22826 Filed 8–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following

meetings that are being held to review grant applications:

Study section/contact person	September–November 1997 meetings	Time	Location
AIDS and Related Research Initial Review Group			
AIDS & Related Research 1, Dr. Sami Mayyasi, 301–435–1216.	Nov. 6–7	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 2, Dr. Gilbert Meier, 301–435–1219.	Nov. 7	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 3, Dr. Bruce Maurer, 301–435–1225.	Nov. 3–4	8:30 a.m	St. James Hotel, Washington, DC.
AIDS & Related Research 4, Dr. Mohindar Poonian, 301–435–1218.	Nov. 6–7	8:30 a.m	Hyatt Regency Hotel, Bethesda, MD.
AIDS & Related Research 5, Dr. Mohindar Poonian, 301–435–1218.	Nov. 4	8:30 a.m	Hyatt Regency Hotel, Bethesda, MD.
AIDS & Related Research 6, Dr. Gilbert Meier, 301–435–1219.	Nov. 21	8:00 a.m	Holiday Inn, Chevy Chase, MD.
AIDS & Related Research 7, Dr. Gilbert Meier, 301–435–1219.	Nov. 14	8:00 a.m	Holiday Inn, Chevy Chase, MD.
Biobehavioral and Social Sciences Initial Review Group			
Behavioral Medicine, Ms. Carol Campbell, 301–435–1257.	Oct. 20–21	8:30 a.m	St. James Hotel, Washington, DC.
Human Development & Aging-2, Dr. Michael Micklin, 301–435–1258.	Oct. 21–22	8:30 a.m	Holiday Inn, Chevy Chase, MD.
Social Sciences & Population, Dr. Robert Weller, 301–435–1261.	Oct. 23–24	8:00 a.m	Governors House Hotel, Washington, DC.
Biochemical Sciences Initial Review Group			
Biochemistry, Dr. Chhanda Ganguly, 301–435–1739	Oct. 22–24	8:30 a.m	Hotel Sofitel, Washington, DC.
Medical Biochemistry, Dr. Alexander Liacouras, 301–435–1740.	Oct. 16–17	8:30 a.m	Holiday Inn, Silver Spring, MD.
Pathobiochemistry, Dr. Zakir Bengali, 301–435–1742	Oct. 9–10	8:30 a.m	Georgetown Holiday Inn, Washington, DC.
Physiological Chemistry, Dr. Richard Panniers, 301–435–1166.	Oct. 23–24	8:00 a.m	Governors House Hotel, Washington, DC.
Biophysical and Chemical Sciences Initial Review Group			
Bio-Organic & Natural Products Chemistry, Dr. Harold Radtke,, 301–435–1728.	Oct. 23–24	9:00 a.m	Holiday Inn, Silver Spring, MD.
Biophysical Chemistry, Dr. Donald Schneider, 301–435–1727.	Oct. 23–24	8:30 a.m.	Wyndham Bristol Hotel, Washington, DC.
Medicinal Chemistry, Dr. Ronald Dubois, 301–435–1722.	Oct. 15–17	8:30 a.m.	DoubleTree Hotel, Rockville, MD.
Metallobiochemistry, Dr. John Bowers, 301–435–1725	Oct. 23–24	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Molecular & Cellular Biophysics, Dr. Nancy Lamontagne, 301–435–1726.	Oct. 23–24	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Physical Biochemistry, Dr. Gopa Rakhit, 301–435–1721.	Oct. 27–28	8:30 a.m.	DoubleTree Hotel, Rockville, MD.
Cardiovascular Sciences Initial Review Group			
Cardiovascular, Dr. Gordon Johnson, 301–435–1212	Oct. 27–29	8:00 a.m.	Holiday Inn, Silver Spring, MD.
Cardiovascular & Renal, Dr. Anthony Chung, 301–435–1213.	Oct. 20–21	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Cardiovascular Sciences, Dr. Anshumali Chaudhari, 301–435–1210.	Oct. 20–21	8:00 a.m.	DoubleTree Hotel, Rockville, MD.
Hematology-1, Dr. Clark Lum, 301–435–1195	Oct. 16–17	8:00 a.m.	Ramada Hotel, Bethesda, MD.
Hematology-2, Dr. Jerrold Fried, 301–435–1777	Nov. 12–13	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Pathology A, Dr. Larry Pinkus, 301–435–1214	Oct. 21–22	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Pharmacology, Dr. Jeanne Ketley, 301–435–1789	Nov. 6–7	8:00 a.m.	American Inn, Bethesda, MD.
Cell Development and Function Initial Review Group			
Biological Sciences-2, Dr. Anthony Carter, 301–435–1024.	Nov. 6–7	8:30 a.m.	Hotel George, Washington, DC.
Cellular Biology and Physiology-1, Dr. Gerald Greenhouse, 301–435–1023.	Sept. 29–30	8:00 a.m.	Sheraton Reston Hotel, Reston, VA.
Cellular Biology and Physiology-2, Dr. Gerhard Ehrenspeck, 301–435–1022.	Oct. 15–16	8:30 a.m.	Holiday Inn, Bethesda, MD.

Study section/contact person	September–November 1997 meetings	Time	Location
Human Embryology & Development-2, Dr. Sherry Dupere, 301–435–1021.	Oct. 16–17	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
International & Cooperative Projects, Dr. G.B. Warren, 301–435–1019.	Oct. 16–17	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Molecular Biology, Dr. Robert Su, 301–435–1025	Oct. 9–10	8:30 a.m.	The Georgetown Inn, Washington, DC.
Molecular Cytology, Dr. Ramesh Nayak, 301–435–1026.	Oct. 9–10	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Endocrinology and Reproductive Sciences Initial Review Group			
Biochemical Endocrinology, Dr. Michael Knecht, 301–435–1046.	Oct. 20–21	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Endocrinology, Dr. Syed Amir, 301–435–1043	Oct. 13–14	8:30 a.m.	Ramada Inn, Rockville, MD.
Human Embryology & Development–1, Dr. Michael Knecht, 301–435–1046.	Oct. 30–31	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Reproductive Biology, Dr. Dennis Leszczynski, 301–435–1044.	Oct. 13–14	8:00 a.m.	DoubleTree Hotel, Rockville, MD.
Reproductive Endocrinology, Dr. Abubakar Shaikh, 301–435–1042.	Oct. 30–31	8:00 a.m.	Woodfin Suites, Rockville, MD.
Genetic Sciences Initial Review Group			
Biological Sciences–1, Dr. Nancy Pearson, 301–435–1047.	Nov. 5–7	8:30 a.m.	St. James Hotel, Washington, DC.
Genetics, Dr. David Remondini, 301–435–1038	Oct. 16–17	9:00 a.m.	Ramada Inn, Bethesda, MD.
Genome, Dr. Cheryl Corsaro, 301–435–1045	Oct. 20–22	9:00 a.m.	Holiday Inn, Bethesda, MD.
Mammalian Genetics, Dr. Camilla Day, 301–435–1142	Oct. 20–21	9:00 a.m.	Holiday Inn, Bethesda, MD.
Health Promotion and Disease Prevention Initial Review Group			
Epidemiology & Disease Control–1, Dr. Scott Osborne, 301–435–1782.	Oct. 15–17	8:30 a.m.	Marriott Residence Inn, Bethesda, MD.
Nursing Research, Dr. Gertrude McFarland, 301–435–1784.	Oct. 20–21	8:30 a.m.	DoubleTree Hotel, Rockville, MD.
Immunological Sciences Initial Review Group			
Allergy & Immunology, Dr. Gene Zimmerman, 301–435–1220.	Oct. 16–17	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Expermental Immunology, Dr. Calbert Laing, 301–435–1221.	Oct. 23–24	8:30 a.m.	Henley Park Hotel, Washington, DC.
Immunobiology, Dr. Betty Hayden, 301–435–1223	Oct. 23–24	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Immunological Sciences, Dr. Anita Corman Weinblatt, 301–435–1224.	Oct. 29–31	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Infectious Diseases and Microbiology Initial Review Group			
Bacteriology & Mycology–1, Dr. Timothy Henry, 301–435–1147.	Oct. 20–21	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Bacteriology & Mycology–2, Dr. William Branche, Jr., 301–435–1148.	Oct. 15–17	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Virology, Dr. Garrett Keefer, 301–435–1152.	Oct. 20–21	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Microbial Physiology & Genetics–1, Dr. Martin Slater, 301–435–1149.	Oct. 29–31	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Microbial Physiology & Genetics–2, Dr. Gerald Liddel, 301–435–1150.	Oct. 22–23	8:30 a.m.	Holiday Inn, Bethesda, MD.
Tropical Medicine & Parasitology, Dr. Jean Hickman, 301–435–1146.	Oct. 9–10	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Virology, Dr. Rita Anand, 301–435–1151	Oct. 14–15	8:30 a.m.	Holiday Inn, Bethesda, MD.
Musculoskeletal and Dental Sciences Initial Review Group			
General Medicine A–1, Dr. Harold Davidson, 301–435–1776.	Oct. 20–21	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
General Medicine B, Dr. Shirley Hilden, 301–435–1198.	Oct. 7–8	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Oral Biology & Medicine–1, Dr. Priscilla Chen, 301–435–1787.	Oct. 7–8	8:30 a.m.	Holiday Inn-Old Town, Alexandria, VA.
Oral Biology & Medicine–2, Dr. Priscilla Chen, 301–435–1787.	Oct. 20–21	8:30 a.m.	Holiday Inn-Old Town, Alexandria, VA.

Study section/contact person	September–November 1997 meetings	Time	Location
Orthopedics & Musculoskeletal, Dr. Daniel McDonald, 301–435–1215.	Oct. 20–21	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Neurological Sciences Initial Review Group			
Neurological Sciences–1, Dr. Carl Banner, 301–435–1251.	Oct. 15–16	8:30 p.m.	Governors House Hotel, Bethesda, MD.
Neurological Sciences–2, Dr. Kathleen Michels, 301–435–1250.	Oct. 7–9	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Neurology A, Dr. Joe Marwah, 301–435–1253	Oct. 9–10	830 a.m.	Governors House Hotel, Washington, DC.
Neurology B–1, Dr. Lawrence Stanford, 301–435–1255.	Oct. 14–15	8:30 a.m.	Governors House Hotel, Washington, DC.
Neurology B–2, Dr. Herman Teitelbaum, 301–435–1254.	Oct. 14–16	8:00 a.m.	Ramada Inn, Rockville, MD.
Neurology C, Dr. Kenneth Newrock, 301–435–1252	Oct. 15–17	8:30 a.m.	Radisson Barcelo Hotel, Washington, DC.
Nutritional and Metabolic Sciences Initial Review Group			
General Medicine A–2, Dr. Mushtaq Khan, 301–435–1778.	Oct. 6–7	8:30 a.m.	Holiday Inn, Bethesda, MD.
Metabolism, Dr. Krish Krishnan, 301–435–1779	Oct. 30–31	8:30 a.m.	Georgetown Holiday Inn, Washington, DC.
Nutrition, Dr. Sooja Kim, 301–435–1780	Oct. 6–7	8:30 a.m.	Holiday Inn, Bethesda, MD.
Oncological Sciences Initial Review Group			
Chemical Pathology, Dr. Edmund Copeland, 301–435–1715.	Oct. 15–17	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Experimental Therapeutics-1, Dr. Philip Perkins, 301–435–1718.	Oct. 23–24	8:30 a.m.	Hyatt Hotel, Key Bridge, Arlington, VA.
Experimental Therapeutics-2, Dr. Marcia Litwack, 301–435–1719.	Oct. 29–31	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Metabolic Pathology, Dr. Marcelina Powers, 301–435–1720.	Oct. 22–24	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Pathology B, Dr. Martin Padarathsingh, 301–435–1717	Oct. 15–17	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Radiation, Dr. Paul Strudler, 301–435–1716	Oct. 16–18	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Pathophysiological Sciences Initial Review Group			
Lung Biology & Pathology, Dr. Andrea Harabin, 301–435–1017.	Oct. 15–16	8:00 a.m.	Holiday Inn, Chevy Chase, MD.
Physiology, Dr. Michael Lang, 301–435–1015	Oct. 16–17	8:30 a.m.	Embassy Suites Hotel, Chevy Chase Pavilion, Washington, DC.
Respiratory & Applied Physiology, Dr. Everett Sinnett, 301–435–1016.	Nov. 3–4	8:30 a.m.	Holiday Inn, Chevy Chase, MD.
Sensory Sciences Initial Review Group			
Hearing Research, Dr. Joseph Kimm, 301–435–1249	Oct. 6–7	8:30 a.m.	Embassy Square Suites, Washington, DC.
Sensory Disorders & Language, Dr. Sam Rawlings, 301–435–1243.	Oct. 15–17	8:30 a.m.	Capitol Holiday Inn, Washington, DC.
Visual Sciences A, Dr. Luigi Giacometti, 301–435–1246.	Oct. 22–24	8:30 a.m.	Ramada Inn, Rockville, MD.
Visual Sciences B, Dr. Leonard Jakubczak, 301–435–1247.	Oct. 8–9	8:30 a.m.	Holiday Inn, Silver Spring, MD.
Visual Sciences C, Dr. Carole Jelsema, 301–435–1248.	Oct. 8–9	8:00 a.m.	Wyndham Bristol Hotel, Washington, DC.
Surgery, Radiology and Bioengineering Initial Review Group			
Diagnostic Radiology, Dr. Eileen Bradley, 301–435–1178.	Oct. 22–23	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Surgery & Bioengineering, Dr. Lee Rosen, 301–435–1171.	Oct. 20–21	8:00 a.m.	Georgetown Holiday Inn, Washington, DC.
Surgery, Anesthesiology & Trauma, Dr. Gerald Becker, 301–435–1750.	Oct. 29–30	1:00 p.m.	Georgetown Holiday Inn, Washington, DC.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with

the application and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844,, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 20, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–22823 Filed 8–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applications.

Name of SEP: Biological and Physiological Sciences.

Date: August 28, 1997.

Time: 12:00 p.m.

Place: NIH, Rockledge 2, Room 4142, Telephone Conference.

Contact Person: Dr. Edmund Copeland, Scientific Review Administrator, 6701 Rockledge Drive, Room 4142, Bethesda, Maryland 20892, (301) 435–1715.

Name of SEP: Microbiological and Immunological Sciences.

Date: September 2, 1997.

Time: 9:00 a.m.

Place: NIH, Rockledge 2, Room 4182, Telephone Conference.

Contact Person: Dr. William Branche, Jr., Scientific Review Administrator, 6701 Rockledge Drive, Room 4182, Bethesda, Maryland 20892, (301) 435–1148.

Name of SEP: Behavioral and Neurosciences.

Date: September 5, 1997.

Time: 2:00 p.m.

Place: NIH, Rockledge 2, Room 5168, Telephone Conference.

Contact Person: Dr. Jane Hu, Scientific Review Administrator, 6701 Rockledge Drive, Room 5168, Bethesda, Maryland 20892, (301) 435–1245.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

Name of SEP: Clinical Sciences.

Date: October 28, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4136, Telephone Conference.

Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4136, Bethesda, Maryland 20892, (301) 435–1212.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 20, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–22824 Filed 8–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Division of Research Grants; Notice of Closed Meetings

Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following Division of Research Grants Special Emphasis Panel (SEP) meetings:

Purpose/Agenda: To review individual grant applicants.

Name of SEP: Biological and Physiological Sciences.

Date: August 28, 1997.

Time: 3:00 p.m.

Place: NIH, Rockledge 2, Room 4150, Telephone Conference.

Contact Person: Dr. Marcia Litwack, Scientific Review Administrator, 6701 Rockledge Drive, Room 4150, Bethesda, Maryland 20892, (301) 435–1717.

Name of SEP: Clinical Sciences.

Date: August 28, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 4136, Telephone Conference.

Contact Person: Dr. Gordon Johnson, Scientific Review Administrator, 6701 Rockledge Drive, Room 4136, Bethesda, Maryland 20892, (301) 435–1212.

Name of SEP: Behavioral and Neurosciences.

Date: September 3, 1997.

Time: 1:00 p.m.

Place: NIH, Rockledge 2, Room 5178, Telephone Conference.

Contact Person: Dr. Joseph Kimm, Scientific Review Administrator, 6701 Rockledge Drive, Room 5178, Bethesda, Maryland 20892, (301) 435–1249.

This notice is being published less than 15 days prior to the above meetings due to the urgent need to meet timing limitations imposed by the grant review and funding cycle.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. Applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable materials and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93,337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS.)

Dated: August 21, 1997.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 97–22825 Filed 8–26–97; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed information requests, the Substance Abuse and Mental Health Service Administration (SAMHSA) will publish periodic summaries of each proposed collection of information. To request a copy of these documents, contact the SAMHSA Reports Clearance Officer on (301) 443–8005.

SAMHSA is publishing this notice to solicit public comment on the Proposed Reporting Requirements in the Final Rule for the activities of Protection and Advocacy for Individuals with Mental Illness (PAIMI) programs. Written comments from the public should be received within 60 days of the publication of this notice.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the

use of automated collection techniques or other forms of information technology.

Proposed Project: Protection and Advocacy for Individuals with Mental Illness (PAIMI) Final Rule—Information collection requirements in the Final Rule for the protection and advocacy programs serving individuals with mental illness. The development of regulations and issuance of the Final Rule meets the directive under Public Law 102–173, ''Protection and Advocacy for Mentally Ill Individuals Amendments Act of 1991'' (PAIMI Act), 42 U.S.C. 10826(b), requiring the Secretary to promulgate final regulations to carry out the Act. 45 CFR Subchapter 51 of the Final Rule contains information collection requirements.

The PAIMI Act (Pub. L. 99–319) authorized funds to support activities on behalf of individuals with mental illness. Recipients of this formula grant program are required by law to annually report their activities and accomplishments to include the number of individuals served, types of facilities involved, types of activities undertaken and accomplishments resulting from such activities. This summary must also include a separate report prepared by the PAIMI Advisory Council descriptive of its activities and assessment of the operations of the protection and advocacy system. The annual burden estimate is as follows:

Estimated Annual Reporting Burden:

	Annual number of respondents	Annual frequency	Average burden per response (hours)	Annual burden hours
Section 51.8(a)(2)				
Program Performance Report	56	1	35.0	[1] 1,960
Part I			33.0	
Part II			2.0	
Section 51.8(a)(8)				
Advisory Council Report	56	1	10.0	[1] 560
Section 51.10				
Remedial Actions:				
Corrective Action Plan	6	1	8.0	48
Implementation Status Report	6	3	2.0	36
Section 51.23(c)				
Reports, materials and fiscal data to Advisory Council	56	1	1.0	56
Section 51.25(b)(2)				
Grievance Procedure	56	1	0.5	28
Total	124			2,688

[1] Burden hours associated with the Annual Performance Report and Advisory Council Report are approved under OMB Control No. 0930–0169.

Individuals or organizations wishing to submit comments on the information collection requirements, estimated burden, or any other aspect of this collection of information should send their comments to: Beatrice A. Rouse, Reports Clearance Officer, SAMHSA, 16–105 Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. Written comments should be received within 60 days of this notice.

Dated: August 15, 1997.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 97–22726 Filed 8–26–97; 8:45 am]

BILLING CODE 4162–20–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4209–N–03]

Mortgagee Review Board; Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) of the National Housing Act, notice is hereby given of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Morris E. Carter, Director, Office of Lender Activities and Program Compliance, 451 Seventh Street, S.W., Washington, DC 20410, telephone: (202) 708–1515. (This is not a toll-free number). A Telecommunications Device for Hearing and Speech-Impaired Individuals (TTY) is available at 1–800–877–8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (added by Section 142 of the Department of Housing and Urban Development Reform Act of 1989, Pub. L. 101–235), approved December 15, 1989, requires that HUD ''publish a description of and the cause for administrative action against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board. In compliance with the requirements of Section 202(c)(5), notice is hereby given of administrative actions that have been taken by the Mortgagee Review Board from April 12, 1997 through July 17, 1997.

1. First Choice Mortgage LLC, Burr Ridge, Illinois

Action: Withdrawal of HUD–FHA mortgagee approval and a proposed civil money penalty of $200,000.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements that included: failure to remit to HUD–FHA One-Time Mortgage Insurance Premiums (OTMIPs) within 15 days after loan closing, and, to timely remit late charges and interest; and failure to implement a Quality Control Plan.

2. InterAmerican Mortgage Corp., Rosedale, New York

Action: Withdrawal of HUD–FHA mortgagee approval and a proposed civil money penalty of $100,000.

Cause: A HUD monitoring review that cited violations of HUD–FHA requirements that included: use of alleged false documentation or conflicting information to approve mortgagors; failure to report fraudulent activity to HUD–FHA; closing loans that exceeded HUD–FHA maximum mortgage amounts; closing an unauthorized loan to an investor; failure to properly verify the source and/or adequacy of mortgagors' funds for the downpayment and/or funds to close; employing a loan officer that was not an exclusive employee; failure to maintain a Quality Control Plan in compliance with HUD–FHA requirements; failure to reflect all charges to the buyers and sellers on the HUD–l Settlement Statements; charging borrowers fees that are not in compliance with HUD–FHA requirements; and loan pricing based on loan amounts.

3. AFI Mortgage Corporation, Shawnee, Kansas

Action: Withdrawal of HUD–FHA mortgagee approval.

Cause: Violations of the Department's requirements that included: failure to remit payments to Government National Mortgage Association (GNMA) securities' holders in connection with liquidated mortgages in GNMA mortgage-backed securities pools; and failure to meet HUD–FHA net worth requirements for approval as a mortgagee.

4. LIDD Enterprises, Inc., d/b/a Southern California Funding, Pasadena, California

Action: Withdrawal of HUD–FHA Title I lender approval.

Cause: Use of false and misleading advertising in the Title I Property Improvement Home Loan Program.

5. Carlton Mortgage Services, Inc., Palatine, Illinois

Action: Proposed Settlement Agreement that would include: payment to the Department of a civil money penalty in the amount of $15,000; indemnification for any claim losses in connection with three improperly originated HUD–FHA insured mortgages; a refund of the mortgage insurance premium to a borrower in connection with an uninsured loan; and corrective action to assure compliance with HUD–FHA requirements.

Cause: A HUD monitoring review that disclosed violations of HUD–FHA requirements that included: failure to timely remit One-Time Mortgage Insurance Premiums (OTMIPs); failure to properly calculate mortgagors' income and/or debt ratios; permitting ''sweat equity'' to be escrowed; and failure to implement an adequate Quality Control Plan.

6. Mortgage Capital Resource Corporation, Santa Ana, California

Action: Proposed Settlement Agreement that would include: a payment to the Department in the amount of $35,000; indemnification for any claim loss in connection with one HUD–FHA insured mortgage; and corrective action to assure compliance with HUD–FHA requirements.

Cause: Violations of the Department's requirements that included: failure to perform quality control reviews of branch offices; failure to perform timely quality control reviews; and failure to disclose in the company's annual audited financial statement that the Department was considering administrative action against the company.

7. Consumer Home Mortgage, Inc., Melville, New York

Action: Settlement Agreement that includes: indemnification to the Department for claim losses in connection with 27 improperly originated HUD–FHA insured mortgages; corrective action to assure compliance with HUD–FHA requirements; and payment to the Department of a civil money penalty in the amount of $75,000.

Cause: A HUD monitoring review that cited violations of HUD–FHA home mortgage insurance program violations that included: using alleged false information in originating HUD–FHA insured mortgages; failure to ensure that mortgagors met their minimum required investment; failure to verify the source of funds for mortgagors' downpayment and/or closing costs; permitting mortgagors to sign documents in blank; and, adding non-occupant co-mortgagors to loans for the purpose of qualifying the mortgagors.

8. Madison Home Equities, Inc., Lake Success, New York

Action: Settlement Agreement that includes: indemnification to the Department for claim losses in connection with 31 improperly originated HUD–FHA insured mortgages; corrective action to assure compliance with HUD–FHA requirements; and payment to the Department of a civil money penalty in the amount of $51,000.

Cause: A HUD monitoring review that cited violations of HUD–FHA requirements that included: failure to properly verify and document the source of mortgagors' funds used for downpayment and closing costs; using unsubstantiated credit given to mortgagors in determining the mortgagors' investment; using alleged false information to originate HUD–FHA insured mortgages; submitting an alleged false property inspection report; miscalculating a mortgagor's required investment; failure to accurately reflect disbursements on HUD–l Settlement Statements; and failure to establish, maintain, and implement a Quality Control Plan in compliance with HUD–FHA requirements.

9. Mortgagees and Title I Lenders That Failed To Comply With HUD–FHA Requirements for the Submission of an Audited Annual Financial Statement and/or Payment of the Annual Recertification Fee

Action: Withdrawal of HUD–FHA mortgagee approval and Title I lender approval.

Cause: Failure to submit to the Department the required annual audited financial statement and/or remit the required annual recertification fee.

Mortgagees withdrawn: Associated Funding Services, Inc., Hickory Hills, IL; first Mecklenburg Mortgage Corp., Charlotte, NC; Tower Mortgage Corp., Austin, TX; Home Loans of America, Downey, CA; National Guaranty Mortgage Corp., Atlanta, GA; Chase Federal Bank FSB, Miami, FL; Citizens Mortgage Corp., Atlanta, GA; American Financial Mortgage, Decatur, GA; First Federal Savings Bank, Leitchfield, KY; First Liberty Bank, Macon, GA; Weymouth Savings Bank, Weymouth, MA; Bankunited, Coral Gables, FL; Home Owners Funding Corp. of America, Dallas, TX; Mortgages Unlimited Inc., Fair Oaks, CA; Community Mortgage Investment, Blythewood, SC; Great Five Percent Real Estate Company, Covina, CA; Puget Sound Mortgage Escrow Inc., Poulsbo, WA; First Intercity Mortgage, Campbell, CA; Hartford Bancorp, Lancaster, CA;

Wogo, Inc., Palmdale, CA; Citi Lites Realty Inc., Rancho Cucamonga, CA; Peninsula Bank of San Diego, San Diego, CA; First American Savings Bank, Bedford, TX; Smith Solomon, Temple City, CA. Title I lenders withdrawn: Home Loans of America, Downey, CA; Kinsley Bank, Kinsley, KS; First Mecklenburg Mortgage Company, Charlotte, NC; Coop Ahorry Credito Maunabo, Maunabo, PR; SD Mortgage Associates, Inc., San Diego, CA; All American Funding Inc., Santa Monica, CA; Conduit Acceptance Corp., Dallas, TX; Homeland Savings Bank, Waterloo, IA; Antelope Financial Inc., Lancaster, CA; Eggie Mortgage Inc., d/b/a Rockland Financial, Sherman Oaks, CA; Great Five Percent Real Estate Company, Covina, CA; Wogo Inc d/b/a Regency Financial, Palmdale, CA; Platinum USA Home Loan Inc., Las Vegas, NV; Community Mortgage Investment, Blythewood, SC; New York Central Mortgage Inc., Tarzana, CA; Mortgage America Nationwide, Grand Terrace, CA.

Dated: August 21, 1997.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing, Commissioner.

[FR Doc. 97–22722 Filed 8–26–97; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4264–N–01]

Public Housing Lease and Grievance Procedures; Notice of HUD Due Process Determinations

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of HUD due process determinations.

SUMMARY: Under section 6(k) of the United States Housing Act of 1937, a housing agency (HA) is generally required to provide a public housing tenant with the opportunity for an administrative hearing before commencement of eviction proceedings in court. The statute provides that the HA may bypass the administrative hearing for evictions involving any activity that threatens the health, safety or right to peaceful enjoyment of the premises of other tenants or employees of the HA or any drug-related criminal activity on or of such premises. However, HUD must first make a determination that local law requires a pre-eviction court hearing that provides the basic elements of due process (a ''due process determination''). This notice lists the judicial eviction procedures in the States of Louisiana and North Carolina for which HUD has recently issued a due process determination.

FOR FURTHER INFORMATION CONTACT: Office of General Counsel, Assisted Housing Division, Department of Housing and Urban Development, 451 7th Street, SW., Room 8166, Washington, DC 20410; telephone (202) 708–0470 (This is not a toll free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

Individuals may arrange to inspect and copy the documents detailing the legal analysis on which the due process determination is based by contacting the Assisted Housing Division.

SUPPLEMENTARY INFORMATION:

I. Background

On March 26, 1996 (61 FR 13272), HUD published a final rule in the **Federal Register** amending its regulations governing public notice and comment rulemaking requirements (24 CFR part 10) and public housing lease and grievance procedures (24 CFR part 966). The final rule added a new paragraph (a)(2)(iii) to § 966.51 which states that ''[f]or guidance to the public, HUD will publish in the **Federal Register** a notice listing the judicial eviction procedures for which HUD has issued a due process determination.''

Also on March 26, 1996 (61 FR 13276), HUD published a notice in the **Federal Register** implementing 24 CFR 966.51(a)(2)(iii). The notice provided a State-by-State listing of the due process determinations issued by HUD. Each listing provided a brief description of the judicial eviction procedures required by local law which HUD has determined are consistent with the basic elements of due process, as further defined in 24 CFR 966.53(c).

Subsequent to the publication of the March 26, 1996 notice, HUD issued due process determinations covering the States of Mississippi and Connecticut. Additionally, HUD expanded the coverage of its previously issued determination for the State of Massachusetts to account for a recent change in State law. On September 11, 1996 (61 FR 47953), HUD published a notice in the **Federal Register** which described the judicial eviction procedures in the States of Connecticut, Massachusetts and Mississippi for which it had issued a due process determination.

Since the publication of the March 26, 1996 and September 11, 1996 **Federal Register** notices, HUD has issued two new due process determinations, which cover the States of North Carolina and Louisiana. This notice supplements the March 26, 1996 and September 11, 1996 notices by providing a brief description of the judicial eviction procedures in these two States for which determinations have been issued.

II. Listing of Judicial Eviction Procedures in the States of Louisiana and North Carolina for Which HUD Has Issued a Due Process Determination

Louisiana

A summary action for eviction in the district courts and in the courts of limited jurisdiction under Book VII, Title XI of the Louisiana Code of Civil Procedure.

North Carolina

A summary ejectment action in district court (including a summary ejectment action before a magistrate in district court) and in superior court under Chapter 42, Article 3 of the General Statutes of North Carolina.

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance Number for Public Housing is 14.850.

Dated: August 21, 1997.

Kevin Emanuel Marchman,

Acting Assistant Secretary for Public and Indian Housing.

[FR Doc. 97–22719 Filed 8–26–97; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Western Water Policy Review Advisory Commission Meeting

AGENCY: Department of the Interior.

ACTION: Notice of open meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Western Water Policy Review Advisory Commission (Commission), established by the Secretary of the Interior under the Reclamation Projects Authorization and Adjustment Act of 1992, will meet to hear testimony, to discuss final language of the draft Commission Report, and to address other Commission business. The purpose of this meeting is to adopt the draft final Commission report. The draft will be sent to everyone on the Commission's mailing list and other interested parties for a 60 day public review period, beginning approximately October 10, 1997.

DATES: Thursday, September 18, 1997, 8:30 a.m.–5:00 p.m. Friday, September 19, 1997, 8:30 a.m.–5:00 p.m. Saturday, September 20, 1997, 8:00 a.m.–11:00 a.m.

ADDRESSES: All meetings will be held at the Sheraton Denver West Hotel and Conference Center, 360 Union Boulevard, Lakewood, Colorado. Room locations in the hotel will be posted in the hotel lobby. Copies of the agenda are available from the Western Water Policy Review Office, D–5001; P.O. Box 25007; Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: The Commission Office at telephone (303) 236–6211, FAX (303) 236–4286, or E-mail to lschulz@do.usbr.gov.

SUPPLEMENTARY INFORMATION:

Public Participation

Written statements may be provided in advance to the Western Water Policy Review Office, address cited under the **ADDRESSES** caption of this notice, or submitted directly at the meeting. Statements will be provided to the members prior to the meeting if received by no later than September 11, 1997.

The Commission has scheduled time for formal presentations by the public during the meeting during the morning of September 19, 1997. Speakers will be asked to limit presentations to less than 10 minutes, including time for questions and answers. Speakers are asked to reserve time on the agenda by contacting the Commission Office as indicated above, and should provide 25 copies of any handouts at the time of their presentation.

Dated: August 21, 1997.

Larry Schulz,

Administrative Officer.

[FR Doc. 97–22748 Filed 8–26–97; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Extension of the Comment Period for Tribal Shares

The Bureau of Indian Affairs (BIA) is extending the period during which Tribes and other interested parties may comment on the process whereby Tribes can contract and compact functions of the BIA (See 62 FR 27064, May 16, 1997). Transcripts of the tribal consultations held in Bloomington, Minnesota, Seattle, Washington, and Tempe, Arizona, the List of Inherent Federal Functions and the Tribal Shares Comment Form are available on the BIA HOME PAGE @ HTTP:// WWW.DOI.GOV/BIA/SHARES.HTML.

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

ADDRESSES: Comments are to be mailed to Deborah Maddox, Director, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW, MS 4603–MIB, Washington, D.C. 20240; or, hand delivered to Room 4603 at the same address.

FOR FURTHER INFORMATION CONTACT: Bettie Rushing, Bureau of Indian Affairs (202) 208–4400.

Dated: August 22, 1997.

Deborah Maddox,

Director, Office of Tribal Services.

[FR Doc. 97–22800 Filed 8–26–97; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–095–07–6332–02: GP7–0278]

Emergency Closure of Public Lands; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary closure of public lands and access roads in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are temporarily closed to all public use, including vehicle operation, camping, open fires, shooting, hiking and sightseeing, erecting structures and storing personal property, from August 21, 1997 through March 20, 1998 at 6:00 p.m. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this closure are specifically identified as follows:

Willamette Meridian, Oregon

T. 19 S., R. 5 W.,

Sec. 15: A tract of land located in the W½NW¼ and further being defined by orange paint, orange painted blazed markings, and closure notices on the perimeter trees.

The area described contains approximately 32 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the purchaser of BLM timber within the closure area and its employees and subcontractors. Access by additional parties may be allowed, but must be approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to, but not limited to, the penalties provided in 43 CFR 8360.0–7, which include a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months, as well as the penalties provided under Oregon State law.

The public lands temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this temporary closure is to protect persons from potential harm from logging operations, to protect valuable public timber resources from unauthorized damage, to facilitate authorized timber harvest operations, and to protect natural resources from fire, unauthorized uses, unsanitary conditions, degradation and to provide for public and employee safety.

DATES: This closure is effective from August 21, 1997 through March 20, 1998 at 6:00 p.m.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands are available during business hours (7:45 a.m. to 4:15 p.m.) from the Eugene District Office, P. O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Doug Huntington, Public Information Officer, Eugene District office, at (541) 683–6600.

Dated: August 21, 1997.

Denis Williamson,

District Manager, Eugene District.

[FR Doc. 97–22728 Filed 8–26–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00; GP7–0274]

Call for Nominations for the Academician and Commercial Timber Positions on the Eastern Washington Resource Advisory Council; Call for Nominations Notice

AGENCY: Interior, Bureau of Land Management, Spokane District.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit public nominations for an academician and commercial timber representative for the Eastern Washington Resource Advisory Council,

established and authorized in 1995 by the Secretary of the Interior to provide advice and recommendations to the Bureau of Land Management (BLM) and Forest Service on management of public lands.

The Council, which was established in August, 1995, is made up of 15 members. This notice requests nominations to fill the vacant academician and commercial timber positions for the balance of their terms which expire in August of 1998.

The Council, which covers eastern Washington, has worked closely with the BLM on the development of standards for rangeland health and guidelines for grazing management, and in providing comments on the draft environmental impact statements for the Interior Columbia Basin Ecosystem Management Project.

This council is authorized under the Federal Land Policy and Management Act (FLPMA), which directs the Secretary of the Interior to involve the public in planning and issues related to management of lands administered by BLM. Section 309 of FLPMA directs the Secretary to select 10 to 15 member citizen-based advisory councils that are established and authorized consistent with the requirements of the Federal Advisory Committee Act (FACA). As required by the FACA, Resource Advisory Council membership must be balanced and representative of the various interests concerned with the management of public lands. These include three categories:

Category One: Holders of federal grazing permits, representatives of energy and mining development, timber industry, transportation or rights-of-way, off-road vehicle use and developed recreation.

Category Two: Representatives of environmental and resource conservation organizations, dispersed recreation, archeological and historic interests, and wild horse and burro groups.

Category Three: Representatives of State and local government, Native American Tribes, academicians involved in natural sciences, employees of State agencies responsible for the management of natural resources, land, or water, and the public at large.

Individuals may nominate themselves or others. Nominees must be residents of the State of Washington. The Eastern Washington Council covers eastern Washington (with the exception of the area south of the Snake River drainages).

Nominees for the academician position will be evaluated based on their experience as an academician in a natural resource related field and their knowledge of the geographic area covered by the Council. Nominees for the commercial timber position will be evaluated based on their experience working in the commercial timber industry and their knowledge of the geographic area covered by the Council. Nominees must also have demonstrated a commitment to collaborative resource decision making. All nominations must be accompanied by letters of reference from represented interests or organizations, a completed background information nomination form, as well as any other information that speaks to the nominee's qualifications. The BLM Oregon/Washington State Director, the Forest Service Regional Forester, and the Washington Governor's Office will forward the nominations to the Secretary of Interior, who will make the appointment to the Council.

This nomination period will also be announced through press releases issued by the BLM Oregon/Washington State Office. Nominations for Resource Advisory Councils should be sent to: Elaine Zielinski, Bureau of Land Management, Oregon/Washington State Director, P.O. Box 2965, Portland, OR, 97208–2965.

DATES: All nominations must be received by the BLM Oregon/Washington State Office on or before September 25, 1997.

FOR FURTHER INFORMATION CONTACT: Brenda Lincoln Wojtanik, OR 912, Bureau of Land Management, Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon, 97208–2965; or call 503–952–6437.

Dated August 19, 1997.

Joseph K. Buesing,

District Manager.

[FR Doc. 97–22471 Filed 8–26–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–020–07–1060–04: GP 7–273]

Oregon: Wild Horse Gathering Schedule Meeting Notice

AGENCY: Bureau of Land Management (BLM), DOI.

ACTION: Burns District Office: Statewide wild horse gathering schedule public meeting.

SUMMARY: In accordance with Pub. L. 92–195, this notice sets forth the public meeting date to discuss the use of helicopters in gathering wild horses and the proposed gathering schedule in Oregon for FY97.

EFFECTIVE DATE: September 15, 1997—2:00 p.m. to 3:30 p.m.

ADDRESSES: The meeting will take place at the BLM Burns District Office in Hines, Oregon.

FOR FURTHER INFORMATION CONTACT: Michael T. Green, District Manager, Burns District, Bureau of Land Management, HC 74–12533 Hwy 20 West, Hines, Oregon 97738, Telephone (503) 573–4400.

SUPPLEMENTARY INFORMATION: The use of helicopters to gather wild horses throughout southeastern Oregon in FY97 will be discussed along with other aspects of the program and adoption process. Information concerning the gathering of several Oregon wild horse herds will be presented at the meeting. The total number of horses expected to be gathered will be between 300 and 600 depending on the availability of funds and the capability of the Burns District to process and adopt out the horses gathered.

This meeting is open to the public. Persons interested in making an oral statement at this meeting are asked to notify the District Manager, Burns District Office, HC 74–12533 Hwy 20 West, Hines, Oregon 97738 by September 8, 1997. Written statements must be received by this date.

Summary minutes of the meeting will be available for public inspection and duplication within 30 days following the meeting.

Dated: August 8, 1997.

Jerome A. Petzold,

Assistant District Manager for Operations.

[FR Doc. 97–22720 Filed 8–26–97; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–094–07–1430–01: GP7–0270; OR 53849]

Realty Action; Noncompetitive Lease of Public Land; Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action—noncompetitive lease of public land in Lane County, Oregon.

SUMMARY: The following described parcel of public land is being considered for lease under Section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732), at no less than the appraised fair market value:

Willamette Meridian, Oregon

T. 18 S., R. 12 W.

Sec. 15: The easterly 150 feet of the SE¼NE¼

Containing 4.55 acres.

The purpose of the lease would be to authorize the stabilization of a sand dune through grading and vegetative plantings and long-term maintenance of those plantings. Authorization to stabilize the dune has been requested to protect commercial improvements to be constructed on adjoining private land, which is located along Highway 101 in the City of Florence, Oregon.

Since there is no known competitive interest in such a lease and the proposed land use would benefit only the adjoining landowner, the proposed lease would be offered noncompetitively to that landowner, Fred Meyer Inc. The lease would be issued for a term estimated to be 30 years or more.

Fred Meyer Inc. may submit an application for the proposed lease to the address shown below. The application shall include the information required by 43 CFR 2920.5–2 and will be subject to reimbursement of costs as specified by 43 CFR 2920.6. The application will be reviewed in accordance with the National Environmental Policy Act and applicable regulations to assess impacts and determine compatibility with land use plans for the area.

DATES: For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Coast Range Area Manager, Bureau of Land Management, at the address below. All comments received will be considered in the review/decision process for the proposed lease application.

ADDRESSES: Information concerning the proposed land use is available at the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: David Schroeder, Realty Specialist, Eugene District Office, at (541) 683–6482.

Date of Issue: August 15, 1997.

Norman B. Gartley,

Acting Coast Range Manager.

[FR Doc. 97–22834 Filed 8–26–97; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

A detailed assessment of the human remains was made by Bishop Museum professional staff in consultation with representatives of the Hawaiian Civic Club, AluLike, Inc., The Princess Nahoa 'Olelo O Kamehameha Society, Office of Hawaiian Affairs, Hui Malama I Na Kupuna 'O Hawai'i Nei, Friends of 'Iolani Palace, and Ka Lahui Hawaii.

In 1889, Joseph S. Emerson sold a wood image from Waimea, O'ahu, to the Bishop Museum. Human hair is incorporated into this object. No known individuals were identified.

In 1889, a helmet (or wig) incorporating human hair and a refuse container incorporating human teeth and bone were bequeathed to the Bishop Museum by Queen Emma. No known individuals were identified.

In 1889, a kahili incorporating human bone became part of the original collections of the Bishop Museum. This kahili was given to Bernice Pauahi by Ke'elikolani. No known individual was identified.

In 1891, a refuse container incorporating human teeth and a kahili incorporating human bone were acquired with the collections of the Hawaiian National Museum which were transferred to the Bishop Museum. No further documentation is available. No known individuals were identified.

In 1892 or before, an image from Kaua'i with human hair was purchased by Bishop Museum Director William T. Brigham on behalf of the Bishop Museum. No known individuals were identified.

Prior to 1892, an image incorporating human hair was received as a gift by the Bishop Museum from the Trustees of O'ahu College. No known individuals were identified.

Prior to 1892, two bracelets incorporating human bone were received from an unknown source as part of the original Bishop Museum collections. No known individuals were identified.

In 1893, a sash with human teeth, a pahu (drum) incorporating human teeth, and a refuse container with human teeth were removed from 'Iolani Palace by the Provisional Government and sent into the collections of the Bishop Museum. No known individuals were identified.

In 1895, an image incorporating human hair was purchased by the Bishop Museum from the American Board of Commissioners for Foreign Missions. No further information is available. No known individual was identified.

In 1908, an ipu with human teeth from Kohala, Hawai'i was purchased by the Bishop Museum from the estate of William E.H. Deverill. No further information is available. No known individual was identified.

In 1910, a sash incorporating human teeth was received by the Bishop Museum as a gift from Queen Lili'uokalani. No further information is available. No individual was identified.

In 1916, a piece of fishhook made of human bone and a tool made of human bone were donated to the Bishop Museum by Mr. Albert F. Judd, Jr. No further information is available. No individuals were identified.

In 1920, a kahili incorporating human bone was received by the Bishop Museum as a gift from Elizabeth Keka'ani'auokalani Pratt and Ewa K. Cartwright Styne. No further information is available. No individual was identified.

In 1923, three kahili incorporating human bone were received by the Bishop Museum as a gift from Elizabeth Kahanu Kalaniana'ole Woods. No further information is available. No individuals were identified.

In 1932, a kahili handle incorporating human bone was received by the Bishop Museum as a bequest from Lucy K. Peabody.

In 1936, a netting shuttle of human bone was received by the Bishop Museum as a gift from Annie E. Zablan. The donor's father had obtained this shuttle in 1917 from Eugene Duvechelle. No known individual was identified.

In 1936, an awl of human bone was received by the Bishop Museum as a gift from John M. Warinner who had obtained it from a cave on the Kohala side of Keauhou. No known individual was identified.

In 1940, two pieces of human bone modified for tool making were removed from a cave at Keauhou, Kona, Hawai'i and donated to the Bishop Museum by Keith K. Jones. No known individual was identified.

In 1944, a refuse container incorporating human teeth was donated to the Bishop Museum by Catherine

Goodale. This container had been on loan to the Bishop Museum since 1928. No known individual was identified.

In 1946, a composite fishhook of human bone was received by the Bishop Museum. The donor and means of acquisition are unknown. No known individual was identified.

In 1949, a fishing toggle of human bone from Kalalau Valley, Kaua'i was donated to the Bishop Museum by Rebecca Banks. No known individual was identified.

In 1989, an inventory of the collection included four human teeth which may have been parts of a necklace or similar ornamentation. No further information is available. No known individuals were identified.

In consultation with Native Hawaiian organizations, the Bishop Museum has decided that no attempt would be made to determine the age of the human remains. These human remains and cultural items are Native Hawaiian based on geographic location and known Native Hawaiian tradition and practices.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (b) (4–6) the 34 objects listed above are not sacred objects, unassociated funerary objects, or objects of cultural patrimony. Based on consultation with Native Hawaiian organizations and anthropological evidence, the Bishop Museum has determined that, pursuant to Section 10.2 (d)(1), these human remains were not freely given or naturally shed by the individuals from whose bodies they were obtained. Officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 34 individuals of Native American ancestry. Lastly, officials of the Bishop Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Office of Hawaiian Affairs, Hui Malama I Na Kupuna 'O Hawai'i Nei, The Princess Nahoa Olelo 'O Kamehameha Society, and Friends of 'Iolani Palace. .

This notice has been sent to officials of the Office of Hawaiian Affairs, Hui Malama I Na Kupuna 'O Hawai'i Nei, The Princess Nahoa Olelo 'O Kamehameha Society, Friends of 'Iolani Palace, Daughters and Sons of Hawaiian Warriors, James Bartels, Quentin Kawananakoa, and Matt Mattice. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Janet Ness, Registrar, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817; telephone: (805) 848–4105, before September 26, 1997. Repatriation of the human remains to the Office of Hawaiian Affairs, Hui Malama I Na Kupuna 'O Hawai'i Nei, The Princess Nahoa Olelo 'O Kamehameha Society, and Friends of 'Iolani Palace may begin after that date if no additional claimants come forward.

Dated: August 14, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–22736 Filed 8-26-97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains from the Battle of Nu'uanu in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of human remains from the Battle of Nu'uanu in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed assessment of the human remains was made by Bishop Museum professional staff in consultation with representatives of Hui Malama I Na Kupuna 'O Hawai'i Nei, Hawaii Island Burial Council, Kauai/Nihau Island Burial Council, Maui/Lanai Island Burial Council, Molokai Island Burial Council, O'ahu Burial Committee, Office of Hawaiian Affairs, Nahoa 'Olelo O Kamehameha Society, and the Hawaiian Civic Club.

In 1884, a kahili incorporating the human remains of at least three individuals was given to Charles Reed Bishop by Queen Emma. This kahili is part of the original collections of the Bishop Museum.

In 1889, a kahili incorporating the human remains of at least three individuals was donated to the Bishop Museum by Gorham Gilman, who had received it as a gift from Paki, the father of Bernice Pauahi Bishop.

Oral history, historical documents, and museum records indicate these kahili incorporate the remains of at least three ali'i: Ka'iana, Kalanikupule, and Kaneoneo. This evidence also states these individuals died in or as a result of the battle of Nu'uanu in 1795. Some documents and records mention the kahili include remains of ''other great chiefs'' killed at Nu'uanu, however, the Museum has been unable to find any other names attached to these kahili. These kahili are consistent with Native Hawaiian practice and material culture. No lineal descendants have been identified.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (b) (4–6) the two objects listed above are not sacred objects, unassociated funerary objects, or objects of cultural patrimony. Based on consultation with Native Hawaiian organizations and anthropological evidence, the Bishop Museum has determined that, pursuant to Section 10.2 (d)(1), these human remains were not freely given or naturally shed by the individuals from whose bodies they were obtained. Officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of three individuals of Native American ancestry. Officials of the Bishop Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and the Hui Malama I Na Kupuna 'O Hawai'i Nei, Hawaii Island Burial Council, Kauai/Nihau Island Burial Council, Maui/Lanai Island Burial Council, Molokai Island Burial Council, O'ahu Burial Committee, Office of Hawaiian Affairs, Nahoa 'Olelo O Kamehameha Society, and the Hawaiian Civic Club .

This notice has been sent to officials of the Hui Malama I Na Kupuna 'O Hawai'i Nei, Hawaii Island Burial Council, Kauai/Nihau Island Burial Council, Maui/Lanai Island Burial Council, Molokai Island Burial Council, O'ahu Burial Committee, Office of Hawaiian Affairs, Nahoa 'Olelo O Kamehameha Society, and the Hawaiian Civic Club. Individuals who wish to make a claim as lineal descendants of the ail'i or representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with these human remains should contact Janet Ness, Registrar, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817; telephone:

(808) 848–4105, before September 26, 1997. Repatriation of the human remains to the Hui Malama I Na Kupuna 'O Hawai'i Nei, Hawaii Island Burial Council, Kauai/Nihau Island Burial Council, Maui/Lanai Island Burial Council, Molokai Island Burial Council, O'ahu Burial Committee, Office of Hawaiian Affairs, Nahoa 'Olelo O Kamehameha Society, and the Hawaiian Civic Club may begin after that date if no additional claimants come forward.

Dated: August 14, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–22737 Filed 8-26-97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for an Associated Funerary Object in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of associated funerary objects in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed assessment of the associated funerary objects was made by Bishop Museum professional staff in consultation with representatives of Hui Malama I Na Kupuna 'O Hawai'i Nei, Hawaii Island Burial Council, Kauai/Nihau Island Burial Council, Maui/Lanai Island Burial Council, Molokai Island Burial Council, O'ahu Burial Committee, Office of Hawaiian Affairs, Nahoa 'Olelo O Kamehameha Society, and the Hawaiian Civic Club.

In 1896, an Ipu'ai was purchased by the Bishop Museum from the American Board of Commissioners for Foreign Missions.

In traditional Native Hawaiian practice, the ipu'ai is manufactured exclusively as a receptacle of food for the dead. The form of this ipu'ai is consistent with other known ipu'ai and traditional Native Hawaiian practice.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the one object listed above are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bishop Museum have determined that, pursuant to 25 U.S.C. 3001 (2), there is a relationship of shared group identity which can be reasonably traced between this associated funerary object and Hui Malama I Na Kupuna 'O Hawai'i Nei, Hawaii Island Burial Council, Kauai/Nihau Island Burial Council, Maui/Lanai Island Burial Council, Molokai Island Burial Council, O'ahu Burial Committee, Office of Hawaiian Affairs, Nahoa 'Olelo O Kamehameha Society, and the Hawaiian Civic Club.

This notice has been sent to officials of Hui Malama I Na Kupuna 'O Hawai'i Nei, Hawaii Island Burial Council, Kauai/Nihau Island Burial Council, Maui/Lanai Island Burial Council, Molokai Island Burial Council, O'ahu Burial Committee, Office of Hawaiian Affairs, Nahoa 'Olelo O Kamehameha Society, and the Hawaiian Civic Club. Representatives of any other Native Hawaiian organization that believes itself to be culturally affiliated with this associated funerary object should contact Janet Ness, Registrar, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817; telephone: (808) 848–4105, before September 26, 1997. Repatriation of the associated funerary object to the Hui Malama I Na Kupuna 'O Hawai'i Nei, Hawaii Island Burial Council, Kauai/Nihau Island Burial Council, Maui/Lanai Island Burial Council, Molokai Island Burial Council, O'ahu Burial Committee, Office of Hawaiian Affairs, Nahoa 'Olelo O Kamehameha Society, and the Hawaiian Civic Club may begin after that date if no additional claimants come forward.

Dated: August 14, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–22738 Filed 8-26-97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Associated Funerary Objects of Queen Lili'uokalani in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003 (d), of the completion of an inventory of associated funerary objects of Queen Lili'uokalani in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed assessment of the associated funerary objects was made by Bishop Museum professional staff in consultation with representatives of the Dominis family, Friends of 'Iolani Palace, and the Kawananakoa family.

In 1917, a pair of satin slippers and a satin pillow were donated to the Bishop Museum by Prince Jonah Kuhio Kalaniana'ole and Col. Curtis I'aukea.

Donor information indicates these objects were made by Queen Lili'uokalanai during a visit to Washington, DC, probably in 1896, and that she intended they be used for her lying-in-state. However, they were not found until after her funeral. Ms. Virginia Dominis Koch and Ms. Sybil Dominis Silver have been identified as the lineal descendents of Queen Lili'uokalanai as granddaughters of her adopted-hanai son, John Aimoka Dominis.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(A), the two objects listed above are reasonably believed to have been made exclusively to be placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Officials of the Bishop Museum have determined that, pursuant to 25 U.S.C. 3005 (a)(5)(A), that Ms. Virginia Dominis Koch and Ms. Sybil Dominis Silver are direct lineal descendants of the individual who made and owned these associated funerary objects.

This notice has been sent to officials of the Friends of 'Iolani Palace, Hui Malama I Na Kupuna 'O Hawai'i Nei, the Office of Hawaiian Affairs, Virginia Dominis Koch and Sybil Dominis Silver, and the Kawananakoa family. Any other person or Native Hawaiian organization who believes they are affiliated with these associated funerary objects should contact Janet Ness, Registrar, Bernice Pauahi Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817; telephone: (808) 848–4105, before September 26, 1997. Repatriation of the associated funerary objects to the lineal

descendents may begin after that date if no additional claimants come forward.

Dated: August 14, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–22739 Filed 8-26-97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of the Field Museum of Natural History, Chicago, IL

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 25 U.S.C. 3005 (a)(2), of the intent to repatriate cultural items in the possession of the Field Museum of Natural History which meet the definition of ''sacred object'' under Section 2 of the Act.

The cultural items consist of a stone mortar with a concave indentation on one side, a small basketry ''hopper'' with a geometric design covered with pitch which fits on top of the stone mortar, and a smooth stone pestle. The basketry is a coiled weave with white sewing of sumac, mottled sewing of bullrush, and black sewing of an unknown fiber. These items are collectively catalogued as a basketry medicine mortar (Accession 1490; Catalogue number 103496).

In 1923, these items were acquired by the Field Museum from Homer E. Sargent. In 1913, Mr. Sargent purchased these items from Ernest Juan who collected them at ''San Manuel and Banning.'' The items are affiliated with the Serrano.

The form of these objects, their source, and the documentation concerning its acquisition lead the Museum to believe that they comprise a Serrano medicine mortar. Representatives of the San Manuel Mission Band of Indians (Serrano) have verified this identification and have stated that these objects are needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

Based on the above-mentioned information, officials of the Field Museum have determined that, pursuant to 25 U.S.C. 3001 (3)(C), these three cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the Field Museum have also determined that, pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity which can be reasonably traced between these items and the San Manuel Band of Mission Indians. Although officials of the Field Museum recognize the significant importance of these cultural items to the San Manuel Band of Mission Indians, the Field Museum asserts that it has right of possession of these cultural items. However, the Field Museum is willing to return the mortar under a compromise repatriation claim.

This notice has been sent to officials of the San Manuel Band of Mission Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Jonathan Haas, MacArthur Curator of North American Anthropology, Field Museum of Natural History, Roosevelt Road at Lake Shore Dr., Chicago, IL 60605; telephone: (312) 922–9410, ext. 641, before September 26, 1997. Repatriation of these objects to the San Manuel Band of Mission Indians may begin after that date if no additional claimants come forward.

The National Park Service is not responsible for the determinations within this notice.

Dated: August 14, 1997.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 97–22735 Filed 8-26-97; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Review of Existing Coordinated Long-Range Operating Criteria for Colorado River Reservoirs (Operating Criteria)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of proposed decision regarding the Operating Criteria.

SUMMARY: The purpose of this action is to provide public notice that the Secretary of the Interior proposes no change to the existing Operating Criteria as a result of the current review process. The current review has been conducted as an open public process, including formal consultation with the seven Colorado River Basin States (Basin States). The results of the review indicate that modification of the Operating Criteria is not justified at the present time.

DATES: All written comments relevant to this proposed decision received on or before September 10, 1997.

ADDRESSES: Interested parties should send comments or questions to Bruce Moore, Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone (801) 524–3702, or Jayne Harkins, Bureau of Reclamation, P.O. Box 61470, Boulder City, Nevada 89005, telephone (702) 293–8190.

SUPPLEMENTARY INFORMATION: The public review process began with a **Federal Register** notice published on August 20, 1996, announcing the review of the Operating Criteria and inviting comments during the 60 days following the notice. On October 31, 1996, another **Federal Register** notice was published announcing two public consultation meetings and extending the comment period an additional 30 days. On November 4, 1996, a Fact Sheet containing information about the Operating Criteria review and an invitation to the public consultation meetings was sent to known and anticipated interested parties and agencies, and governor-designated representatives of the Basin States, inviting their participation. Public consultation meetings were held on November 18, 1996, and December 2, 1996, to receive comments on issues and questions from all interested parties.

Comments from the two **Federal Register** notices were received from 18 respondents. The comments were reviewed by the Bureau of Reclamation for identification and analysis of the issues. A set of all comment letters received was provided to any interested party requesting a copy. A synopsis of the issues raised during the public review process was sent to all interested parties and participants in a March 1997 newsletter entitled the *River Review*.

In response to requests, another public consultation meeting and an additional 45-day comment period were announced in the **Federal Register** on March 28, 1997. On April 4, 1997, a letter from the Team Leader containing the preliminary results of Reclamation's analysis on each major issue area and an invitation to attend a public consultation meeting on the preliminary results and analysis was sent to all 18 respondents, Governor-designated representatives of the Basin States, and any others who had attended meetings or expressed an interest in the review of the Operating Criteria. On April 22, 1997, a final public consultation

meeting was conducted to discuss the preliminary analyses.

As required by Pub. L. 90–537, formal consultation with the representatives of the seven Basin States, and other parties and agencies as the Secretary may deem appropriate, was conducted in the context of public consultation meetings on three separate occasions: November 18, 1996; December 2, 1996; and April 22, 1997.

Following analysis of comments received as a result of this notice, any proposed Federal action will be evaluated by Reclamation to determine the applicability of National Environmental Policy Act (NEPA) compliance. After that process has been completed, the final Secretarial decision will be published in the **Federal Register**.

Background

The Operating Criteria, promulgated pursuant to Section 602 of Public Law 90–537 (U.S.C. 1552), were published in the **Federal Register** on June 10, 1970. The Operating Criteria provide for the coordinated long-range operation of the reservoirs constructed and operated under the authority of the Colorado River Storage Project Act, the Boulder Canyon Project Act, and the Boulder Canyon Project Adjustment Act for the purposes of complying with and carrying out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty.

Previous reviews of the Operating Criteria were initiated in 1975, 1980, 1985, and 1990. They resulted in no changes to the Operating Criteria. Prior to 1990, reviews were conducted primarily through meetings with and correspondence among representatives of the seven Basin States and Reclamation. Because the long-range operation of the Colorado River reservoirs is important to many agencies and individuals, in 1990, through an active public involvement process, Reclamation expanded the review of the Operating Criteria to include all interested stakeholders. A team consisting of Reclamation staff from Denver, Colorado; Salt Lake City, Utah; and Boulder City, Nevada, was organized to conduct the 1990 review. For the 1995 review, Reclamation staff from Salt Lake City, Utah, and Boulder City, Nevada, followed the same public process.

The scope of the review has been consistent with the statutory purposes of the Operating Criteria which are ''to comply with and carry out the provisions of the Colorado River Compact, the Upper Colorado River Basin Compact, and the Mexican Water Treaty.'' Long-range operations generally refer to the planning of reservoir operations over several decades, as opposed to the Annual Operating Plan (AOP) which details specific reservoir operations for the next operating year.

Synopsis of Review Results

Many of the issues raised during the review are more properly dealt with during the development of the AOP. These include annual surplus determinations in the Lower Basin; the probability of spills from Lake Powell, including the release of beach/habitat building flows from Glen Canyon Dam; storage equalization between Lakes Powell and Mead; and factors for determining 602(a) storage.

The Operating Criteria were purposely designed to be flexible so that during the development of the AOP, variations in hydrologic conditions and changing demands for water use, including environmental demands and possible mitigation measures, could be accommodated. The process for developing the AOP is open to the public and all interested parties.

Reclamation regularly applies the NEPA process to activities constituting a major Federal action significantly affecting the quality of the human environment. The appropriate level of NEPA compliance for the review of the Operating Criteria will be determined by Reclamation based on the final decision resulting from the review.

With respect to other environmental issues, Reclamation is in various stages of consultation with the Fish and Wildlife Service under Section 7 of the Endangered Species Act on most Colorado River mainstem facilities. When a Section 7 consultation results in the Service providing Reclamation with specific flow recommendations to remove or prevent jeopardy to listed species or their critical habitat, they are incorporated into Reclamation's operations, and if appropriate, included in the AOP.

Reclamation has programmed and expended funds for fish and wildlife mitigation and enhancement for impacts associated with previous activities where appropriate. Reclamation will continue to use this approach. Any changes associated with the long-range Operating Criteria will also be evaluated to determine if there are any mitigation requirements or enhancement opportunities.

Regarding the issue of water marketing and banking, Reclamation has initiated a rule-making process focused on water banking in groundwater aquifers or off-mainstem storage reservoirs in the Lower Basin. This administrative rule is considered a responsibility of the Secretary of the Interior and focuses only on the three Lower Basin states. Reclamation believes that water marketing and banking would not change the current Operating Criteria, as this issue lends itself to the AOP process.

Throughout the course of the review of the Operating Criteria, Reclamation has encouraged public participation and developed a thorough administrative record. Based on the results of the review and the analysis of public comments, it is proposed that the Operating Criteria not be modified at this time.

Analysis of Issues

Issue #1

[Application of the Administrative Procedures Act (APA)]

Background: The APA was signed into law in 1946 by President Truman. The purposes of the Act are: (1) To require agencies to keep the public informed on organization, procedures and rules, (2) to provide for public participation in the rule-making process, (3) to prescribe uniform standards of conduct for rule-making and adjudicatory proceedings, and (4) to restate the law of judicial review. The law primarily deals with rule-making. The definition in the law of a rule in part is as follows: ''* * * the whole or part of an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency * * *'' Rule-making has two parts, formal and informal.

Analysis and Response: The Coordinated Long-Range Operating Criteria is a document generated from a requirement in the 1968 Colorado River Basin Project Act. It describes how the Secretary of the Interior will meet some of the commitments under the Act. The APA applies to rule-making exercises only and focuses on the requirements for the public to comply with the statutes.

The Bureau of Reclamation is encouraging public participation and developing a thorough administrative record. The review of the Coordinated Long-Range Operating Criteria is not a rule-making exercise and is therefore not subject to the APA.

Issue #2

[Surplus declarations are referenced in the 1964 Supreme Court decree (*Arizona* v. *California*) and are a part of the 1970 Criteria

for Coordinated Long-Range Operation of Colorado River Reservoirs. The decree apportions surpluses (50 percent to California, 46 percent to Arizona, and 4 percent to Nevada), while the Operating Criteria define surpluses as existing when there is sufficient storage in Lake Mead to supply greater than 7.5 million acre-feet (MAF) for Lower Basin consumptive uses. Guidelines for determining when surplus conditions exist have never been formally adopted.]

Background: In the past, Reclamation has performed computer modeling studies of alternative surplus guidelines to determine the effects of various levels of surplus use. Because the shortage risks of surplus use (Arizona) fall on other than the benefactor (California), impacts and differences in risks of future shortages and reservoir drawdown have been keenly debated. All modeling strategies have as their foundation the principle of reducing system spills by allowing greater use in the Lower Basin, thus drawing down the reservoirs. This greater drawdown then allows the high flows of flood years to be captured by the reservoir system. While the amount of system spills is thus reduced, the degree of drawdown affects the risk of shortages to users during possible future drought conditions. Resolving the balance between risk of shortages and spills is the heart of the surplus issue.

Until 1996, Lower Basin consumptive uses were less than their allocation of 7.5 MAF, and California uses were met through unused apportionments of Arizona and Nevada rather than surplus declarations. However, with the implementation of the Arizona groundwater banking program, total Lower Basin use now exceeds 7.5 MAF and water above this amount can only be delivered through surplus declarations.

The 1996 Annual Operating Plan (AOP) committed to meet all reasonable beneficial consumptive uses, and later in the year when the annual Lower Basin use was greater than 7.5 MAF, a surplus was declared. The 1997 AOP contains an explicit determination of surplus, based on the current hydrologic situation and a lack of impacts from this single decision. As a result of 1997 system flood control operations, the 1998 AOP will almost certainly contain an explicit surplus determination.

However, these determinations have relied solely on an annual examination of reservoir conditions in the Colorado River Basin rather than specific, long-term strategies which examine the potential for problems in the future. Drought periods in the basin can extend for many years and with the large volume of reservoir storage, many years could be required before negative impacts of surplus determinations are observed. Much of the current debate is focused on the risk of certain things happening in the future.

Analysis and Response: The comments received addressed three key topics relating to surplus determinations: (1) The establishment of guidelines, (2) the forum for establishing these guidelines, and (3) how surpluses will affect the probability of spills from Lake Powell.

Establishment of Guidelines.—The comments all agreed that surplus and shortage guidelines should be established, but varied in how firm or detailed these guidelines should be. The most flexible approach would be the annual determination of surplus/normal/shortage conditions through the AOP process, deciding on the condition of the reservoir system on a year-by-year basis. The most rigid approach would be the revision of the Operating Criteria to include specific guidelines which then would be applied each year to produce a determination.

Flexible guidelines have the advantage of being easily modified as consumptive use demands and hydrologic conditions change throughout the basin. For some parties, near-term surpluses could be more liberal than when Upper Basin uses increase and the likelihood of surplus deliveries are reduced. Flexible guidelines could be adopted without the more formal process of incorporating guidelines into the Operating Criteria.

Modifying the Operating Criteria to include surplus guidelines offers the advantage of clearly specifying under what conditions surpluses would be declared. All interests would then understand exactly what impacts could be expected under ranges of hydrologic conditions. Contingency plans could be implemented to mitigate adverse impacts and agreements could be formed to help meet consumptive use demands during non-surplus periods.

Forum for Establishing Guidelines.—Most commentors felt that the AOP would be the most appropriate mechanism for preparing surplus/shortage guidelines. The less formal nature of the AOP meetings was viewed as positive for attempting to resolve this difficult issue. However, the issue has been addressed for the last five years in the AOP meetings, and no definite guidelines have been produced.

Probability of Spills from Lake Powell.—The release of beach/habitat building flows from Glen Canyon Dam was a contentious topic during the completion of the Glen Canyon Dam Environmental Impact Statement. The 1968 Colorado River Basin Project Act directed the Secretary of the Interior to avoid anticipated spills while the 1992 Grand Canyon Protection Act directed the Secretary to operate the dam to improve the environmental conditions in the Grand Canyon. In 1995, an agreement was reached between interested parties which attempts to meet the intents of both the 1968 and 1992 Acts by providing these high flows during high reservoir storage conditions when required for dam safety purposes.

Surplus determinations which explicitly drop the level of Lake Mead and through equalization drop the level of Lake Powell would likely reduce the probability of these powerplant bypasses. Commentors responded with concern for this possibility recommending that if surpluses were declared, measures should be taken to keep the probability of bypasses the same as at the present. The impacts of high spring flows are currently believed to be very important and this potential effect should be addressed as surplus guidelines are developed.

The Bureau of Reclamation believes that surplus/shortage criteria should: (1) Be specific guidelines that can be used to predict measurable effects in the future, (2) be developed through the AOP process, and (3) include a discussion of the potential effects on Lake Powell spills along with possible mitigation measures.

Issue #3

[Section 602(a)(3) of the 1968 Colorado River Basin Project Act discusses the quantification of a reservoir storage volume in the Upper Basin. This storage is intended to supplement the unregulated flow of the Colorado River at Lees Ferry during drought periods as part of the 1922 Colorado River Compact deliveries to the Lower Basin. The intent of this provision is to avoid impairment of Upper Basin consumptive uses.]

Background: The 1968 Act contains several provisions which can be viewed as accomplishing the intent of the Article III(e) provision of the Colorado River Compact, that of the Upper Basin not withholding water that the Lower Basin requires for consumptive use demands. Through a combination of avoiding spills, equalizing storage between Lakes Powell and Mead, and the 602(a) storage volume, Upper Basin water was to be transferred to Lake Mead for use in the Lower Basin. When Upper Basin storage falls below this 602(a) storage level, storage equalization provisions of the 1968 Act are disregarded.

By statute, the 602(a) storage volume was to be quantified taking into account

historic stream flows, the most critical period of record, and probabilities of water supply. Since the purpose of this storage is to help provide Lower Basin deliveries, it is quantified as the difference between depleted flow at Lees Ferry and the Lower Basin delivery requirements over some period of drought. Upper Basin depletion levels significantly affect the storage calculation. Using the most critical period of natural flow, the 602(a) volume is currently estimated to be about 10 million acre-feet, which includes preservation of the 5.2 million acre-feet minimum power pool in Lake Powell. In the future, when Upper Basin consumptive uses increase, it has been assumed that Lake Powell could be completely drained to provide Lower Basin deliveries.

Controversy exists regarding the probability attached to the depleted flow assumptions with respect to both the rarity of the critical flow period and the projected depletion increases in the Upper Basin. These are the principle reasons that 602(a) storage has never been formally determined and agreed to by the Basin States. However, in the computer modeling of long-range operations of the reservoir system, some estimate or procedure must be used to model this portion of the applicable statutes. Currently, the Bureau of Reclamation uses the observed critical 12-year period (1953–1964) as the basis for the storage calculation. Reflecting the lack of a formal determination, each year's Annual Operating Plan has contained language stating that current reservoir storage in Upper Basin reservoirs exceeds the storage required under Section 602 under any reasonable range of assumptions which may be applied. The current Upper Basin depletion level is the prime reason that this statement is true.

Analysis and Response: The relationship between the 602(a) volume and surplus/shortage criteria has been raised in previous Annual Operating Plan discussions. Some parties have argued that both less or more severe drought periods should be used in the modeling, thus changing the Upper Basin risk of shortages.

Formally specifying or changing the risks associated with the 602(a) storage level will likely require a legal opinion on the issue of avoiding impairment of Upper Basin consumptive uses. Since these uses presently do not significantly restrict Lower Basin surpluses and require much less than full Lake Powell storage to meet Lower Basin deliveries, this issue perhaps is not ripe for resolution. Reclamation recommends delaying implementing guidelines or changing the current 602(a) modeling assumptions until current assumptions or practices create unacceptable impacts.

Issue #4a

The Bureau of Reclamation should conduct an environmental analysis under the National Environmental Policy Act (NEPA) of any changes to the Operating Criteria.

Background: Letters of comment to the Operating Criteria review expressed concern over the long-term effects of the Operating Criteria on downstream resources as it relates to cumulative effects and spill frequency. Several letters indicated that the current Operating Criteria do not give equal consideration to environmental and recreational resources, and instead focus only on traditional water and power uses. To incorporate consideration of all resources and impacts of the Operating Criteria, the commentors recommended that the Operating Criteria be evaluated through application of NEPA.

Analysis and Response: Reclamation regularly applies the NEPA process to activities constituting a Federal action, and agrees that compliance with NEPA would be required for any proposed changes to the long-range Operating Criteria that are discretionary Federal Actions (Chapter 3.1 of the NEPA Handbook). The appropriate level of NEPA compliance will be determined by Reclamation if the results of the review include proposed changes to the Operating Criteria.

The first step in the NEPA process is to reach a decision on whether or not the proposed changes are ''a major Federal action significantly affecting the quality of the human environment.'' If the answer is yes, an Environmental Impact Statement is prepared by Reclamation. If the answer is no, a Categorical Exclusion is prepared by Reclamation. If there is uncertainty as to the ''significance'' of the change, Reclamation prepares an Environmental Assessment to determine if a Finding of No Significant Impact (FONSI) is justified. If a FONSI is not justified, Reclamation continues the NEPA analysis and writes an Environmental Impact Statement.

The key issue in whether NEPA documentation is needed is whether there is a Federal action or Federal discretion associated with this review. If no Federal action is being proposed or taken by Reclamation, no NEPA documentation is required. While no changes are being proposed as the result of this review, Reclamation is making a decision in proposing no change. Because of this, Reclamation recommends that a Categorical Exclusion be prepared pursuant to Departmental Instructions 516 DM 2, appendix 1.7.

Issue #4b

The Operating Criteria should recognize the need to preserve and recover endangered species dependent upon the quantity, quality, and pattern of release.

Background: Construction and operation of water storage and delivery facilities on the Colorado River and its tributaries are recognized as factors contributing to the decline of certain fish and wildlife species which have been listed as threatened or endangered by the Fish and Wildlife Service (Service). Storing water during the spring runoff decreases the natural spring flow, and releasing water later in the year for human use raises the base flow. These types of changes in the hydrograph have removed spawning cues, effected water temperature, clarity, the food base, and fluvial geomorphology. Physical alteration from riverine to extensive reservoir environments has occurred causing further change to habitat for these species and resulted in the establishment of exotic species of fish, wildlife, and plants that directly compete with listed species and their habitat. The control of natural flood cycles and development of the floodplain for agriculture and other purposes has significantly changed or eliminated original habitats in and along extensive parts of the lower Colorado River. The success of efforts to recover endangered species are often thought to be dependant on restoring the natural hydrograph to the degree possible. Commentors are concerned that if provisions for releases designed to recover endangered species are not incorporated into the Operating Criteria, changes to operations will not be implemented.

Analysis and Response: Reclamation is in various stages of consultation with the Service under Section 7 of the Endangered Species Act on most mainstem facilities. Conservation plans and recovery programs are also a large part of Reclamation activities in operation of the Colorado River. Operation of these facilities for endangered species would remain consistent with the original intended purpose of the project in accordance with the implementing regulations of the Endangered Species Act. When a Section 7 consultation results in the Service providing Reclamation with specific flow recommendations or other alternatives to remove or prevent jeopardy to listed species or their critical habitat, they are incorporated

into Reclamation's operations, and if appropriate, are included in the Annual Operating Plan of the particular facility which was the subject of the consultation. Operations remain consistent with the ''Law of the River,'' water service contracts, and other legal obligations. Examples of facilities where consultation has been completed resulting in a flow recommendation are Flaming Gorge Dam on the Green River in Utah, Glen Canyon Dam on the Colorado River in Arizona, and several features of the Colorado River Front Work and Levee System Program on the last 270 miles of the Colorado River in the United States.

Reclamation and the Service recently completed formal Section 7 consultation on lower Colorado River operations and maintenance (Lake Mead to the Southerly International Boundary with Mexico), and are engaged in ongoing consultation for Navajo Reservoir operations on the San Juan River in Colorado, and Aspinall Unit operations on the Gunnison River in Colorado. The Department of the Interior signed a Memorandum of Agreement in August 1995 that was further described in a Memorandum of Clarification and most recently a joint Participation Agreement to develop a long-term (50 year) Lower Colorado River Multi-Species Conservation Program (MSCP) from Lees Ferry to the Southerly International Boundary with Mexico. The overall objective of the MSCP is to develop a plan which would conserve and protect more than 100 listed and sensitive species within the Colorado River and its one hundred-year flood plain, and to the greatest extent possible, accommodate current and future water and power operations.

Reclamation continues to undertake and pursue efforts for conservation and recovery of fish and wildlife and associated critical habitat under specific project authorities such as Section 8 of the Colorado River Storage Project Act and the Grand Canyon Protection Act. In addition, Reclamation has significant ongoing conservation and recovery efforts under the authority of Section 7(a)(1) of the Endangered Species Act. For example, the Lake Mohave Native Fish Rearing Program in the Lower Colorado River Basin continues to collect and rear wild larval razorback and bonytail chubs for release back into Lake Mohave to maintain the primary adult population and genetic pool for these species. Voluntary refinements to river operations have also been implemented when possible to benefit endangered species (i.e., management of reservoir levels in Lake Mohave for endangered fish). The Upper Colorado River Recovery Implementation Program, with an annual budget exceeding $7 million, and the San Juan River Basin Recovery Implementation Program are other examples.

Reclamation will continue to plan and implement initiatives for protection of endangered species and associated critical habitat on a project-specific basis as described, with the goal of integrating these actions to the greatest degree possible to address ecosystem level needs. Where appropriate, initiatives such as the Glen Canyon Adaptive Management Program and the MSCP will be considered and incorporated into future Annual Operating Plans.

Issue #4c

Funding for mitigation of negative impacts to fish and wildlife resources should be provided.

Background: Modification of river flows due to the operation of projects authorized by the Colorado River Storage Project Act has impacted fish, wildlife, and their habitats through reduction or elimination of overbank flooding, channelization, water depletions, and changes in water quality. These projects produce revenue primarily through power production. Commentors are concerned that sufficient funds be made available for mitigation activities.

Analysis and Response: Reclamation, like all Federal agencies, must have both authorization and appropriations to undertake actions and incur debt. In the Upper Colorado River Basin, Section 8 of the Colorado River Storage Project Act authorizes and directs the Secretary of the Interior to investigate, plan, construct, operate, and maintain facilities to improve conditions for and mitigate losses of fish and wildlife. Funds authorized by this section of the Act are nonreimbursable and nonreturnable, and therefore must be appropriated by the Congress. Section 5(a) specifies that the Basin Fund will not be applied to Section 8 (fish and wildlife mitigation). The Grand Canyon Protection Act states that power revenues may be used for activities designed to conserve the environment downstream from Glen Canyon Dam, but does not exclude the use of other funding mechanisms.

Mitigation and enhancement activities are typically identified and proposed on a project-by-project basis through project planning and environmental compliance. Reclamation has programmed and expended funds for fish and wildlife mitigation and enhancement for impacts associated with previous activities where appropriate. Most often these activities are identified in Fish and Wildlife Coordination Act Reports and National Environmental Policy Act documents. Reclamation will continue to use this approach. Since no changes are being proposed, there is no specific mitigation or enhancement necessary for this action. Reclamation will continue to comply with NEPA and other appropriate environmental laws in identifying, planning, and carrying out mitigation and enhancement activities.

Issue #5

Is there a need to change the Operating Criteria.

Background: The Operating Criteria are to accomplish the objectives of Section 602(a) of the Colorado River Basin Project Act. Modification of the Operating Criteria can be done by the Secretary of the Interior ''* * * as a result of actual operating experiences or unforeseen circumstances * * * to better achieve the purposes specified in [Section 602(a) of the Colorado River Basin Project Act].''

Commentors stated that they believe ''* * * there are no conditions resulting from actual operating experiences or unforeseen circumstances, since the last review, that justify the need to modify the existing Criteria,'' and that the reservoirs have been operating satisfactorily under the present Operating Criteria. These comments support not changing the criteria at this time.

Others stated that we are entering a new era and that the Operating Criteria should be changed to reflect different circumstances and concerns. The Lower Basin States have reached their annual apportionment of 7.5 million acre-feet for consumptive use. Environmental and recreational issues have increased in value in the eyes of the public. There were also those who stated that the Operating Criteria need to be changed to include specific guidelines that allow the Secretary of the Interior to make surplus, shortage, and normal determinations. These comments all support a need for change.

Analysis and Response: The Operating Criteria provide guidelines for the operation of Upper Basin Reservoirs and Lake Mead. Specific operational needs are not detailed in the Operating Criteria. The specific needs have, in the past, been addressed in the Annual Operating Plan development process.

The Operating Criteria may be modified from time to time as a result of actual operating experiences or unforeseen circumstances. With the issues of surplus and flood control in

our current operations and possibly emerging over the next several years, the operational experiences needed to determine if changes to the Operating Criteria are necessary will be acquired. Under the present Operating Criteria, all needs have been met.

The evaluation of operational experiences over the next several years will determine whether or not to change the Operating Criteria. But for the purposes of this review, it appears that no change is needed to the Operating Criteria.

Issue #6

Water marketing and banking.

Background: Several years ago the Bureau of Reclamation advanced draft regulations for administering Colorado River water entitlements in the Lower Basin States of Arizona, California, and Nevada. The draft regulations contained provisions for water banking and water marketing in the Lower Basin. Because there was not consensus with the states regarding the draft regulations, they have been held in abeyance while the three states attempt to reach some agreement on numerous issues, including water marketing and banking. This negotiation process among the states is continuing. Many people believe that some form of water banking and marketing will be essential to meeting future water needs in the Lower Colorado River Basin.

Analysis and Response: Reclamation has initiated a rule-making process focused on water banking in groundwater aquifers or off-mainstream storage reservoirs in the Lower Basin. This administrative rule is considered a responsibility of the Secretary of the Interior under the Boulder Canyon Project Act, and focuses only on the three Lower Basin States. Reclamation continues to work with the States and to encourage them to cooperatively develop a proposal for water marketing and banking in the Lower Basin.

Reclamation believes it is not appropriate that water marketing and banking would change the current Operating Criteria as this issue focuses on the Lower Basin.

Proposed Decision

The Department has considered issues arising from the review of the Operating Criteria. After a careful review of the issues, solicitation of involved party's responses to Reclamation's analysis, and consultation with the Governor's representatives of the seven Basin States, the Department proposes no modifications to the Operating Criteria at this time.

Dated: August 19, 1997.

Eluid L. Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 97–22747 Filed 8–26–97; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–401]

Certain CD–ROM Controllers and Products Containing Same; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on July 21, 1997, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Oak Technology, Inc., 139 Kifer Court, Sunnyvale, CA 94086. On August 1, 1997, Oak filed a notice of withdrawal as to certain proposed respondents. On August 7, 1997, Oak filed a letter and a supplement to the complaint. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain CD–ROM controllers and products containing same by reason of infringement of claim 8 of U.S. Letters Patent 5,535,327 and claims 1–5 and 8–10 of U.S. Letters Patent 5,581,715. The complaint further alleges that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.10 of the Commission's rules of practice and procedure, 19 CFR 210.10 (1997).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on August 19, 1997, *ordered* That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain CD–ROM controllers and products containing same by reason of infringement of claim 8 of U.S. Letters Patent 5,535,327 or claims 1–5 or 8–10 of U.S. Letters Patent 5,581,715, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—

Oak Technology, Inc., 139 Kifer Court, Sunnyvale, CA 94086

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Winbond Electronics Corporation, No. 4 Creation Rd. 3, Science-Based Industrial Park, Hsinchu, Taiwan

Winbond Electronics North America Corporation, 2730 Orchard Parkway, San Jose, CA 95134

Wearnes Technology (Private) Ltd., 801, Lor 7 Toa Payoh #07–00, Singapore SG–319319

Wearnes Electronics Malaysia Sendirian Berhad, No. 99, Jalan Parit Mesjid, 82000 Pontian, Johor, Malaysia

(c) Thomas L. Jarvis, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW, Room 401–J, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such

responses will be considered by the Commission if received not later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: August 20, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–22787 Filed 8–26–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–334 (Remand)]

Notice of Issuance of Limited Exclusion Order and Termination of Investigation; Denial of Petition for Reconsideration

In the matter of Certain condensers, parts thereof and products containing same, including air conditioners for automobiles.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order in the above-captioned investigation and terminated the investigation. The Commission has also determined to deny respondents' petition for reconsideration of the Commission's January 16, 1997, determination that a violation of section 337 of the Tariff Act of 1930 has occurred. (62 FR 3525–6) (January 23, 1997).

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: On December 12, 1991, Modine Manufacturing Co. filed a complaint with the Commission alleging a violation of section 337 by respondents Showa Aluminum Corporation (Japan), Showa Aluminum Corporation of America, Mitsubishi Motors Corporation, Mitsubishi Motors Sales of America, Mitsubishi Heavy Industries, Ltd., and Mitsubishi Heavy Industries America, Inc. (collectively referred to herein as respondents). Modine alleged that respondents had infringed claims of Modine's patent, U.S. Letters Patent 4,998,580 (the '580 patent). The Commission concluded the investigation with a finding of no infringement, and hence a determination of no violation of section 337.

Modine appealed the Commission's determination to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). On February 5, 1996, the Federal Circuit reversed the Commission's claim interpretation and remanded the investigation to the Commission for redetermination of the issues of literal infringement and infringement under the doctrine of equivalents. *Modine Manufacturing Co.* v. *U.S.I.T.C.*, 75 F.3d 1545, 1549 (Fed. Cir. 1996). The court affirmed the Commission's determination in all other respects. Id.

On May 31, 1996, the Commission issued an order remanding the Condensers investigation to the Office of Administrative Law Judges. The Commission's order also directed the ALJ to issue a recommended determination (RD) on the issues of remedy and bonding two weeks after the issuance of the ID. On December 2, 1996, Judge Luckern issued an ID finding a violation of section 337 by respondents. On December 12, 1996, respondents and the Commission investigative attorney (IA) filed separate petitions for review. Complainant Modine filed a petition for review contingent on the Commission's decision either to grant another party's petition for review or to review the ID on its own motion. All parties filed responses to each petition on December 19, 1996. The ALJ issued his RD on remedy and bonding on December 16, 1996.

On January 16, 1997, the Commission determined to review only the reasoning supporting the ALJ's determination that the range of equivalents was limited by the 0.4822 inch hydraulic diameter given for the prior art Cat condenser. 62 FR 3525–6 (Jan. 23, 1997). Since the Commission did not review the ID's determination of the range of equivalents, the ALJ's determination that there had been a violation with respect to two models of the accused condensers, the Mazda 929 and the Audi 90, became the Commission's determination by operation of law. 19 C.F.R. 210.42(h). The Commission's notice of review requested written submissions on the issue under review, and on remedy, the public interest, and bonding. Submissions were received from Modine, the Showa respondents, the Mitsubishi respondents, and the IA on January 30, 1997. Complainant, the Showa respondents, and the IA filed reply submissions on February 6, 1997.

On March 10, 1997, respondents filed a petition for reconsideration of the Commission's determination not to review the ALJ's determination that section 337 had been violated. Respondents' petition was based on the recent Supreme Court decision in *Warner-Jenkinson, Inc.* v. *Hilton-Davis Chemical Company,* 117 S.Ct. 1040 (U.S. Mar. 3, 1997), involving the doctrine of equivalents. Respondents argued that the case is controlling authority which is contrary to the law applied by the Federal Circuit in the Modine decision. Complainant Modine and the IA filed oppositions to the petition on March 17, 1997. The Commission has determined to deny respondents' petition.

After having reviewed the record in this investigation, including the written submissions of the parties, the Commission made its determinations on the issues of remedy, the public interest, and bonding. The Commission determined that the appropriate form of relief is a limited exclusion order prohibiting the unlicensed importation for consumption of infringing condensers, parts thereof, and products containing same manufactured and/or imported by or on behalf of the Showa respondents. The order applies to any of the affiliated companies, parents, subsidiaries, licensees, contractors, or other related business entities, or their successors or assigns of Showa.

The Commission also determined that the public interest factors enumerated in 19 U.S.C. 1337(d) do not preclude the issuance of the limited exclusion order, and that the bond during the Presidential review period shall be in the amount of five percent of the entered value of the condensers in question. Condenser parts and products containing condensers are entitled to entry into the United States without bond during the Presidential review period.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and section 210.58 of the Commission's Interim Rules of Practice and Procedure (19 C.F.R. 210.58)(1994).

Copies of the Commission order, the Commission opinion in support thereof, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: August 20, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–22786 Filed 8–26–97; 8:45 am]

BILLING CODE 7020–04–P

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Forms for Agricultural Recruitment System

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conduct a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the information collection of the Agricultural and Food Processing Clearance Order, Form ETA–790, Agricultural and Food Processing Clearance Memorandum, Form ETA–795, Migrant Worker Itinerary, Form ETA–785, and Job Service Manifest Record, Form ETA–785A.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before October 27, 1997. Written comments should evaluate whether the proposed information collection 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.

ADDRESSES: Pearl Wah, U.S. Employment Service, Employment and Training Administration, Department of Labor Room N–4470, 200 Constitution Avenue, N.W., Washington, D.C. 20210, 202–219–5185 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Migrant and Seasonal Farmworker regulations at 20 CFR 653.500 established procedures for agricultural clearance to all local offices to use the interstate clearance forms as prescribed by ETA. Local and State Employment offices use the Agricultural and Food Processing Clearance Order to extend job orders beyond their jurisdictions. Applicant holding local offices use the Agricultural Clearance Memorandum to give notice of action on a clearance order, request additional information, report results, and to accept or reject the extended job order. State agencies use the Migrant Worker Itinerary to transmit employment and supportive service information to labor-demand areas, and to assist migrant workers in obtaining employment. The Job Service Manifest Record shows names, addresses, and characteristics of all people name on the Migrant Worker Itinerary.

II. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A) of an extension to an existing collection of information previously approved and assigned OMB Control No. 1205–0134. This is no change in burden.

Type of Review: Extension.

Agency: Employment and Training Administration, Labor.

Titles: Agricultural and Food Processing Clearance Order, Agricultural Clearance Memorandum, Migrant Worker Itinerary, and Job Service Manifest Record.

OMB Number: 1205–0134.

Frequency: On occasion.

Affected Public: Individuals and households, employers, and State Governments.

Number of Respondents: 52.

Estimated Time Per Respondent:

Form	Volume per year	Hours per response	Hours per year
ETA–790	2,000	1.0	2,000
ETA–795	3,000	.5	1,500
ETA–785	3,500	.5	1,750
ETA–785A ..	2,500	.5	1,250

Estimated Burden Hours: 6,500.

Total Estimated Cost: None.

Comments submitted in response to this will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 22, 1997.

John R. Beverly, III,

Director, U.S. Employment Service.

[FR Doc. 97–22794 Filed 8–26–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar

character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. VA970068 dated April 4, 1997.

Agencies with construction projects pending, to which this wage decision would have been applicable, should utilize Wage Decision No. VA970063. Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effective unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

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 York:
NY970003 (Feb. 14, 1997)
NY970007 (Feb. 14, 1997)

Volume II

Pennsylvania:
PA970003 (Feb. 14, 1997)
PA970011 (Feb. 14, 1997)
PA970027 (Feb. 14, 1997)
PA970038 (Feb. 14, 1997)
PA970062 (Feb. 14, 1997)
PA970065 (Feb. 14, 1997)
Virginia:
VA970063 (Feb. 14, 1997)

Volume III

Kentucky:
KY970001 (Feb. 14, 1997)
KY970002 (Feb. 14, 1997)
KY970003 (Feb. 14, 1997)
KY970004 (Feb. 14, 1997)
KY970007 (Feb. 14, 1997)
KY970025 (Feb. 14, 1997)
KY970027 (Feb. 14, 1997)
KY970028 (Feb. 14, 1997)
KY970029 (Feb. 14, 1997)

Volume IV

Michigan:
MI970039 (Feb. 14, 1997)
MI970047 (Feb. 14, 1997)
MI970064 (Feb. 14, 1997)
Minnesota:
MN970007 (Feb. 14, 1997)
MN970008 (Feb. 14 ,1997)
MN970012 (Feb. 14, 1997)
MN970027 (Feb. 14, 1997)
MN970031 (Feb. 14, 1997)
MN970058 (Feb. 14, 1997)
MN970059 (Feb. 14, 1997)
MN970061 (Feb. 14, 1997)
Ohio:
OH970001 (Feb. 14, 1997)
OH970002 (Feb. 14, 1997)
OH970003 (Feb. 14, 1997)
OH970012 (Feb. 14, 1997)
OH970018 (Feb. 14, 1997)
OH970026 (Feb. 14, 1997)
OH970027 (Feb. 14, 1997)
OH970028 (Feb. 14, 1997)
OH970029 (Feb. 14, 1997)
OH970034 (Feb. 14, 1997)

Volume V

Arkansas:
AR970001 (Feb. 14, 1997)
Iowa:
IA970004 (Feb. 14, 1997)
IA970006 (Feb. 14, 1997)
IA970014 (Feb. 14, 1997)
IA970016 (Feb. 14, 1997)
IA970042 (Feb. 14, 1997)
IA970055 (Feb. 14, 1997)
IA970057 (Feb. 14, 1997)
IA970061 (Feb. 14, 1997)
IA970063 (Feb. 14, 1997)
IA970064 (Feb. 14, 1997)
IA970073 (Feb. 14, 1997)
Louisiana:
LA970001 (Feb. 14, 1997)
LA970004 (Feb. 14, 1997)
LA970005 (Feb. 14, 1997)
LA970045 (Feb. 14, 1997)
LA970055 (Feb. 14, 1997)
Nebraska:
NE970025 (Feb. 14, 1997)
NE970038 (Feb. 14, 1997)

Volume VI

Alaska:
AK970001 (Feb. 14, 1997)
AK970003 (Feb. 14, 1997)
AK970010 (Feb. 14, 1997)
Oregon:
OR970001 (Feb. 14, 1997)
OR970017 (Feb. 14, 1997)
South Dakota:
SD970002 (Feb. 14, 1997)
SD970024 (Feb. 14, 1997)
SD970041 (Feb. 14, 1997)
Washington:

WA970001 (Feb. 14, 1997)
WA970002 (Feb. 14, 1997)
WA970003 (Feb. 14, 1997)
WA970005 (Feb. 14, 1997)
WA970007 (Feb. 14, 1997)
WA970008 (Feb. 14, 1997)

Volume VII

California:
CA970029 (Feb. 14, 1997)
CA970084 (Feb. 14, 1997)
CA970085 (Feb. 14, 1997)
CA970086 (Feb. 14, 1997)
CA970087 (Feb. 14, 1997)
CA970088 (Feb. 14, 1997)
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CA970090 (Feb. 14, 1997)
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CA970111 (Feb. 14, 1997)
CA970112 (Feb. 14, 1997)
CA970113 (Feb. 14, 1997)
CA970114 (Feb. 14, 1997)
CA970115 (Feb. 14, 1997)

Nevada:
NV970001 (Feb. 14, 1997)
NV970002 (Feb. 14, 1997)
NV970003 (Feb. 14, 1997)
NV970004 (Feb. 14, 1997)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts''. This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. This 22nd Day Of August 1997.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 97–22743 Filed 8–26–97; 8:45 am]

BILLING CODE 4510–27–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

Meeting

AGENCY: Border Environment Cooperation Commission (BECC).

ACTION: Notice of public meeting.

SUMMARY: This notice announces the 13th public meeting of the BECC Board of Directors on Tuesday, September 30, 1997, from 9:00 am–2:00 pm, at the Corbett Center on the campus of New Mexico State University.

FOR FURTHER INFORMATION CONTACT: M.R. Ybarra, Secretary, United States Section, International Boundary and Water Commission, telephone: (915) 534–6698; or Tracy Williams, Public Outreach Coordinator, Border Environment Cooperation Commission, P.O. Box 221648, El Paso, Texas 79913, telephone: (011–52–16) 29–23–95; fax: (011–52–16) 29–23–97; e-mail: becc@cocef.interjuarez.com.

SUPPLEMENTARY INFORMATION: The U.S. Section International Boundary and Water Commission, on behalf of the Border Environment Cooperation Commission (BECC), cordially invites the public to attend the 13th Public Meeting of the Board of Directors on Tuesday, September 30th, from 9:00 am–2:00 pm, at the Corbett Center located on the campus of New Mexico State University.

Proposed Agenda, 9:00 am–2:00 pm

1. Approval of Agenda (Action)
2. Approval of Minutes (Action)
3. Executive Committee Report (Information)
4. Managers Report (Information)
   —Report on the Meeting in San Diego
   —Work Plan
5. Complaints Procedures
   —Public Comments
   —Consideration for Approval (Action)
6. Technical Assistance Program Update (Information)
7. Technical Assistance Announcements
8. Consideration of Projects for Certification
   —Public Comments
   —Certification Consideration (Action)
9. General Public Comments

Anyone interested in submitting written comments to the Board of Directors on any agenda item should send them to the BECC 15 days prior to the public meeting. Anyone interested in making a brief statement to the Board may do so during the public meeting. Please note that this is not a function of New Mexico State University.

Dated: August 18, 1997.

M.R. Ybarra,

Secretary, U.S. IBWC.

[FR Doc. 97–22730 Filed 8–26–97; 8:45 am]

BILLING CODE 4710–03–M

NATIONAL COMMISSION ON THE COST OF HIGHER EDUCATION

Meeting

AGENCY: National Commission on the Cost of Higher Education.

ACTION: Notice of public meeting.

TIME AND DATE: Sunday, September 7, 1997, 10 a.m. to 6 p.m.; and Monday, September 8, 1997, 8 a.m. to 3 p.m.

PLACE: Loews L'Enfant Plaza Hotel, the Lasalle Room, 480 L'Enfant Plaza, SW, Washington, DC 20024.

STATUS: The meetings will be open to the public from 10 a.m. to 6 p.m. on September 7, 1997 and 8 a.m. to 3 p.m. on September 8, 1997.

NOTICE: The Commission will review existing data; hear report from Executive Director; meet with higher education financial experts and develop workplan for the entire work of the Commission.

CONTACT: For further information, contact Dr. William E. Troutt at (615) 460–6793 or write to President, Belmont University, 1900 Belmont Boulevard, Nashville, TN 37212. Please note: The address and telephone number listed for the Commission are temporary.

Cassandra L. Browner,

Acting Director, GSA, Agency Liaison Division.

[FR Doc. 97–22975 Filed 8–26–97; 8:45 am]

BILLING CODE 6820–DR–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; President's Committee on the Arts and the Humanities: Meeting XL

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the President's Committee on the Arts and the Humanities will be held on September 19, 1997 from 8:30 a.m. to 1:00 p.m. The meeting will be held in Chicago, Illinois at the Chicago Cultural Center, 78 E. Washington Street.

The meeting will begin with introductory remarks from Chairman John Brademas and the Committee's Executive Director, Harriet Fulbright, and comments from the Chicago hosts of the meeting. At 9:00 a.m., Ellen McCulloch-Lovell will report on the Millennium Initiative, which will be followed at 10:00 a.m. by Task Force reports on topics that include the New Philanthropy, Preservation and Cultural Heritage, Education, the International Forum and Public and Local Forums.

The President's Committee on the Arts and the Humanities was created by Executive Order in 1982 to advise the President, the National Endowments for the Arts and the Humanities, and the Institute of Museum Services (now the Institute of Museum and Library Services) on measures to encourage private sector support for the nation's cultural institutions and to promote public understanding of the arts and the humanities.

If, in the course of discussion, it becomes necessary for the Committee to discuss non-public commercial or financial information of intrinsic value, the Committee will go into closed session pursuant to subsection (c)(4) of the Government in the Sunshine Act, 5 U.S.C. 552b.

Any interested persons may attend as observers, on a space available basis, but seating is limited in meeting rooms. Individuals wishing to attend are required to notify the staff of the President's Committee in advance at (202) 682–5409 or write to the Committee at 1100 Pennsylvania Avenue, NW, Suite 526, Washington, DC 20506.

Dated: August 21, 1997.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 97–22746 Filed 8–26–97; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Committee of Visitors; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources; Committee of Visitors (#1119).

Date and Time: September 18–19, 1997 from 8:00 am to 6:00 pm.

Place: Room 855, NSF, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Ms. Mary F. Sladek, Associate Program Director, Division on Research, Evaluation & Communication, Room 855, National Science Foundation, 4201 Wilson Blvd. Arlington, VA 22230, Tel: (703) 306–1655 × 5811.

Purpose of Meeting: To Provide oversight review of the Division of Research, Evaluation & Communication (REC).

Agenda: To carry out Committee of Visitors (COV) review, including examination of the scope of contracts, products of evaluations, the EHR Impact Database, and other privileged materials.

Reason for Closing: The meeting is closed to the public because the Committee is reviewing proposal actions that include privileged intellectual property and personal information that could harm individuals if they are disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c)(4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: August 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–22756 Filed 8–26–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Programs (1209).

Date and Time: September 16–17, 1997, 8:30 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 730, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Polly A. Penhale, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Antarctic Biology and Medicine proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–22753 Filed 8–26–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Programs (1209).

Date and Time: September 15–17, 1997, 8:00 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd., Room 330, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Scott Borg, Office of Polar Programs, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Antarctic Geology and Geophysics proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–22754 Filed 8–26–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Polar Programs; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–

463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Polar Programs (1209).

Date and Time: September 15–17, 1997, 8 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Room 310, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Julie Palais, Office of Polar Programs, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1033.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Antarctic Glaciology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: August 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–22755 Filed 8–26–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Ad Hoc Advisory Committee on Measures to Increase the Participation and Success Rates of Women, Historically Underrepresented Minorities and Disabled Persons in Graduate Education in the Sciences, Mathematics and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Science Foundation announces the following meeting:

Name: Ad Hoc Advisory Committee on Measures to Increase the Participation and Success Rates of Women, Historically Underrepresented Minorities and Disabled Persons in Graduate Education in the Sciences, Mathematics and Engineering (5196).

Date and Time: September 12, 1997, 8:30 a.m. to 5:00 p.m.

Place: Room 375, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Open.

Contact Person: Janie Fouke, Director, Division of Bioengineering and Environmental Systems, Room 565S, NSF, 4201 Wilson Blvd., Arlington, Va. 22230. Phone: (703) 306–1320.

Minutes: May be obtained from the contact person at the address above.

Purpose of Meeting: To advise NSF on strategies and tactics to achieve full participation of women, minorities, and persons with disabilities currently underrepresented in graduate education in science, mathematics and engineering.

Agenda

Morning Session

Topics at the morning roundtable session will include:

- Retention and Success, and
- ''Before and After.''

Afternoon Session

Topics at the afternoon roundtable session will include:

- Opportunities for NSF.

Dated: August 21, 1997.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 97–22752 Filed 8–26–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. *Title of the information collection:* 10 CFR part 95, Security Facility Approval and Safeguarding of National Security Information and Restricted Data.

2. *Current OMB approval number:* 3150–0047.

3. *How often the collection is required:* On occasion.

4. *Who is required or asked to report:* NRC regulated facilities and other organizations requiring access to NRC classified information.

5. *The estimated number of annual respondents:* 33.

6. *The number of hours needed annually to complete the requirement or request:* 550.5 hours (374.8 hours reporting and 175.7 hours recordkeeping, or an average of 2.7 hours per response.)

7. *Abstract:* NRC regulated facilities and other organizations are required to provide information and maintain records to ensure that an adequate level of protection is provided to NRC classified information and material.

Submit, by October 27, 1997, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the 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 this document via modem on the Public Document Room Bulletin Board (NRC's Advanced Copy Document Library), NRC subsystem at FedWorld, 703–321–3339. Members of the public who are located outside of the Washington, DC, area can dial FedWorld, 1–800–303–9672, or use the FedWorld Internet address: fedworld.gov (Telnet). The document will be available on the bulletin board for 30 days after the signature date this notice. If assistance is needed in accessing the document, please contact the FedWorld help desk at 703–487–4608. Additional assistance in locating the document is available from the NRC Public Document Room, nationally at 1–800–397–4209, or within the Washington, DC, area at 202–634–3273.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo Shelton, U.S. Nuclear Regulatory Commission, T–6 F33, Washington, DC 20555–0001, by telephone at 301–415–7233 or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 21st day of August 1997.

For the Nuclear Regulatory Commission.

Arnold E. Levin,

Acting Designated Senior, Official for Information Resources Management.

[FR Doc. 97–22780 Filed 8–26–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–280 and 50–281]

Virginia Electric and Power Company Surry Nuclear Power Station; Exemption

I

The Virginia Electric and Power Company (VEPCO, the licensee) is the holder of Facility Operating License No. DPR–32 and Facility Operating License No. DPR–37, which authorize operation of the Surry Nuclear Power Station, Units 1 and 2. The licenses provide that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in Surry County, Virginia.

II

The Code of Federal Regulations at 10 CFR 70.24, ''Criticality Accident Requirements,'' requires that each licensee authorized to possess special nuclear material shall maintain a criticality accident monitoring system in each area in which such material is handled, used, or stored. Sections 70.24 (a)(1) and (a)(2) specify detection and sensitivity requirements that these monitors must meet. Section 70.24(a)(1) also specifies that all areas subject to criticality accident monitoring must be covered by two detectors. Section 70.24(a)(3) requires licensees to maintain emergency procedures for each area in which this licensed special nuclear material is handled, used, or stored, and provides (1) that the procedures ensure that all personnel withdraw to an area of safety upon the sounding of a criticality accident monitor alarm, (2) that the procedures must include drills to familiarize personnel with the evacuation plan, and (3) that the procedures designate responsible individuals for determining the cause of the alarm and placement of radiation survey instruments in accessible locations for use in such an emergency. Section 70.24(b)(1) requires licensees to have a means by which to quickly identify personnel who have received a dose of 10 rads or more. Section 70.24(b)(2) requires licensees to maintain personnel decontamination facilities, to maintain arrangements for a physician and other medical personnel qualified to handle radiation emergencies, and to maintain arrangements for the transportation of contaminated individuals to treatment facilities outside the site boundary. Section 70.24(c) exempts Part 50 licensees from the requirements of 10 CFR 70.24(c) for special nuclear material used or to be used in the reactor. Subsection 70.24(d) states that any licensee who believes that there is good cause why he should be granted an exemption from all or part of 10 CFR 70.24 may apply to the Commission for such an exemption and shall specify the reasons for the relief requested.

III

By letter dated January 27, 1997, as supplemented March 24, 1997, VEPCO requested an exemption from 10 CFR 70.24(a). The Commission has reviewed the licensee's submittal and has determined that inadvertent criticality is not likely to occur in special nuclear materials handling or storage areas at Surry Nuclear Station, Units 1 and 2. The quantity of special nuclear material other than fuel that is stored on site is small enough to preclude achieving a critical mass.

The purpose of the criticality monitors required by 10 CFR 70.24 is to ensure that if a criticality were to occur during the handling of special nuclear material, personnel would be alerted to that fact and would take appropriate action. Although the staff has determined that such an accident is not likely to occur, the licensee has radiation monitors, as required by General Design Criteria 63, in fuel storage and handling areas. These monitors will alert personnel to excessive radiation levels and allow them to initiate appropriate safety actions. The low probability of an inadvertent criticality together with the licensee's adherence to General Design Criterion 63 constitute good cause for granting an exemption to the requirements of 10 CFR 70.24(a).

IV

The Commission has determined that, pursuant to 10 CFR 70.14, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest; therefore, the Commission hereby grants the following exemption:

The Virginia Electric and Power Company is exempt from the requirements of 10 CFR 70.24(a) for the Surry Nuclear Power Station, Unit 1 and Unit 2.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (62 FR 44495).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 21st day of August 1997.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–22779 Filed 8–26–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from August 4, 1997, through August 15, 1997. The last biweekly notice was published on August 13, 1997 (62 FR 43365).

Notice Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a

margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By September 26, 1997, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for

amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: June 12, 1997

Description of amendments request: The proposed amendments would revise the Limiting Condition for Operation (LCO) of Technical Specification 3.6.1.6 to limit drywell average air temperature instead of primary containment average air temperature, which is the volume-weighted average of both drywell and wetwell atmospheres. This change in monitored parameter is consistent with the approach taken in the improved standard technical specifications for boiling water reactor (BWR) plants of this type (NUREG-1433, Rev. 1, ''Standard Technical Specifications General Electric Plants, BWR/4,'' April 1995). The proposed amendments would additionally change the temperature limit in this LCO from 135°F (primary containment average air temperature) to 150°F (drywell average air temperature).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The NRC has provided standards in 10 CFR 50.92 for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Carolina Power & Light Company has reviewed these proposed license amendment requests and has concluded that their adoption would not involve a significant hazards consideration. The basis for this determination follows.

1. The probability of previously evaluated accidents is not a function of the ambient drywell air temperature. The revised drywell average air temperature limit of 150°F does not affect any instrumentation setpoints or allowable values, so [the] likelihood of plant instrumentation initiating a plant transient or accident has not been increased.

The design basis accidents were re-evaluated using an initial drywell air temperature of 150°F. The evaluation results indicate that no containment design requirements are exceeded nor are any regulatory requirements exceeded. Analyses demonstrate that an initial drywell average air temperature of 150°F will ensure that the safety analysis remains valid by ensuring that the peak loss-of-coolant accident drywell temperature does not result in the drywell structure exceeding the maximum allowable temperature of 300°F. Indeed, these evaluations indicate that both the peak drywell pressure and temperature will be slightly less than the peak drywell pressure and temperature resulting from the current 135°F primary containment air temperature limit. Since the drywell temperature and pressure associated with a postulated design basis accident remain less than the drywell maximum design allowable values, revised drywell average air temperature limit of 150°F does not increase the consequences of an accident previously evaluated.

A temporary, one-time exception footnote for the Brunswick Steam Electric Plant (BSEP), Unit No. 2 is being deleted because the period of the footnote's applicability expired on August 15, 1985. Deletion of this footnote is an administrative change that has no effect on the probability or consequences of an accident previously evaluated.

Thus, based on the above, the proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated. Revising the primary containment temperature limit basis to use the drywell average air temperature and increasing the average air temperature limit from 135°F to 150°F does not physically modify the facility nor does the proposed revision modify the operation of any existing plant equipment. A temporary, one-time exception footnote for BSEP Unit No. 2 is being deleted because the period of the footnote's applicability expired on August 15, 1985. Deletion of this footnote is an administrative change that does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety. The drywell average airspace temperature affects the calculated containment response to postulated Design Basis Accidents. Analyses demonstrate that an initial drywell average air temperature of 150°F will ensure that the safety analysis remains valid by ensuring that the peak loss-of-coolant accident drywell air temperature does not result in the drywell structure exceeding the maximum allowable temperature of 300°F. Analyses performed using an initial drywell average air temperature of 150°F also demonstrate that containment design requirements for peak post-accident suppression pool temperature, design basis accident related discharge loads for safety-relief valve piping, and net positive suction head for residual heat removal system and core spray system pumps are met. In addition, setpoints for reactor water level instrumentation located in the drywell have not been adversely affected, drywell equipment environmental qualification is being maintained, and containment performance during a postulated station blackout is not being adversely affected. Therefore, the proposed change does not involve a significant reduction in a margin of safety. The deletion of a temporary, one-time exception footnote for BSEP Unit No. 2 is an administrative change that also does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Gordon E. Edison (Acting)

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: July 18, 1997Description of amendments request: The proposed amendments would revise two specifications included in the Design Features section of the Technical Specifications (TS). The value for primary containment suppression chamber design temperature (TS 5.2.2.b) would be increased from 200°F to 220°F. The licensee has determined that the original suppression chamber design temperature was 220°F and confirmed that it is still the correct design value. Secondly, the specification for reactor coolant system volume (TS 5.4.2) would be redefined as the vessel volume, rather than the vessel and recirculation system volume, resulting in a change in the associated value from 18,670 cubic feet to 18,320 cubic feet. Additionally, the proposed amendments would correct a typographical error in Design Features TS 5.3.2 regarding the reactor core control rod assemblies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

10 CFR 50.92 provides standards for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. Carolina Power & Light Company has reviewed these proposed license amendment requests and has concluded that their adoption would not involve a significant hazards consideration. The basis for this determination follows.

1. The proposed license amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendments correct an inaccurate suppression chamber design temperature to reflect the actual design temperature used during containment analyses and pressure vessel procurement, correct a typographical error, and update the reactor coolant system volume to reflect a more accurate volume used in current analyses. These changes are administrative in nature and do not affect the probability or consequences of any accident previously analyzed.

2. The proposed license amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated. These changes are administrative in nature and correct the Technical Specifications to accurately represent information used during existing accident analyses. These changes do not introduce a new initiating event and do not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety. As stated above, these changes are administrative in nature and correct the Technical Specifications to accurately represent information used during existing accident analyses. These changes document values currently used in existing accident analyses and, therefore, do not reduce the margin of safety already established by the analyses.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Gordon E. Edison (Acting)

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: July 1, 1997

Description of amendment request: The proposed amendments would revise Technical Specification Table 3.3.7.1-1, ''Radiation Monitoring Instrumentation,'' to require two channels to be operable per trip system as opposed to two per intake. This change reflects a modification to the design of the instrument logic to satisfy single failure requirements. The amendment would also revise the associated action statement to clarify system logic wording.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed Technical Specification (TS) change clearly defines the system logic and the specific actions required for system operability. It will not change the probability of occurrence of any accidents, because the affected radiation monitoring instrumentation is not an accident initiator. UFSAR [Updated Final Safety Analysis Report] Section 15.9.3.4 analyzed the effects of the loss of ventilation from the Main Control Room in the event of a Station Black Out (SBO). The scope of work for the design change associated with this TS change does not affect this analysis or any of its assumptions The consequences of an accident will not increase, because the trip system redundancy is being restored to meet design basis requirements. The proposed design change will eliminate the potential of exposing main control room personnel to radiation doses that exceed the limits specified in General Design Criteria (GDC) 19. The design change associated with this TS change will comply with the redundancy due to two trip systems, either of which will actuate the control room emergency makeup train as required and the potential for spurious actuations will be reduced due to the logic change to require two channels of one trip system to cause actuation. The overall control logic for the remaining portions of the CREFS [Control Room Emergency Filtration System] is not changed by the design change.

The changes proposed to the actions are intended to clarify system logic wording. The actions assure that automatic trip capability is maintained and if not, then the CREFS is placed in the pressurization mode as in the current TS. This is consistent with the current TS.

Based upon the above, the proposed amendment will not increase the probability or consequences of any accident previously evaluated.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The elimination of the electrical connection between the redundant trip systems in a given CREFS subsystem will restore trip system independence and eliminate the potential of a single failure disabling the radiation monitoring instrumentation trip function. Specifically, a single failure, resulting from a blown fuse caused by a fault in the affected existing circuit, could remove the control power to the isolation logic relays in both trip systems. These relays require power in order to actuate and perform their safety function. A loss of control power to both trip systems due to the fault could result in exposing main control room personnel to radiation doses that exceed GDC 19 limits.

In addition, the changes to Action Statement 70 of the specification assure that trip capability is maintained.

Based upon the above, the proposed change will not create the possibility of a new or different kind of accident or transient previous evaluated.

3) Involve a significant reduction in the margin of safety because:

The proposed TS change will not prevent the isolation logic relays from performing their function or cause false trips. The alarm/trip setpoints for the affected monitors (including their measurement ranges) remain unchanged. The changes proposed to the actions are intended to clarify system logic wording. The actions assure that automatic trip capability is maintained and if not, then the CREFS is placed in the pressurization mode as in the current TS. This is consistent with the current TS.

Based on the above, the proposed TS change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document location: Jacobs Memorial Library, Illinois Valley Community College, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603

NRC Project Director: Robert A. Capra

Entergy Gulf States, Inc., Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: August 5, 1997

Description of amendment request: The proposed amendment would revise the Technical Specifications for the Safety Limit Minimum Critical Power Ratio (SLMCPR) for Cycle 8 operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The plant/cycle specific SLMCPRs have been calculated using methods identical to those used by GE (General Electric) to assess the SLMCPR for other BWRs (boiling water reactors). Similar methods were used to determine the value of the SLMCPR for the previous cycle. These methods are within the existing design and licensing basis and cannot increase the probability or severity of an accident. The basis of the SLMCPR calculation is to ensure that greater that 99.9% of all fuel rods in the core avoid transition boiling and fuel damage in the event of the occurrence of Anticipated Operational Occurrences (AOO) or a postulated accident.

The SLMCPR is used to establish the Operating Limit Minimum Critical Power Ratio (OLMCPR). Neither the SLMCPR nor the OLMCPR are initiators or affect initiators of an accident previously evaluated and therefore changes to the SLMCPR do not increase the probability of any accident previously evaluated. The proposed changes involve the use of an accepted methodology in calculating the SLMCPR and, since there is no change in the definition of the SLMCPR, these changes will not affect the consequences of any accident previously evaluated. In addition, the proposed changes do not involve any change in the way the plant is operated. Existing procedures will ensure that the SLMCPR is not violated. Therefore, these changes have no effect on the consequences of an accident.

On these bases, there will be no increase in the probability or consequences of an accident previously analyzed as a result the proposed changes.

The proposed changes consist of SLMCPR calculated from an accepted method of analysis which has been used by many BWRs. These changes do not involve any alteration of the plant and do not affect the plant operation. Neither the SLMCPR nor the OLMCPR can initiate an event, therefore a change to the SLMCPR does not create the possibility of occurrence of a new or different kind of accident from any accident previously evaluated.

The SLMCPR is a Technical Specification numerical value to ensure that 99.9% of all fuel rods in the core will avoid transition boiling if the limit is not violated. The proposed SLMCPR change results from SLMCPR analysis using the accepted methods as identified in the Attachment.

The margin of safety resides between the SLMCPR and the point at which fuel fails. Maintaining the MCPR above the proposed SLMCPR will maintain the margin of safety associated with GE's SLMCPR methodology. Existing plant procedures will continue to ensure that the SLMCPR is not violated.

Therefore, this request does not involve a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: Government Documents Department, Louisiana State University, Baton Rouge, LA 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: James W. Clifford, Acting

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: July 28, 1997

Description of amendment request: This amendment is to modify the actions associated with Technical Specifications Table 3.3-1 for the Reactor Protective Instrumentation and Table 3.3-3 for the Engineered Safety Feature Actuation System Instrumentation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

An evaluation of the proposed change has been performed in accordance with 10 CFR 50.91(a)(1) regarding no significant hazards considerations using the standards in 10 CFR 50.92(c). A discussion of these standards as they relate to this amendment request follows:

1. Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated.

The proposed change to the ANO-2 Technical Specifications (TS) modifies the allowed outage time that a channel of the Refueling Water Tank (RWT) Level - Low or Steam Generator differential pressure (delta P) can be in the tripped condition from a maximum of approximately 18 months when one channel is inoperable, and 31 days when two channels are inoperable, to 48 hours for either of these conditions.

If a channel of RWT Level Low is in the tripped condition and a single failure occurs that results in one of the other three channels of RWT Level - Low to actuate, a Recirculation Actuation System (RAS) signal would be generated. This scenario would not be considered severe if the condition occurred as a single event. However, during the injection phase of a Loss of Coolant Accident (LOCA) with a channel of RWT Level - Low in the trip condition with the above single failure, a premature RAS actuation would be the result. The premature RAS actuation would prevent the contents of the RWT from being injected into the reactor coolant system and possibly resulting in failure of both trains of Emergency Core Cooling System (ECCS) and the Containment Spray System.

With one channel of Steam Generator delta P in the tripped condition, as allowed by the TS, the plant is vulnerable to the single failure of a second Steam Generator delta P channel under an unisolable Main Steam Line Break condition. The following scenario will result in the faulted Steam Generator being supplied feedwater by the Emergency Feedwater System during an unisolable Main Steam Line Break. One channel of Steam Generator delta P is in the tripped condition as allowed by the TS and a Main Steam Line Break occurs that is unisolable. During this event one of the remaining channels of Steam Generator delta P fails resulting in incorrectly feeding the faulted Steam Generator. Reducing the time that a channel of RWT Level - Low or Steam Generator delta P can be placed in the tripped condition will reduce the probability of these scenarios from occurring.

The consequences of feeding the faulted Steam Generator during a main steam line break event or a premature RAS actuation during a LOCA are both significant. The proposed change reduces the allowed time a channel of RWT Level - Low or Steam Generator delta P can be in the tripped condition. Reducing the time the channel can be in the tripped condition and thus, the exposure time to this scenario, would not be an accident initiator or involve an increase in the consequences of any accident previously evaluated.

The remaining proposed changes are consistent with NUREG-1432, ''Standard Technical Specifications for Combustion Engineering Plants'' and are intended to correct the actions required by TS Tables 3.3-1 and 3.3-3 to the current NRC approved guidance.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated.

The proposed change does not modify the design or configuration of the plant. The proposed change provides a more conservative time limit for a channel to be in the tripped condition and provides the required actions when a channel is out of service. There has been no physical change to plant systems, structures or components nor will the proposed change reduce the ability of any of the safety related equipment required to mitigate anticipated operational

occurrences or accidents. This change will potentially increase the ability of safety related equipment to perform their functions. The configuration allowed by the proposed specification is permitted by the existing specification.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does Not Involve a Significant Reduction in the Margin of Safety.

The proposed change provides a more restrictive time limit for a channel of RWT Level Low or Steam Generator delta P to be in the tripped condition than is currently allowed by the TS. By reducing the allowed time, the probability is reduced that a single failure of another channel would result in a premature RAS actuation during the injection phase of a LOCA or the feeding of a faulted Steam Generator. By limiting the vulnerability to these events and their consequences, the proposed change will increase the margin of safety.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, Entergy Operations has determined that the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, N.W., Washington, DC 20005-3502

NRC Project Director: James W. Clifford, Acting

Florida Power and Light Company, Docket No. 50-335, St. Lucie Plant, Unit No. 1, St. Lucie County, Florida

Date of amendment request: July 22, 1997

Description of amendment request: The proposed amendment will incorporate a recent evaluation of a postulated inadvertent opening of a Main Steam Safety Valve (MSSV) into the current licensing basis for St. Lucie Unit 1. An assessment of the potential consequences of this specific transient is not presently contained in the Updated Final Safety Analysis Report (UFSAR), and the proposed license amendment is required by 10 CFR 50.59(c).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Unit 1 UFSAR includes analyses for excess load events; however, a stuck open MSSV is not specifically evaluated in the UFSAR. This proposed amendment will add an evaluation of an inadvertent opening of an MSSV to the licensing basis of the plant. The probability of occurrence of an excess load event is not increased by this amendment since the frequency of initiating events has not changed and there is no change to the plant or plant operation as a result of this amendment. Thus, there is no significant increase in the probability of any accident previously analyzed.

The radiological consequences of an excess load event other than steam line ruptures are discussed in UFSAR Section 15.2.11.2.3, and are based on the inadvertent opening of an Atmospheric Steam Dump Valve (ADV). This proposed amendment revises the radiological consequences of the UFSAR excess load event to incorporate the results of a recent evaluation of an inadvertent opening of an MSSV. The consequences of the postulated MSSV scenario are greater than those of an inadvertent opening of an ADV, but the predicted two hour site boundary doses remain a small fraction of 10 CFR 100 limits. In addition, the Unit 1 results are bounded by the St. Lucie Unit 2 analysis results which are reported in Section 15.1.3.1.1.3 of the Unit 2 UFSAR. Therefore, operation of the facility in accordance with the proposed amendment will not involve a significant increase in the consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will add an evaluation of an inadvertent opening of an MSSV to the licensing basis of the plant. The evaluation addresses an anticipated operational occurrence (AOO) and is classified as an Excess Load event under the PSL1 [Plant St. Lucie Unit 1] accident classification criteria. Although an analysis of this specific transient is not currently provided in the UFSAR, analyses of Excess Load events other than steam line ruptures are reported in UFSAR Section 15.2.11. The amendment does not change plant design or operation and does not introduce new failure modes or system interactions. Thus, operation of the facility with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed license amendment adds an engineering evaluation to the licensing basis of the plant to address the consequences of a postulated stuck open MSSV. A change is not being made to plant design or operation. A change is not being made to any Technical Specification Limiting Condition for Operation, Action, or Surveillance Requirement. The evaluation demonstrates that, post-trip, the reactor would remain subcritical throughout the transient, and that the radiological consequences of a stuck open MSSV are a small fraction of 10 CFR 100 limits. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: Indian River Community College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34981-5596

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408-0420

NRC Project Director: Frederick J. Hebdon

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: August 1, 1997

Description of amendment request: The proposed amendment will extend the semi-annual surveillance interval specified in Table 4.3-2 of the Technical Specifications for testing the Engineered Safety Features Actuation System (ESFAS) subgroup relays to an interval consistent with Combustion Engineering Owners Group Report CEN-403, Revision 1-A, March 1996. The proposed surveillance interval is at least once per 18 months, with testing to be performed on a staggered test basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment revises the testing frequency of ESFAS subgroup relays, and is based on demonstrated relay reliability. These relays actuate the engineered safety features (ESF) equipment which is installed to mitigate design basis accidents. ESF system components are not considered initiators of any design basis accident. Therefore, operation of the facility

with the proposed amendment would not involve a significant increase in the probability of an accident previously evaluated.

The proposed amendment does not alter the design or operation of ESF systems. The mean time between failures demonstrated by the ESFAS subgroup relays is significantly greater than the proposed surveillance interval, and testing will be performed on a staggered test basis. This, in addition to ESF redundancy, provides assurance that these systems will continue to function as evaluated to mitigate design basis accidents. Therefore, operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment will not change the physical plant or the modes of operation defined in the facility license. The changes do not involve the addition of new equipment or the modification of existing equipment, nor do they alter the design of St. Lucie plant systems. Therefore, operation of the facility, in accordance with the proposed amendment, would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed amendment revises the surveillance interval for testing the ESFAS subgroup relays consistent with the Combustion Engineering Owners Group topical report CEN-403, Revision 1-A, and conforms to criteria specified in the associated safety evaluation issued by the NRC staff. The St. Lucie Unit 2 subgroup relay mean time between failures is significantly greater than the proposed surveillance interval, and testing will be performed on a staggered test basis. ESFAS setpoints, system operation, and plant configuration will not be changed, and the subgroup relays are not subject to time-related instrument drift. Accident analyses assumptions, initial conditions, and conclusions reported in the Updated Final Safety Analysis Report are not changed by the revised surveillance interval. Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408-0420

NRC Project Director: Frederick J. Hebdon

GPU Nuclear (GPUN) Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: July 30, 1997

Description of amendment request: The purpose of this Technical Specification change request (TSCR) is to incorporate additional system leakage limits and leak test requirements for systems outside containment which were not previously contained in Technical Specification 4.5.4 nor considered in the TMI-1 Updated Final Safety Analysis Report (UFSAR) design basis accident (DBA) analysis dose calculations for 2568 MWt. This TSCR also revises the Technical Specification 3.15.3 Bases for the Auxiliary and Fuel Handling Building Ventilation System (AFHBVS). The revisions to Technical Specification 3.15.3 Bases for the AFHBVS serve to clarify system design requirements and accident analysis considerations. The revision states that the AFHBVS is not credited in reducing off-site dose for the Maximum Hypothetical Accident (MHA) or the Waste Gas Tank Rupture (WGTR) accident analysis dose calculations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

GPUN has determined that this TSCR poses no significant hazards consideration as defined by 10 CFR 50.92.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. No physical modifications which would change structures, systems, or components are being made or proposed by this TSCR. This change has no [effect] on the LOCA [loss-of-coolant accident] safety analysis for ECCS [emergency core cooling system] performance. The results of revised MHA dose calculation are less than that previously evaluated in the UFSAR for the exclusion area boundary (EAB). In addition the doses are below the 10 CFR 100 guideline limits for both the EAB and low population zone (LPZ) ..., and below the 10 CFR 50 Appendix A, GDC [General Design Criteria]-19 limits for the control room. The LPZ increases in dose consequence are the result of using more conservative assumptions in the revised analyses and the new values remain a small fraction of the 10 CFR 100 limits. The WGTR dose calculation is not affected by this TSCR. The proposed Technical Specification changes ensure that the MHA and WGTR accident analysis parameters remain bounded during plant operation.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. This TSCR does not involve any physical modifications which would affect structures, systems, or components, nor does it involve any changes in plant operation. The only changes resulting from this TSCR are revisions to leakage limits and testing requirements necessary to reflect the revised MHA analysis and to correct discrepancies identified by the NRC .... Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. This TSCR does not involve changes to Technical Specification defined Safety Limits, Limiting Conditions for Operation, and does not involve any change to safety system setpoints for operation. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Ronald B. Eaton (Acting)

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, (TMI-1) Dauphin County, Pennsylvania

Date of amendments request: August 12, 1997

Description of amendments request: The amendment requests changes to the Surveillance Specification of the Technical Specification (TS) for the once through steam generator (OTSG) inservice inspection for TMI-1 Cycle 12 Refueling (12R) examinations applicable to TMI-1 Cycle 12 operation. These proposed changes impose axial and circumferential extent sizing limitations in addition to TS requirements for

inside diameter (ID) initiated degradation where bobbin coil eddy current test (ECT) signal amplitudes do not permit reliable through wall sizing. Editorial changes are being made to improve consistency of format, to the Bases which relate to the requested changes in Section 4.19 of the TS, and to the reporting requirements in Section 4.19.5 of the TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has determined that this TSCR [Technical Specification Change Request] poses no significant hazards consideration as defined by 10 CFR 50.92.

A. These proposed changes do not represent a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The only accidents previously evaluated that could be significantly affected by changes to the OTSG tube inservice inspection requirements are the steam generator tube rupture (STGR) and the main steam line break (MSLB) accidents.

The proposed flaw disposition strategy based on measurable eddy current parameters of axial and circumferential extent for Inside Diameter (ID) Initiated Inter-Granular Attack (IGA) will provide high confidence that unacceptable flaws that do not have the required structural integrity to withstand the MSLB are removed from service. The proposed axial and circumferential length limits for eddy current inside diameter degradation indications meet the RG [Regulatory Guide] 1.121 acceptance criteria for margin to failure for MSLB applied differential pressure and axial tube loads. The capability for detection of flaws is unaffected and the identification of tubes which should be repaired or removed from service is maintained or improved. The operation of the OTSG or related structures, systems, or components is otherwise unaffected. Therefore, neither the probability nor consequences of a SGTR is significantly increased either during normal operation or due to the limiting loads of [an] MSLB accident.

Neither the editorial changes in format, punctuation, or grammar nor the administrative changes or changes in reporting requirements, as described above, could significantly affect the probability of occurrence or consequences of any accident previously evaluated.

B. These proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because there are no hardware changes involved nor changes to any operating practices. These changes involve only the OTSG tube inservice inspection surveillance requirements, which could only affect the potential for OTSG primary-to-secondary leakage. The proposed changes impose additional flaw length limits for ID IGA that go beyond existing requirements to assure tube structural and leakage integrity.

In addition, neither the editorial changes in format, punctuation, or grammar nor the administrative changes, as described above, could possibly create the possibility of an accident of a new or different type from any previously evaluated. These changes are included only to improve the clarity and readability of the Technical Specifications and comply with the NRC's desire to obtain the results of the inspections as soon as practical.

Therefore, these changes do not create the potential for single or multiple tube ruptures or any other kind of accident different from those that have been evaluated.

C. Those proposed changes do not involve a significant reduction in a margin of safety because the changes are more restrictive than the current technical specification and the margins of safety defined in R.G. 1.121 are retained. The probability of detecting degradation is unchanged since the bobbin coil eddy current methods will continue to be the primary means of initial detection and the probability of leakage from any indications left in service remains acceptable small. The strategy for dispositioning ID initiated IGA will continue to provide a high level of confidence that tubes exceeding the allowable limits for tube integrity are repaired or removed from service.

In addition, neither the editorial changes in format, punctuation, or grammar nor the administrative changes or changes in reporting requirements, as described above, could significantly affect a margin of safety and are included only to improve the clarity and readability of the Technical Specifications and comply with the NRC's desire to obtain the results from tube inspections as soon as practical.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Ronald B. Eaton, Acting

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, (TMI-1) Dauphin County, Pennsylvania

Date of amendment request: August 14, 1997

Description of amendment request: The proposed license amendment, if approved, would revise the TMI-1 Updated Final Safety Analysis Report (UFSAR) Section 14.1.2.9-Steam Line Break analysis to include the environmental dose consequences associated with postulated accident-induced steam generator tube leakage not previously analyzed. The revised environmental dose consequences for the TMI-1 Steam Line Break analysis would be increased above the values previously reviewed by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has determined that this License Amendment Request poses no significant hazards as defined by 10 CFR 50.92.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. This change has no effect on structures, systems or components prior to the postulated steam line break accident or any other accident. OTSG [once through steam generator] tube loads resulting from other postulated accidents are bounded by the calculated steam line break accident tube loads. Other TMI-1 design basis accidents, which could result in OTSG tube loads and environmental dose consequences, involve releases within the reactor building. These events generally result in rapid depressurization of the primary system which minimizes the differential pressure needed to establish a significant primary-to-secondary leak rate and the OTSG is isolated. Accordingly, leakage to the environment as a result of induced tube loads from postulated accidents other than steam line break is insignificant and therefore need not be considered. The existing steam line break criteria is maintained in that OTSG structural integrity is assured and postulated doses remain within 10 CFR 100 limits. The new radiological consequences of the revised steam line break dose calculation are below 10 CFR 100 limits for the exclusion area boundary (EAB) and low population zone (LPZ). The 10 CFR 50, Appendix A, GDC [General Design Criterion]-19 limits for the control room are not affected by this change since the source term assumed for the TMI-1 control room habitability analysis remains bounding.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. This change has no impact on any plant structures, systems or components. OTSG tube structural integrity is maintained. The only impact is the revised radiological consequences of the steam line break analysis to account for hypothetical accident induced primary-to-secondary leakage.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. This change to the steam line break

dose consequences does not involve a significant reduction in a margin of safety. The new radiological consequences of the revised steam line break dose calculation are below 10 CFR 100 limits for the EAB and LPZ, and do not affect the TMI-1 control room habitability analysis results. This change has no impact on any structures, systems or components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: Law/Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Ronald B. Eaton, Acting

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: July 31, 1997

Description of amendment request: The proposed amendment would change Action Statement 36 of Technical Specification (TS) Table 3.3.3-1, ''Emergency Core Cooling System Actuation Instrumentation,'' so as to specify actions to be taken if one or more channels per trip function should be inoperable in the high-pressure core spray (HPCS) drywell pressure and reactor water level instrumentation. Presently, Action 36 only addresses actions for the plant condition of having one channel per trip function inoperable. Specifically, Action 36 would be changed to require that, with the number of operable channels less than required by the minimum operable channels per trip function requirement, then (1) with one channel inoperable, the inoperable channel is to be placed in the tripped condition within 24 hours or the HPCS system is to be declared inoperable, and (2) with more than one channel inoperable, the HPCS system is to be declared inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes to Table 3.3.3-1, Action 36, will allow Action 36 to be in effect for the plant condition where more than one channel is inoperable per trip function in the HPCS drywell pressure and reactor water level instrumentation and will clarify the actions required if more than one channel is inoperable. Specifically, this action statement will allow the HPCS to be declared inoperable rather than to initiate plant shutdown per TS 3.0.3. None of the precursors of previously evaluated accidents are affected and therefore, the probability of an accident previously evaluated is not increased.

The HPCS system will continue to perform its safety function to automatically initiate and inject water into the vessel. The out of service time for the initiating instruments remains bounded by the out of service time for HPCS. Therefore, these changes will not involve a significant increase in the consequences of an accident previously evaluated.

2. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any previously evaluated.

The changes to Table 3.3.3-1, Action 36, will allow Action 36 to be in effect for plant conditions where more than one channel is inoperable per trip function in the HPCS drywell pressure and reactor water level instrumentation and will clarify the actions required if more than one channel is inoperable. No physical modification of the plant is involved and no changes to the methods in which plant systems are operated are required. The changes do not introduce any new failure modes or conditions that may create a new or different accident. Therefore, the changes do not by themselves create the possibility of a new or different kind of accident [from any accident] previously evaluated.

3. The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The change to Table 3.3.3-1, Action 36, will allow Action 36 to be in effect for plant conditions where more than one channel is inoperable per trip function in the HPCS drywell pressure and reactor water level instrumentation and will clarify the actions required if more than one channel is inoperable. The changes do not adversely affect any physical barrier to the release of radiation to plant personnel or to the public. The proposed change provides consistency between the ECCS [emergency core cooling system] instrumentation and system TS. The TS also continues to require the operability of other injection systems coincidental with HPCS inoperability. The change has the benefit of avoiding unnecessary challenges to plant systems during an unnecessary plant shutdown. Therefore, the changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005-3502

NRC Project Director: Alexander W. Dromerick, Acting Director

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: April 14, 1997

Description of amendment request: The proposed amendment would allow the Safety Review Committee (SRC) to perform a review, rather than an audit, of plant staff performance. The proposed amendment also involves a title change.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response:

This amendment application does not involve a significant increase in the probability or consequences of an accident previously analyzed. The proposed changes allow the SRC to perform a review, rather than an audit, of plant staff performance. This change does not diminish the SRC—s effectiveness. A review of the 1995 QA [quality assurance] audit of plant staff performance shows that no findings were issued. This indicates that the other review mechanisms currently in place are sufficient to ensure that plant staff performance is monitored.

The position title change is an administrative change as all previously performed functions are being maintained and the responsibilities and reporting chain for this position remain the same. Therefore, the proposed changes do not affect the probability or consequences of any previously analyzed accident.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

This amendment application does not create the possibility of a new or different

kind of accident from any accident previously evaluated. The proposed changes affect an SRC audit requirement and a position title. These changes do not affect plant equipment or the way the plant operates. Therefore, they cannot create a new or different kind of accident.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

This amendment application does not involve a significant reduction in a margin of safety. The requested Technical Specification revisions require the SRC to review rather than audit facility staff performance and will not diminish the effectiveness of the SRC. A review of the 1995 audit confirms that performance of the annual audit is redundant as no findings or recommendations concerning plant staff performance were made. The QA/ORG [Operations Review Group] quarterly trend reports and SRC review of plant staff performance are adequate to ensure that plant staff performance is properly monitored.

The position title change is an administrative change as all previously performed functions are being maintained and the responsibilities and reporting chain for this position remain the same. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019

NRC Project Director: Alexander W. Dromerick, Acting

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: May 29, 1997

Description of amendment request: The amendment would revise the definition of Containment Integrity in Section 1.10, and revise Section 3.6 and Table 3.6-1 for consistency. Several valves would be added to Table 3.6-1 to be consistent with the revised definition in Section 1.10. The amendment would also add a footnote stating that valves SP-SOV-506 and SP-SOV-507 in Table 4.4-1, ''Containment Isolation Valves'' are sealed from weld channel and containment penetration pressurization system (WCCPPS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The revision of the definition of containment integrity in Section 1.10, Section 3.6.A.1, the Basis, and the addition of existing containment isolation valves into the Table of Containment Isolation Valves in the Technical Specifications does not change the design, operation or testing of the plant. Section 1.10 is being revised to clearly cover all non-automatic containment isolation valves, and the valves are being added to be consistent with the revised definition. The valves being added are currently identified as containment isolation valves and tested as specified in the Final Safety Analysis Report. Additionally, valves CB-3, 4, 7 & 8 are controlled in accordance with Section 1.10.5 (revised numbering) for the airlock doors. Because the design and operation are not being changed, the addition of the valves has no effect on the probability or consequences of an accident.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Changing the definition in Section 1.10 and the list of containment isolation valves for consistency does not change the design, operation or testing of the plant. Section 1.10 is being revised to clearly cover all non-automatic containment isolation valves, and the valves are being added to be consistent with the revised definition. The valves being added are currently identified as containment isolation valves and tested as specified in the Final Safety Analysis Report. Therefore, without changing design, operation or testing of the plant this does not create a new or different type of accident.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

The proposed changes in the definition for containment integrity and the listings of Containment Isolation Valves in the Technical Specifications does not involve a significant reduction in the margin of safety because the change reflects current design, operation and testing of the plant, and will not alter plant operation.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019

NRC Project Director: Alexander W. Dromerick, Acting

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: June 25, 1997

Description of amendment request: The proposed amendment would allow for up to +17/-12 steps of control rod misalignment for core power greater than 85% rated thermal power.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response:

No. Based on the Westinghouse evaluation in WCAP-14668, the Authority has determined that all pertinent licensing basis acceptance criteria have been met, and the margin of safety as defined in the TS [technical specification] Bases is not reduced in any of the IP3 licensing basis accident analysis (even for misalignments to [plus or minus] 24 steps for core power [less than or equal to] 85% of RTP). Increasing the magnitude of allowed control rod indicated misalignment is not a contributor to the mechanistic cause of an accident evaluated in the FSAR [final safety analysis report]. Neither the rod control system nor the rod position indicator function is being altered. Therefore, the probability of an accident previously evaluated has not significantly increased. Because design limitations continue to be met, and the integrity of the reactor coolant system pressure boundary is not challenged, the assumptions employed in the calculation of the offsite radiological doses remain valid. Therefore, the consequences of an accident previously evaluated will not be significantly increased.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

No. Based on the Westinghouse evaluation in WCAP-14668, the Authority has determined that all pertinent licensing basis acceptance criteria have been met, and the margin of safety as defined in the TS is not reduced in any of the IP3 licensing basis accident analysis. Increasing the magnitude of allowed control rod indicated misalignment is not a contributor to the mechanistic cause of any accident. Neither the rod control system nor the rod position indicator function is being altered. Therefore, an accident which is new or different than any previously evaluated will not be created.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

No. Based on the Westinghouse evaluation in WCAP-14668, the Authority has determined that all pertinent licensing basis

acceptance criteria have been met, and the margin of safety as defined in the TS Bases is not reduced in any of the IP3 [Indian Point Unit 3] licensing basis accident analysis based on the changes to safety analyses input parameter values as discussed in WCAP-14668. Since the evaluations in Section 3.0 of WCAP-14668 demonstrate that all applicable acceptance criteria continue to be met, the proposed change will not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019

NRC Project Director: Alexander W. Dromerick, Acting

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: June 19, 1997, as supplemented by letters dated July 30 and 31, 1997

Description of amendment request: The proposed amendment would provide changes to Technical Specification (TS) 4.1.3.1.2, ''Control Rod Operability,'' TS 3.1.3.6, ''Control Rod Drive Coupling,'' TS 3.1.3.7, ''Control Rod Position Indication'', TS 3.1.4.1, ''Rod Worth Minimizer,'' TS 3/4.1.4.2, ''Rod Sequence Control System,'' TS 3/4.10.2, ''Special Test Exceptions - Rod Sequence Control System,'' the Bases for TS 2.2.1.2, ''Average Power Range Monitor,'' the Bases for TS 3/4.1.4, ''Control Rod Program Controls,'' and the Bases for TS 3/4.10.2, ''Rod Sequence Control System.'' The changes are proposed in order to eliminate the Rod Sequence Control System (RSCS) Limiting Condition for Operation and Surveillance Requirements from the TSs and reduce the Rod Worth Minimizer (RWM) low power setpoint from 20% to 10%. Changes are also proposed as necessary to delete reference to the RSCS from the TSs and to incorporate additional requirements necessary to support the elimination of the RSCS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

A. RSCS Deletion

The RSCS system restricts the pattern of control rods prior to a postulated control rod drop accident (RDA) so as to minimize the reactivity worth of the dropped rod. The RSCS provides no mitigation following the postulated RDA. The ability to restrict the pattern of control rods also allows the RSCS to be able to reduce the probability of a Continuous Rod Withdrawal During Reactor Startup, as described in the Hope Creek UFSAR [Updated Final Safety Analysis Report] Section 15.4.1.2 and Appendix 15B. However, to determine the consequence of such a rod withdrawal event, the RSCS is not credited, and the rod is assumed to be fully withdrawn from the core at its maximum rate. The RDA is therefore the only analyzed accident impacted by the proposed deletion of the RSCS system. Since the RSCS system plays no role in preventing a[n] RDA, it therefore does not affect the probability of occurrence of this postulated accident.

As stated in an NRC Safety Evaluation Report dated December 27, 1987, the RSCS system is the result of requirements promulgated by the NRC staff in the early 1970's in response to unknowns and perceived problems relating to the RDA. The GE [General Electric] calculational methodology being used at that time produced results showing that, even without pattern errors, calculated enthalpies for the RDA approached limiting values. In addition, the Rod Worth Minimizer (RWM) Technical Specifications were not effective in ensuring RWM availability and use, and the system was poorly maintained and frequently bypassed thus providing no significant protection. Second operator substitution for the RWM was used routinely and was providing minimal protection. Finally, no reliable study existed to address the probability of exceeding enthalpy limits as a result of an RDA.

Information associated with the above concerns has been significantly expanded or modified. Studies using improved methodologies have proven significantly lower peak fuel enthalpy values compared with methodologies in use when the RSCS was originally developed. In addition, a reliable probability study has been completed showing that the probability of an RDA exceeding NRC limits is very low. As a result, NRC review of the RSCS requirements has concluded that the RSCS system is not needed and operation without it is acceptable provided: 1) TSs are modified to minimize the use of the second operator option, 2) procedures and quality control associated with the second operator option are reviewed to ensure that this option provides an effective and truly independent monitoring process; and 3) rod patterns used are at least equivalent to Banked Pattern Withdrawal System (BPWS) patterns. Each of these items has been addressed for the Hope Creek Generating Station.

As a result of the resolution of the original concerns associated with the RDA, the RWM system and limited use of the second operator option, when properly instituted, are now deemed to provide adequate protection to maintain the consequences of the RDA at an acceptable level. The remaining concerns regarding operation without the RSCS system and proper use of the second operator substitution option have been addressed for the Hope Creek Generating Station. We therefore conclude that the redundant RSCS system is no longer necessary and its deletion from the Technical Specifications will not significantly increase the probability or consequences of an RDA.

B. RWM Setpoint Reduction

The RWM system restricts the pattern of control rods prior to a postulated control rod drop accident (RDA) so as to minimize the reactivity worth of the dropped rod. The RWM provides no mitigation following the postulated RDA. The ability to restrict the pattern of control rods also allows the RWM to be able to reduce the probability of a Continuous Rod Withdrawal During Reactor Startup, as described in the Hope Creek UFSAR Section 15.4.1.2 and Appendix 15B. However, to determine the consequence of such a rod withdrawal event, the RWM is not credited, and the rod is assumed to be fully withdrawn from the core at its maximum rate. The RDA is therefore the only analyzed accident impacted by the proposed reduction in the RWM setpoint. Since the RWM system plays no role in preventing a[n] RDA, it therefore does not affect the probability of occurrence of this postulated accident.

Existing calculations have demonstrated that no significant RDA can occur above 10% power. Calculations by both General Electric and the Brookhaven National Laboratory indicate that, even with significant error patterns, peak fuel enthalpy is reduced well below required limits at 10% power. The 20% limit was originally required as an extreme bound because of the then existing uncertainties in the analyses. Based on the current analyses, the 10% level is now acceptable and deemed to provide adequate protection to maintain the consequences of an RDA at an acceptable level. Changing the RWM setpoint from 20% to 10% will therefore not significantly increase the consequences of any previously analyzed accident.

2. Do not create the possibility of a new or different kind of accident from any accident previously evaluated.

A. RSCS Deletion

Operation of the RSCS cannot cause or prevent an accident; this system functions to minimize the consequences of an RDA. The Bank Position Withdrawal Sequence (BPWS) will still be used to ensure that rod pull pattern[s] are constrained to those assumed in the RDA. The RSCS has no impact on the operation of any other system, and therefore its deletion will not contribute to a malfunction in any other equipment nor create the possibility of a new or different accident from any accident previously evaluated.

B. RWM Setpoint Reduction

Operation of the RWM cannot cause or prevent an accident; this system functions to minimize the consequences of an RDA. The RWM has no impact on the operation of any

other system, and therefore changing its setpoint from 20% to 10% will not contribute to a malfunction in any other equipment nor create the possibility of a new or different accident from any accident previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

A. RSCS Deletion

When the original decisions were made regarding the need for the RSCS system, numerous perceived problems in the RDA analysis existed. As noted in the discussion of the consequences of previously analyzed accidents in Item 1 above: 1) the perceived RDA problems have been resolved; 2) reviews of the RDA have concluded that the RSCS is not needed to mitigate the consequences of an RDA; and 3) operation without the RSCS is acceptable. The RWM and limited use of second operator substitution, when properly instituted, are now deemed adequate to ensure that peak fuel enthalpies remain below NRC limits. Therefore, the deletion of the redundant RSCS system will not significantly decrease any margin of safety.

B. RWM Setpoint Reduction

The Bases for the HCGS TSs state that when thermal power is greater than 20%, there is no possible rod worth that, if dropped at the design rate of the velocity limiter, could result in a peak enthalpy of 280 calories per gram. Existing calculations demonstrate that the RDA is not a significant concern above 10% power, and therefore, a mitigation system is not needed for higher power level operation. Calculations by both General Electric and the Brookhaven National Laboratory indicate that, even with significant error patterns, peak fuel enthalpy is reduced well below required limits (280 calories per gram) at 10% power. The 20% limit was originally required as an extreme bound because of the then existing uncertainties in the analyses. Based on the current analyses, the 10% level is now acceptable and deemed to provide adequate assurance that the peak fuel enthalpy will remain below the NRC limits during a postulated RDA. Changing the RWM setpoint from 20% to 10% will therefore not significantly reduce any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit - N21, P. O. Box 236, Hancocks Bridge, New Jersey 08038

NRC Project Director: John F. Stolz

Southern Nuclear Operating Company, Inc. Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 30, 1997

Description of amendments request: The proposed amendments would change the Farley Technical Specifications to: revise and clarify the requirements for the Control Room Emergency Filtration System (CREFS), the Penetration Room Filtration System (PRFS) and the related Storage Pool Ventilation System (SPVS); revise the required number of radiation monitoring instrumentation channels; and delete the Containment Purge Exhaust Filter (CPEF) specification.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Pursuant to 10 CFR 50.92, SNC [Southern Nuclear Operating Company, Inc.] has evaluated the proposed amendments and has determined that operation of the facility in accordance with the proposed amendments would not involve a significant hazards consideration. The basis for this determination is as follows:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to convert from ANSI N510-1980 to ASME N510-1989 for specific FNP [Joseph M. Farley Nuclear Plant] filtration surveillance testing requirements and related changes do not affect the probability of any accident occurring. The consequences of any accident will not be affected since the proposed changes will continue to ensure that appropriate and required surveillance testing for FNP filtration systems will be performed consistent with the revised accident analyses. The results of the fuel handling accident remain well within the guidelines of I0 CFR Part 100 and the doses due to a LOCA [loss-of-coolant accident], including ECCS [emergency core cooling system] recirculation loop leakage, remain within the guidelines of I0 CFR Part 100 and General Design Criterion 19 of Appendix A to I0 CFR Part 50. Relocating specific testing requirements to the FNP FSAR [Final Safety Analysis Report] has no effect on the probability or consequences of any accident previously evaluated since required testing will continue to be performed.

Therefore, the proposed TS [Technical Specification] changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Testing differences between ANSI N510-1980 and ASME N510-1989 have been evaluated by SNC and none of the proposed changes have the potential to create an accident at FNP. ASME N510-1989 has been endorsed and approved by the NRC for licensee use in NUREG 1431 [Standard Technical Specifications Westinghouse Plants]. Testing the additional channels of radiation monitoring and verification of penetration room boundary integrity do not require the affected systems to be placed in configurations different from design. Thus, no new system design or testing configuration is required for the changes being proposed that could create the possibility of any new or different kind of accident from any accident previously evaluated. Relocating specific testing requirements to the FSAR has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated since it is an administrative change in nature.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

Conversion from the testing requirements of ANSI N510-1980 sections 10, 12, and 13 to ASME N510-1989 sections 10, 11, and 15 has been previously approved by the NRC at other nuclear facilities. ASME N510-1989 has been approved and endorsed by the NRC in NUREG 1431. The safety factor associated with the conservative charcoal adsorber laboratory test methods and dose calculations ensures that doses will continue to meet the guidelines of 10 CFR Part 100 and GDC [General Design Criterion] 19 of Appendix A to 10 CFR Part 50. The enhanced testing of radiation monitoring instrumentation and the penetration room boundary integrity provide additional assurance that the acceptance criteria of the safety analyses and the resultant margins of safety are not reduced. Relocating specific testing requirements to the FSAR has no effect on the margin of plant safety since required testing will continue to be performed. Clarifying the 10 hour run with heaters on is consistent with the Improved TS language and accomplishes the purpose for the surveillance. Therefore, SNC concludes based on the above, that the proposed changes do not result in a significant reduction of margin with respect to plant safety as defined in the Final Safety Analysis Report or the bases of the FNP technical specifications.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Southern Nuclear Operating Company, Inc, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 30, 1997

Description of amendments request: The proposed amendments would change the Farley Technical Specifications to incorporate the requirements necessary to change the basis for prevention of criticality in the fuel storage pool. This change eliminates the need for Boraflex as a neutron absorbing material in the fuel pool criticality analysis for both Unit 1 and Unit 2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

There is no significant increase in the probability of a fuel assembly drop accident in the spent fuel pool when considering the presence of soluble boron in the spent fuel pool water for criticality control. The handling of the fuel assemblies in the spent fuel pool has always been performed in borated water.

The consequences of a fuel assembly drop accident in the spent fuel pool are not affected when considering the presence of soluble boron.

Although the probability of misloading an assembly in the spent fuel racks may increase due to new assembly placement constraints, there is no significant increase in the probability of an accidental misloading of spent fuel assemblies into the spent fuel pool racks that will cause a criticality accident when considering the presence of soluble boron in the pool water for criticality control. Sufficient soluble boron will be maintained in the spent fuel pool to maintain k_{eff} below 0.95 following a postulated single misload. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the Technical Specification spent fuel rack storage configuration limitations. The addition of the spent fuel pool storage configuration surveillance in proposed new Technical Specifications 3.7.14 for Unit 1 and 3.7.15 for Unit 2 will provide increased assurance that a spent fuel pool inventory verification will be completed in a timely manner (7 days) after the relocation or addition of fuel assemblies in the spent fuel storage pool.

There is no significant increase in the consequences of the accidental misloading of spent fuel assemblies into the spent fuel pool racks because criticality analyses demonstrate that the pool will remain subcritical following an accidental misloading if the pool contains an adequate boron concentration. The proposed new Technical Specifications limitations will ensure that an adequate spent fuel pool boron concentration will be maintained.

In the event of failure of a spent fuel pool cooling pump, or loss of cooling to a spent fuel pool heat exchanger, the second spent fuel pool cooling train provides 100 percent backup capability, thus ensuring continued cooling of the spent fuel pool. However, even if a loss of spent fuel pool cooling were to occur, there is sufficient soluble boron to prevent K_{eff} from exceeding 0.95.

There is no significant increase in the probability of the loss of normal cooling to the spent fuel pool water when considering the presence of soluble boron in the pool water for subcriticality control since a high concentration of soluble boron has always been maintained in the spent fuel pool water.

A loss of normal cooling to the spent fuel pool water causes an increase in the temperature of the water passing through the stored fuel assemblies. This causes a decrease in water density which would result in a decrease in reactivity when Boraflex neutron absorber panels are present in the racks.

However, since Boraflex is not considered to be present, and the spent fuel pool water has a high concentration of boron, a density decrease causes a positive reactivity addition. However, the additional negative reactivity provided by the proposed 2000 ppm boron concentration limit, above that provided by the concentration required to maintain K_{eff} less than or equal to 0.95 (400 ppm), will compensate for the increased reactivity which could result from a loss of spent fuel pool cooling event. Because adequate soluble boron will be maintained in the spent fuel pool water, there is no significant increase in the consequences of a loss of normal cooling to the spent fuel pool.

Therefore, based on the conclusions of the above analysis, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

Spent fuel handling accidents are not new or different types of accidents, they have been analyzed in Section 15.4.5 of the Final Safety Analysis Report.

Criticality accidents in the spent fuel pool are not new or different types of accidents, they have been analyzed in the Final Safety Analysis Report and in Criticality Analysis reports associated with specific licensing amendments for fuel enrichments up to 5.0 weight percent U-235.

Proposed new Technical Specifications 3.7.13 for Unit 1 and 3.7.14 for Unit 2 on the spent fuel pool boron concentration do not represent new concepts. The boron concentration in the spent fuel pool has always been maintained near at the limit of the RWST [refueling water storage tank] boron concentration for refueling purposes. These new proposed Technical Specifications establish new boron concentration requirements for the spent fuel pool water consistent with the results of the revised criticality analysis [ ].

Since soluble boron has always been maintained in the spent fuel pool water, the implementation of this new requirement will have little effect on normal pool operations and maintenance. The implementation of the proposed new limitations on the spent fuel pool boron concentration will only result in increased sampling to verify boron concentration. This increased sampling will not create the possibility of a new or different kind of accident.

Because soluble boron has always been present in the spent fuel pool, a dilution of the spent fuel pool soluble boron has always been a possibility. However, it was shown in the spent fuel pool dilution evaluation [ ] that a dilution of the Farley spent fuel pool which could reduce the spent fuel storage rack K_{eff} to less than 0.95 is not a credible event. Therefore, the implementation of new limitations on the spent fuel pool boron concentration will not result in the possibility of a new kind of accident.

Proposed new Technical Specifications 3.7.14 for Unit 1 and 3.7.15 for Unit 2, and 5.6.1.1.e., 5.6.1.1.f, and 5.6.1.1.g. (for Unit 1) specify the requirements for the spent fuel rack storage configurations, and do not represent new concepts. These proposed new spent fuel pool storage configuration limitations are consistent with the assumptions made in the spent fuel rack criticality analysis, and will not have any significant effect on normal spent fuel pool operations and maintenance and will not create any possibility of a new or different kind of accident. Verifications will continue to be performed to ensure that the spent fuel pool loading configuration meets specified requirements.

As discussed above, the proposed changes will not create the possibility of a new or different kind of accident. There is no significant change in plant configuration, equipment design or equipment. The accident analysis in the Final Safety Analysis Report remains bounding.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed Technical Specification changes and the resulting spent fuel storage operating limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a plant specific criticality analysis [ ] performed in accordance the Westinghouse spent fuel rack criticality analysis methodology described in [WCAP-14416-NP-A, ''Westinghouse Spent Fuel Rack Criticality Analysis Methodology,'' Revision 1, November 1996].

The criticality analysis utilized credit for soluble boron to ensure K_{eff} will be less than or equal to 0.95 under normal circumstances, and storage configurations have been defined using a 95/95 K_{eff} calculation to ensure that the spent fuel rack K_{eff} will be less than 1.0 with no soluble boron.

Soluble boron credit is used to provide safety margin by maintaining K_{eff} less than or equal to 0.95, including uncertainties, tolerances, and accident conditions in the presence of spent fuel pool soluble boron.

The loss of substantial amounts of soluble boron from the spent fuel pool which could lead to exceeding a K_{eff} of 0.95 has been evaluated [ ] and shown to be not credible.

The evaluations which...show that the dilution of the spent fuel pool boron concentration from 2000 ppm to 400 ppm is not credible, combined with the 95/95 calculation, which shows that the spent fuel rack K_{eff} remain less than 1.0 when flooded with unborated water, provide a level of safety comparable to the conservative criticality analysis methodology required by [USNRC Standard Review Plan for the Review of Safety Analysis Reports for Nuclear Power Plants, LWR Edition, NUREG-0800, June 1987, USNRC Spent Fuel Storage Facility Design Bases (for comment) Proposed Revision 2, 1981, Regulatory Guide 1.13, and ANS, Design Requirements for Light Water Reactor Spent Fuel Storage Facilities at Nuclear Power Stations, ANSI/ANS-57.2-1983].

Therefore, the proposed changes in this license amendment will not result in a significant reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: Herbert N. Berkow

Vermont Yankee Nuclear Power Corporation, Docket No. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: July 11, 1997

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) to implement 10 CFR Part 50, Appendix J, Option B, by referring to Regulatory Guide 1.163, ''Performance-Based Containment Leak-Test Program,'' with four exceptions as detailed in the licensee's application. Specifically, changes are requested for TSs 3.7/4.7, STATION CONTAINMENT SYSTEMS, their associated BASES, and changes to TS Table 4.7.2. Included in the above changes is a revision to the conservative wording of Surveillance Requirement (SR) 4.7.A.3 that is being replaced by wording from the Standard Technical Specifications, and the relocation of this SR to the Limiting Condition for Operation. The change to TS Table 4.7.2 updates the information in the Table to the current operational practices, as approved by an NRC letter dated May 3, 1982. In addition, a description of Vermont Yankee's Primary Containment Leakage Rate Testing Program (PCLRTP) will be added to the Administrative Controls Section (6.0) of the TSs. The testing intervals for the containment system and for the components that penetrate the primary containment, under Option B of Appendix J will be performance-based.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

Option B

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that contribute to initiation of any accidents previously evaluated. Thus, the proposed change cannot increase the probability of any accident previously evaluated.

The proposed change potentially affects the leak-tight integrity of the containment structure designed to mitigate the consequences of a loss-of-coolant accident (LOCA). The function of the containment is to maintain functional integrity during and following the peak transient pressures and temperatures which result from any LOCA. The containment is designed to limit fission product leakage following the design basis LOCA. Because the proposed change does not alter the plant design or test method, only the frequency of measuring Type A, B and C leakage, the proposed change does not directly result in an increase in containment leakage. However, decreasing the test frequency can increase the probability that an increase in containment leakage could go undetected for an extended period of time. Based upon the results of the periodic containment Type A or Integrated Leak Rate Tests (ILRTs) and Type B and C or Local Leak Rate Tests (LLRTs) surveillance tests, this is not expected during the remaining life of the plant. The risk resulting from the proposed changes is as follows:

Type A Testing

NUREG/CR-4330 (NRC86) found that the effect of containment leakage on overall accident risk is small since risk is dominated by accident sequences that result in failure or bypass of the containment. It is also determined that on an expected individual dose basis, the effect of containment leakage is small.

Industry wide, ILRTs have only found a small fraction of the leaks that exceed current acceptance criteria. Only three percent of all leaks are detected by ILRTs, and therefore, by extending Type A testing intervals, only three percent of all leaks have a potential for remaining undetected for longer periods of time. In addition, when leakage has been detected by ILRTs, the leakage rate has been only about two times the allowable leakage rate.

NUREG-1493, ''Performance-Based Containment Leakage Test Program'', found that these observations, together with the insensitivity of reactor accident risk to the containment leakage rate, show that reducing the Type A leakage test frequency would have a minimal impact on public risk.

Type B and C Testing

NUREG-1493 found that while Type B and C tests can identify the vast majority (greater than 95 percent) of all potential leakage paths, performance-based alternatives are feasible without significant risk impacts. The risk model used in NUREG-1493 suggests that the number of components tested would be reduced by about 60 percent with less than a three-fold increase in the incremental risk due to containment leakage. Since, under existing requirements, leakage contributes less than 0.1 percent of overall accident risk, the overall impact is very small. NUREG-1493 found that while the extended testing intervals for Type B and C tests led to minor increases in potential offsite dose consequences the actual decrease of on-site (worker) doses would be reduced in proportion to the number of Type B or C tests not performed.

EPRI Research Project Report TR-104285, ''Risk Impact Assessment of Revised Containment Leak Rate Testing Intervals,'' also concluded that a relaxation of the test intervals for Type B and C penetrations results in a negligible increase in total plant risk.

Based on the above VYNPC [Vermont Yankee Nuclear Power Corporation] has concluded that the proposed change will not result in a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve a change to the plant design or operation. As a result, the proposed change does not affect any of the parameters or conditions that could contribute to initiation of any accidents. This change involves the reduction in Type A, B, and C test frequency. The methods of performing the tests are not changed. No new accident modes are created by extending the testing intervals. No safety-related equipment or safety functions are altered as a result of this change. Extending the test frequency has no influence over nor does it contribute to, the possibility of a new or different kind of accident or malfunction from those previously analyzed.

Based upon the above, VYNPC has concluded that the proposed change will not create the possibility of a new or different kind of accident from those previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

As stated in the Technical Support Document (TSD) for the NRC's Option B to

Appendix J rule change, NUREG-1493 concludes a reduction in the frequency of Type A testing from the current three per ten years to one per ten years leads to an imperceptible increase in risk. It also concludes that a reduction in the frequency of Type B testing of electrical penetrations should be possible with no adverse impact on risk. A vast majority of leakage paths are identified by Type C testing of containment isolation valves and, based on the model of component failure with time, performance-based alternatives to the current Type C testing intervals are feasible without significant risk impacts.

4.7.A.3

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not result in any hardware or operating procedure changes. Closed and de-activated automatic valves, closed manual valves or blind flanges that serve as primary containment isolation valves are not assumed to be initiators of any analyzed event. The role of these devices is to isolate containment during analyzed events, thereby limiting consequences. The change establishes compensatory measures using closed and de-activated automatic valves, closed manual valves or blind flanges as an isolation barrier which is equivalent to those already included in the current Technical Specifications. The proposed change does not introduce any new failure modes, such that a single active failure could allow a primary containment release through an un-isolated path. Therefore, this change will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

This change does not result in any changes to equipment design or capabilities or the operation of the plant. The change still ensures the primary containment boundary is maintained. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Closed and de-activated automatic valves, closed manual valves or blind flanges which are used to satisfy the compensatory measures of 4.7.A.3 are primary containment isolation devices will be leak tested per the PCLRTP. In addition, the Technical Specification establishes these devices as an isolation barrier that cannot be adversely affected by a single active failure. As a result, any reduction in a margin of safety will be insignificant and offset by the benefit gained with equivalent compensatory measures to ensure the primary containment boundary is maintained, which reduces unnecessary plant shutdown transients.

Table 4.7.2 Editorial Change

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change updates the information presented in this Table to reflect current practice. The methods of maintaining an inerted containment and differential pressure between the drywell and suppression pool have been previously docketed. The valves to now be shown normally closed on the Table are large (6'' and 18'') purge valves and the valves to be shown as normally open to provide makeup nitrogen are both 1'' in size. The probability of an accident is not significantly increased, since the subject valves are not considered to be initiators of any accident previously evaluated. The consequences of an accident are not significantly increased, since each of the subject valves receives a close signal from PCIS [primary containment isolation system]. In addition, PCIS closure of the two one inch valves will terminate the associated release pathway more rapidly than the existing valve lineup reflected on the Table. Thus it is concluded that this change will not involve any significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from amy previously evaluated?

All four valves whose listed normal positions are proposed to be changed are PCIS valves and receive the same closing signal. All are tested in accordance with our Appendix J and IST [inservice testing] programs. No changes in equipment design or operation are proposed, only the listed normal positions of the subject valves. Thus, this change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

The valves to be listed as normally open are significantly smaller and faster closing than the purge valves currently listed as open. Thus the change in the listed normal position of these four valves provides a more conservative initial condition than is currently depicted in Table 4.7.2. No changes in equipment design or operation are proposed. Thus, it is concluded that there is no significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: Brooks Memorial Library, 224 Main Street, Brattleboro, VT 05301

Attorney for licensee: R. K. Gad, III, Ropes and Gray, One International Place, Boston, MA 02110-2624

NRC Project Director: Ronald B. Eaton, Acting

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: August 14, 1997 (TSCR 199)

Description of amendment request: These amendments would revise: TS 15.4.2.B. ''In-Service Inspection and Testing of Safety Class Components Other than Steam Generator Tubes,'' to modify item 2 to change the reference from TS 15.4.4 to the Containment Leakage Rate Testing Program; TS 15.6.12.A.1, ''Containment Leakage Rate Testing Program,'' to eliminate the one-time requirement for Unit 2 Type A testing since the testing has been completed; and TS Bases 15.4.4 to delete the specific bases for containment purge valve testing and to delete a reference that is no longer used.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not result in a significant increase in the probability or consequences of an accident previously evaluated.

The proposed administrative changes correct discrepancies in the Technical Specifications introduced as a result of Amendment 169 to Operating License DPR-24 for Point Beach Nuclear Plant Unit 1 and Amendment 173 to Operating License DPR-27 for Point Beach Nuclear Plant Unit 2. These changes correct references to containment isolation valve testing in the Specifications and Bases. These amendments were evaluated as acceptable in a safety evaluation dated October 9, 1996. Therefore, these changes do not result in an increase in the probability or consequences of any accident previously evaluated.

The Point Beach Nuclear Plant Unit 2 containment was tested and found acceptable within the maximum interval defined by a one-time Technical Specifications requirement. Subsequent testing will be performed in accordance with the approved testing program defined by Technical Specifications 15.6.12. Therefore, the Technical Specification requirements are met. These requirements are established to ensure the containment performs and is maintained as designed and assumed in the safety analyses. The removal of the one-time specific periodicity requirements for the Unit 2, Type A containment integrated leak rate test does not result in a significant increase in the probability or consequence of any accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the Technical Specifications do not change the requirements for the Point Beach Nuclear Plant containments to perform as designed and evaluated in the safety analyses. Test requirements in the Technical Specifications continue to meet the standards evaluated and approved by the NRC to ensure the containments continue to perform as

designed and analyzed. Administrative discrepancies in the Specifications and bases are also corrected. Therefore, no new or different kind of accident from any accident previously evaluated is created.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not involve a significant reduction in a margin of safety.

The proposed changes to the Technical Specifications ensure consistency with Amendment 169 to Point Beach Nuclear Plant Unit 1 Operating License DPR-24 and Amendment 173 to Point Beach Nuclear Plant Unit 2 Operating License DPR-27. Testing of the Unit 2 containment has been performed within the maximum time limit allowed by the one-time test requirement of Technical Specification 15.6.12. Testing requirements continue to meet NRC requirements and ensure the containment continues to operate as designed and analyzed. Administrative corrections to the Specifications and bases ensure consistency with previously approved amendments. Therefore, a margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: John N. Hannon

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: July 29, 1997

Description of amendment request: This license amendment request revises the wording of Action Statement 5.a to Technical Specification Table 3.3-1. ''Reactor Trip System Instrumentation.'' This action statement prescribes a set of actions to be accomplished when a source range neutron detector is inoperable with the plant shut down. The proposed wording change will clarify the times and order in which these actions are to be performed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

In MODE 3, 4, or 5 with the rod control system capable of rod withdrawal or rods not fully inserted, the source range neutron detectors provide a reactor trip signal on high neutron flux to provide core protection against an uncontrolled rod cluster control assembly bank withdrawal from a subcritical or low power startup condition. This trip function is actuated when either of two independent source range channels indicates a neutron flux level above a preselected manually adjustable setpoint. If the rod control system is not capable of rod withdrawal with rods fully inserted, the source range detectors are not required to trip the reactor.

NUREG-1431, Revision 1, ''Standard Technical Specifications Westinghouse Plants,'' allows one source range neutron detector to be out of service for up to 48 hours. One additional hour is allowed to open the reactor trip breakers and suspend operations involving the addition of positive reactivity. This was the same action sequence prescribed for the source range neutron detectors prior to the implementation of Amendment No. 96 to the Wolf Creek Technical Specifications, which inadvertently resulted in an ambiguous rewording of the action. The proposed rewording of the action statement clarifies the proper timing of the required actions, and is consistent with NUREG-1431, Revision 1.

The proposed change does not introduce any new potential accident initiating conditions and does not alter any plant operating procedures or method of operation of any plant components or systems. Allowing positive reactivity changes during the 48 hour period in which one source range neutron detector is inoperable is acceptable since the remaining detector will still provide the reactor trip function and control room indication when the reactor trip breakers are closed, and control room indication when the reactor trip breakers are open. This is consistent with the provisions in NUREG-1431, Revision 1. Thus, the proposed change does not affect any system's ability to mitigate the consequences of an accident and will not increase the probability of occurrence of any previously evaluated accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not affect the method of operation of any plant component or system, and does not create any new, or alter any existing, accident initiators. The proposed change clarifies that positive reactivity changes may be allowed during the 48 hour period in which a source range neutron detector is inoperable, as provided for in NUREG-1431, Revision 1. This action does not affect the capability of the remaining source range neutron detector to provide a reactor trip signal on high neutron flux during this period when the reactor trip breakers are closed, nor does it affect the ability of the remaining detector of providing control room indication. This function of the source range neutron detectors is discussed in Chapter 15 of the Wolf Creek Updated Safety Analysis Report. This proposed change does not modify any existing plant equipment, add any new plant equipment, or alter any component or system operating parameters or procedures. Therefore, this proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The source range neutron detectors provide a reactor trip function during shutdown conditions when the reactor trip breakers are closed. When the reactor trip breakers are open they provide control room alarm/indication, only. The proposed change clarifies that positive reactivity changes may be allowed during the 48 hour period in which a source range neutron detector is inoperable. This is consistent with the provisions in NUREG-1431, Revision 1 and with Wolf Creek Technical Specification Table 3.3-1, Action 5.a, prior to the implementation of Amendment No. 96. In Amendment No. 96 the wording of this action was changed such that this allowance was no longer clear. With one source range neutron detector inoperable with the reactor trip breakers closed, the reactor trip on high neutron flux function is still provided by the remaining source range neutron detector. With one source range neutron detector inoperable with the reactor trip breakers open, control room indication of high neutron flux is still provided. As stated above, this is consistent with NUREG-1431, Revision 1, as well as with the action requirements prior to the implementation of Amendment No. 96. This proposed change, then, does not affect the margin of safety provided by the source range neutron detectors.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman

Previously Published Notices Of Consideration Of Issuance Of Amendments To Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, And Opportunity For A Hearing

The following notices were previously published as separate individual notices. The notice content was the

same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: July 25, 1997

Brief description of amendments: The proposed amendments would modify Technical Specification (TS) 4.0.5.f in a manner that would allow exceptions to the NRC staff's positions on intergranular stress corrosion cracking in boiling water reactor austenitic stainless steel piping, where specific written relief has been granted by the NRC. TS 4.0.5.f now requires that the Brunswick Steam Electric Plant, Units 1 and 2, Inservice Inspection program be performed in accordance with the positions identified in NRC Generic Letter 88-01. Date of publication of individual notice in **Federal Register:** August 12, 1997 (62 FR 43187)

Expiration date of individual notice: September 11, 1997

Local Public Document location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Nuclear Generating Plant, Unit No. 3, Citrus County, Florida

Date of application for amendment: August 4, 1997

Brief description of amendment: The proposed amendment would revise the Technical Specifications to extend the frequency for certain surveillances related to the emergency diesel generators. Date of publication of individual notice in the FEDERAL REGISTER:August 12, 1997 (62 FR 43189)

Expiration date of individual notice: September 11, 1997

Local Public Document location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 6, 1997

Description of amendment request: The proposed amendment would revise Technical Specification Table 2.2-1 and 3/4.2.5 to allow the reactor coolant system total flow to be determined using cold leg elbow tap differential pressure measurements. Date of individual notice in the **Federal Register:** August 14, 1997 (62 FR 43556)

Expiration date of individual notice: September 15, 1997

Local Public Document location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488

Notice Of Issuance Of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Commonwealth Edison Company, Docket No. 50-455, Byron Station, Unit No. 2, Ogle County, Illinois, Docket No. STN 50-457, Braidwood Station, Unit No. 2, Will County, Illinois

Date of application for amendments: May 24, 1997, as supplemented by letters dated May 31, June 20 and June 24, 1997

Brief description of amendments: The amendments revise Technical Specification 4.5.2.b.1 to include the use of Ultrasonic Testing (UT) to verify that the emergency core cooling system (ECCS) is completely filled with water. For the ECCS subsystem with high point vent valves in direct communication with the operation system, UT is acceptable in lieu of physically opening the vents.

Date of issuance: August 13, 1997

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 91 and 84

Facility Operating License Nos. NPF-66 and NPF-77: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 10, 1997 (62 FR 31633) The May 31, June 20, June 24, and July 18, 1997, submittals provided additional clarifying information that did not change the proposed initial no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 13, 1997. No significant hazards consideration comments received: No

Local Public Document location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: June 9, 1997

Brief description of amendments: The amendments authorize a change to the realistic dose values for the process gas system rupture in Section 15.0 of the

Byron/Braidwood (B/B) Updated Final Safety Analysis Report (UFSAR). During preparation of a UFSAR change package, ComEd discovered that the Final Safety Analysis Report (FSAR) had not been updated to correct an error from the previous revision of the dose calculation. Since the correct dose value is greater than that previously reported, the consequences of the accident had increased, and an unreviewed safety question resulted.

Date of issuance: August 13, 1997

Effective date: August 13, 1997

Amendment Nos.: 92, 92, 85, 85

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendments authorize a change to the Byron/Braidwood UFSAR.

Date of initial notice in **Federal Register:** July 10, 1997 (62 FR 37079). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 13, 1997. No significant hazards consideration comments received: No

Local Public Document location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481

Consumers Energy Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of application for amendment: April 30, 1997

Brief description of amendment: The amendment revises the Big Rock Point Plant license and technical specifications to reflect the licensee's name change from ''Consumers Power Company'' to ''Consumers Energy Company.''

Date of issuance: August 14, 1997

Effective date: August 14, 1997

Amendment No.: 119

Facility Operating License No. DPR-6: Amendment revised the license and the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1997 (62 FR 30630) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 14, 1997. No significant hazards consideration comments received: No.

Local Public Document location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: May 8, 1997, as supplemented June 10, and July 25, 1997

Brief description of amendment: The amendment incorporates additional NRC-approved topical reports into the Technical Specifications (TS).

Date of issuance: August 12, 1997

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 202

Facility Operating License No. DPR-50: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 4, 1997 (62 FR 30633) The June 10 and July 25, 1997, letters provided clarifying information that did not change the scope of the May 8, 1997, application or the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1997. No significant hazards consideration comments received: No

Local Public Document location: Law/Government Publications Section, State Library of Pennsylvania (REGIONAL DEPOSITORY), Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: February 29, 1996 (AEP:NRC:1232), and supplemented November 15, 1996 (AEP:NRC:1232A), and February 4, 1997 (AEP:NRC:1232B)

Brief description of amendments: The amendments revise the Technical Specifications and associated bases to increase the minimum borated water volume in the boric acid storage system and decrease the required boron concentration.

Date of issuance: August 7, 1997

Effective date: August 7, 1997, with full implementation when the required plant modifications are completed, but not later than August 31, 1998.

Amendment Nos.: 216 and 200

Facility Operating License Nos. DPR-58 and DPR-74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 24, 1996 (61 FR 18172) The November 15, 1996, and February 4, 1997, supplements only provided the schedule for the plant modifications and procedure changes associated with this amendment and did not change the staff's proposed determination of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 7, 1997.No significant hazards consideration comments received: No.

Local Public Document location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: December 20, 1996

Brief description of amendments: The amendments reduce the frequency and scope of reactor coolant pump flywheel inspections.

Date of issuance: August 8, 1997

Effective date: August 8, 1997, with full implementation within 45 days.

Amendment Nos.: 217 and 201

Facility Operating License Nos. DPR-58 and DPR-74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 18, 1997 (62 FR 33126) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 8, 1997. No significant hazards consideration comments received: No.

Local Public Document location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Maine Yankee Atomic Power Company, Docket No. 50-309, Maine Yankee Atomic Power Station, Lincoln County, Maine

Date of application for amendment: September 13, 1996, as supplemented by letter dated September 25, 1996

Brief description of amendment: The amendment revised Technical Specification 5.5.B to designate the President, Maine Yankee as the responsible official for matters related to the Nuclear Safety Audit and Review (NSAR) Committee. The amendment includes some minor editorial changes to the same technical specification.

Date of issuance: August 8, 1997

Effective date: August 8, 1997, to be implemented within 30 days of the date of issuance.

Amendment No.: 159

Facility Operating License No. DPR-36: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 6, 1996 (61 FR

57487) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1997. No significant hazards consideration comments received: No.

Local Public Document location: Wiscasset Public Library, High Street, P.O. Box 367, Wiscasset, ME 04578

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: June 13, 1997

Brief description of amendment: The amendment modifies Technical Specification (TS) Surveillance Requirement 4.4.1.3.3 to be consistent with the requirements of TS 3.4.1.3. Specifically, the change brings TS 4.4.1.3.3 into agreement with TS 3.4.1.3 by requiring that the specified reactor coolant and/or residual heat removal system loops be verified in operation and circulating reactor coolant at least once per 12 hours during Mode 4.

Date of issuance: August 5, 1997

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 145

Facility Operating License No. NPF-49: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 2, 1997 (62 FR 35850) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 5, 1997. No significant hazards consideration comments received: No.

Local Public Document location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut 06360, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut 06385

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: January 27, 1997, as supplemented May 16, 1997

Brief description of amendment: The amendment changes the Technical Specifications to permit control rod misalignment of up to plus or minus 18 steps when the core thermal power is less than 85% of rated power.

Date of issuance: August 11, 1997

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 176

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 19, 1997 (62 FR 33445) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 11, 1997. No significant hazards consideration comments received: No

Local Public Document location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: March 26, 1997

Brief description of amendment: The amendment revises TS 4.5.2.a for the two charging/high head safety injection (HHSI) pump cross connect valves (XVG-8133A and XVG-8133B) and charging pump mini-flow header isolation valve (XVG-8106) in the emergency core cooling system (ECCS). The proposed amendment adds these valves to the list of valves in TS Surveillance Requirement 4.5.2.a on page 3/4 5-4, consequently these valves will be verified once every 12 hours to indicate that they are in the required position with power to the valve operators removed.

Date of issuance: August 8, 1997

Effective date: August 8, 1997

Amendment No.: 136

Facility Operating License No. NPF-12: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** May 21, 1997 (62 FR 27801) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 8, 1997. No significant hazards consideration comments received: No

Local Public Document location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: November 14, 1995, as supplemented July 11, 1996 and July 24, 1997

Brief description of amendment: The amendment revises Technical Specification 3/4.8.4.2 for motor-operated valves thermal overload protection and bypass devices at Virgil C. Summer Nuclear Station.

Date of issuance: August 13, 1997

Effective date: August 13, 1997

Amendment No.: 137

Facility Operating License No. NPF-12: Amendment adds a new License Condition and revises the Technical Specifications.

Date of initial notice in **Federal Register:** December 20, 1995 (60 FR 65684) The July 11, 1996, and July 24, 1997 submittals contained clarifying information only and did not change the proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 13, 1997. No significant hazards consideration comments received: No

Local Public Document location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee Date of application for amendments: September 26, 1996, as supplemented on August 12, 1997 (TS 96-04)

Brief description of amendments: The amendments change the Technical Specifications (TS) by relocating the fire protection program details to the Updated Final Safety Analysis Report and Fire Protection Plan in accordance with Generic Letters 86-10 and 88-12.

Date of issuance: August 12, 1996

Effective date: August 12, 1996

Amendment Nos.: 227 and 218

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the TS.

Date of initial notice in **Federal Register:** July 2, 1997 (62 FR 35843) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated August 12, 1997. No significant hazards consideration comments received: No

Local Public Document location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: August 22, 1996, as revised July 14, 1997

Brief description of amendments: These amendments revise Section 3.A of Facility Operating Licenses DPR-24 and

DPR-27 from a licensed power level of 1518 megawatts thermal to 1518.5 megawatts thermal. A similar revision is made in the bases of Technical Specification 15.3.1.B, ''Pressure/Temperature Limits.''

Date of issuance: August 6, 1997

Effective date: August 6, 1997

Amendment Nos.: 175 and 179

Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the licenses.

Date of initial notice in **Federal Register:** October 9, 1996 (61 FR 52972) The July 14, 1997, supplement provided a corrected bases page and did not affect the staff's no significant hazards considerations determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 6, 1997. No significant hazards consideration comments received: No.

Local Public Document location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: February 12, 1997, as supplemented on March 11, 1997 (TSCR 196)

Brief description of amendments: These amendments revise Point Beach Nuclear Plant's (PBNP) Technical Specifications (TSs) to relocate turbine overspeed protection specifications, limiting conditions for operation, surveillance requirements, and associated bases from TS Section 15.3.4, ''Steam and Power Conversion System,'' and Section 15.4.1, ''Operational Safety Review,'' to the Final Safety Analysis Report (FSAR) in accordance with Generic Letter 95-10.

Date of issuance: August 6, 1997

Effective date: These license amendments are effective as of the date of issuance and shall be implemented by incorporating the turbine overspeed protection specifications, limiting conditions for operation, surveillance requirements, and associated bases into the FSAR by June 30, 1998.

Amendment Nos.: 176 and 180

Facility Operating License Nos. DPR-24 and DPR-27: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** April 23, 1997 (62 FR 19838) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 6, 1997. No significant hazards consideration comments received: No.

Local Public Document location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin 54241

Dated at Rockville, Maryland this 20th day of August 1997.

For the Nuclear Regulatory Commission

John A. Zwolinski,

Acting Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation.

[Doc. 97–22635 Filed 8–26–97; 8:45 am]

BILLING CODE 7590–01–F

POSTAL SERVICE

Specifications for Information Based Indicia Program (IBIP) Postal Security Devices and Indicia (Postmarks)

AGENCY: Postal Service.

ACTION: Notice of USPS response to public comments and availability of Specifications.

SUMMARY: The Postal Service received hundreds of comments in response to our **Federal Register** notices on the draft specifications for Information Based Indicia Program Postal Security Device (PSD) and Indicium. The Postal Service has reviewed all those comments and developed a response. Some of the comments were within the scope of the draft proposed specifications and some of the comments were not. Those within the scope of the draft proposed specifications have responses included herein. Those outside the scope of the draft proposed specifications will be included in subsequent responses. Some of the topics not dealt with herein include key management, host system specifications, cash management, certificate authority, product life-cycle management, mail classes, customer usage requirements, market research, procurement policy, product submission requirements, product/service provider infrastructure, and program development activities.

ADDRESSES: Copies of the draft PSD and Indicium specifications dated July 23, 1997, may be obtained from Ed Zelickman, United States Postal Service, 475 L'Enfant Plaza SW Room 1P801, Washington, DC 20260–6807. Comments should be submitted to the same address. These documents supersede all previously issued Indicium and PSD Specifications. Copies of all written comments may be inspected between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

DATES: All written comments must be received on or before October 27, 1997.

FOR FURTHER INFORMATION CONTACT: Ed Zelickman at (202) 268–3940.

SUPPLEMENTARY INFORMATION: The Postal Service received hundreds of comments on the proposed draft Information Based Indicia Program (IBIP) Indicia and Postal Security Device specifications (62 FR 37631, July 14, 1997). Those outside the scope of the draft proposed specifications will be dealt with in subsequent specifications and documents and will not be addressed herein.

Indicium Specification

Many comments were received regarding Indicium data contents. Generally, these comments fall into six categories:

1. Reserve Field Usage

The specific use of the reserved field has not been defined. Product Service Providers are welcome to suggest how the customer or service provider could best use this field. This field was installed in the indicia data set as a customer defined field.

2. The PSD Certificate in the Indicium

The USPS has included in the initial draft the PSD certificate in the indicia. The removal of the certificate in subsequent releases of these specifications is dependent upon the key management infrastructure.

3. Size and Format of the Indicium Fields

The USPS feels that all fields (except the reserve field) in the indicia contribute to either the security/verification of the indicia or the audit control of IBIP products. We will continue to explore replacement methods in an effort to reduce indicia size.

4. Rate Category Definition

The Rate category is defined in the draft DMM and CFR policies and is not defined in these documents.

5. Ascending Register as a Data Element

The ascending register along with the device ID provides absolute uniqueness to each indicium. The inclusion of the ascending register also provides one audit control data element.

6. Special Purpose Field

The special purpose field is included as an audit control field. This data element within the barcode should match the human readable value on the mailpiece. If these two do not match, this could be a fraud indicator.

Many comments were received regarding the use of digital signatures and associated technology. Specifically, a question arose on use of varying hash

functions within a given digital signature algorithm. Additionally, use of alternate algorithms was suggested.

Recent discoveries concerning the use of one of the hash functions (MD5) specified in the PSD specification have prompted the USPS to modify the requirements to read that the hash function required is now SHA–1. The specification also indicates that the USPS will consider other equally secure digital signature algorithms. These changes will be included in the next release of the specifications.

A few comments were received regarding the selection of the error correction level.

The recommended minimum error correction level was selected based on the data capacity of the Indicium. Product service providers are at liberty to use a higher error correction level. If additional data is added to the Indicium, the error correction level must be chosen to comply with the PDF417 standard.

A few comments were received regarding envelope issues.

There is no requirement for indicia to be printed directly on the envelopes. Indicia could be printed on labels and those labels subsequently applied to envelopes, or indicia-window envelopes could be used.

Numerous comments were received regarding the size and position of the Indicium on the mailpiece.

The PDF 417 barcode symbology offers great flexibility in tailoring its dimensions to the particular application. The 2-inch maximum barcode width was chosen so as not to infringe on the FIM or the OCR region. The X dimension feature size was the minimum considered acceptable for processing using USPS equipment. Larger feature sizes can be used at the discretion of the product service provider to achieve the specified read rates. However, other issues such as printing technologies, paper physics, and required read rates should also be considered by the product service provider to arrive at an appropriate rate. All issues regarding positioning, format, and content of the envelope should be referred to the DMM, which is being updated to include provisions for IBIP. The Indicium must be visible from the front of the mailpiece. The Postal Service will continue to explore methods to minimize real estate requirements on envelopes while continuing to satisfy security, audit and control, administration, and customer value-added functions. Our position will be reflected in the next version of the specifications.

Numerous comments were received regarding reflectance issues.

All issues regarding ink, reflectance and fluorescence should be referred to the DMM, which is being updated to include provisions for IBIP. The product service provider must evaluate the Indicium to ensure USPS readability and quality specifications are met. The product service provider is required to correct any deficiencies that are discovered from this evaluation.

A few comments were received regarding the minimum and maximum postage value issue.

These values will be set by USPS policy.

Numerous comments were received regarding the aesthetics of the sample Indicium.

Use of IBIP indicia is not mandatory; the Information Based Indicia represents a fourth form of postage. Design of mailpieces with regard to evidence of postage is left to the discretion of the product service provider so long as it is a USPS-recognized form of postage. As a result, the IBIP indicia design is left to the discretion of the product service provider so long as it is in compliance with the Indicium Specification and the Domestic Mail Manual (DMM).

Numerous comments were received regarding print contrast ratio issues.

IBIP does not limit requirements for paper selection and printing options. We encourage mailers to take sample mailpieces to their product service provider for evaluation. Mailpiece design analysis will determine pass or fail on a case-by-case basis.

A few comments were received regarding a Postal Service pre-disposition on print technology. No specific technology has been assumed for printing of the new indicia.

Numerous comments were received regarding readability rate.

Mail submitted must comply with USPS read rate regulations. The readability of a barcode that represents postage is quite a different issue than reading a Postnet barcode. There are a number of modifiable factors that contribute to the readability of a barcode, and the product service provider must weigh the advantages and disadvantages of the particular path they have chosen to implement IBIP products.

Many comments were received regarding the selection of PDF–417 as the two-dimensional symbology.

Alternate symbologies may be submitted for consideration, as part of product/service provider proposals.

Several comments were received regarding barcode characteristics.

Most of the comments received concerned the specifications of a minimum mil feature size with a statement of concern that it was too small because it would lead to the USPS' not being able to achieve a 99.9 percent read rate. The USPS plans to hand scan/sample mailpieces in the initial phases of the IBIP program. The USPS will consider raising the minimum X dimension to 15 mils. With regard to the alignment (skew) tolerance of the barcode, the USPS has not specified the tolerance levels at this time.

Many comments were received regarding the requirement to use the facing identification mark (FIM). Additionally, comments were made suggesting changes to the existing FIM printing requirements because of the difficulty of printing close to the edge of an envelope.

FIM marks are needed for any IBIP mail subject to entry through our opening 010 operation. This includes mail dropped in collection boxes. No changes to existing FIM requirements are proposed in this rulemaking.

Many comments were received regarding the applicability of automation requirements to First-Class Mail.

In order to provide customer capabilities to print evidence of postage using open systems including use of current desktop laser and ink jet printing technologies, fluorescent ink is not required. To compensate the handling of these mailpieces for facing, a facing identification mark (FIM) is required for IBIP mail. The requirement for inclusion of delivery point barcode and standardized addresses is for IBIP open systems only. This is a security-based requirement.

A few comments were received regarding mailpiece design issues.

The USPS is not contemplating address block placement of the IBI symbology on letter/flat mail at this time. The USPS will entertain the placement of the indicia in a window of an envelope in the upper right corner as long as the read rate is met.

A few comments were received regarding use of ink types.

If fluorescent ink is used, the facing identification mark is not required. Additionally, black ink is not required per se. It is the intent of IBIP for indicia to be produced using black ink.

Several questions and comments were received regarding key lengths with the digital signature. Some comments argued that the key length proposed is unnecessarily strong, increasing computation requirements and indicia

size and resulting in more expensive meters.

The key lengths chosen were selected to ensure adequate device lifetime against cryptographic attack.

Many comments were received regarding intellectual property and patent issues.

The specifications included references to intellectual property and patent issues to remind product service providers that technologies they chose to use in implementing IBIP may be subject to third party intellectual property rights. By including or referring to any specific technology in the specifications, the USPS does not purport to grant product service providers the right to use such technologies. The indemnification provision is included to protect the USPS against claims by third parties that a particular product service provider's product infringes third party intellectual property rights. Product service providers are responsible for securing any right, such as license rights, that may be necessary to develop IBIP systems.

The USPS is internally studying intellectual property issues that may be raised by the specifications based on USPS use of this technology. The USPS does not intend to release the results of our internal studies at this time. The USPS will consider amendments to the specifications that may be helpful to the product service provider community and the public in avoiding or resolving intellectual property issues. Product service providers are encouraged to bring any known issues to USPS' attention as soon as possible.

Postal Security Device Specification

A few questions were received regarding postage loading amounts and the maximum and minimum postage value.

It is not the intent of section 3.2.1.5 of the Draft PSD specification to imply that only rate break postage can be selected. The maximum and minimum postage value will be announced in the policy documents.

A few questions were received regarding the print function and whether the print functions are to be controlled by the PSD.

The PSD specifications do not state that the PSD controls the print function.

A few comments were received regarding the use of the transaction ID. The transaction ID is PSD unique. All messages containing the transaction ID will be signed.

Many comments were received regarding the use of the term ''IBIP Infrastructure'' and its definition.

The use of the term IBIP Infrastructure in the document was generalized at the time of the writing of the document to be referable to either the USPS or the product service provider. For further definition of the responsibilities of these, the Product Service Provider should contact the USPS under the Interim Product Submission Procedures. The proposed draft IBIP specifications are written with respect to a target system that assumes that a USPS infrastructure is in place to handle postage download, device audit, and other interactions. Until that infrastructure is in place, an interim product service provider-focused system will be used.

Many comments were received regarding resetting functions.

At this time all postage value downloads or resettings will be handled by the product service providers through CMRS. All details for this issue can be found in draft CFR section 502.26, Computerized Remote Postage Resetting, and in The Cash Management Operating Specifications for the Computerized Remote Postage Meter Resetting System.

Several comments were received regarding the device audit message.

Because of the digital signature creation and verification process that the Device Audit Message will be subjected to, both the format and content of this message must be specified.

Many comments were received regarding PSD functionality.

The PSD will not be a general signature device, it will be used only for IBIP signatures. Additionally, the PSD is anticipated to be limited to the functionality detailed in the PSD specification. This will be reflected in the next iteration of the PSD documentation. In terms of remote loading of cryptographic keys into the PSD, the Postal Service is considering the possibility of this action. Our response will be reflected in the soon to be published draft Key Management Plan.

Several comments were received requiring PSD specification clarification.

The proposed draft IBIP specifications are written with respect to a target system that assumes that a USPS infrastructure is in place to handle postage download and device audit, among other things. Until that infrastructure is in place, an interim product service provider-centric system will be used.

A comment was received regarding device authorization.

When security is an issue, the USPS has a vested interest in the communications link between the customer and the product service provider even though the product service provider may own both ends of that communication circuit. All such communications, formats, protocols, and content will be subject to the approval of the USPS or its representatives.

A comment was received regarding the watchdog timer function.

Yes, the watchdog timer is reset only after a successful device audit.

A large number of comments were received regarding PSD physical characteristics and FIPS 140–1 certification.

The PSD must conform to the FIPS 140–1 requirements. All questions concerning FIPS validation testing should be directed to the specific NIST Cryptographic Module Testing laboratory chosen by the product service provider for validation testing. For further explanation regarding specific PSD design issues, please contact one of the NIST certified labs.

One comment was received regarding PSD testing. Testing of the PSD by the product service provider should ensure that the registers cannot be altered except as specified in the PSD specification.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 97–22695 Filed 8–26–97; 8:45 am]

BILLING CODE 7710–12–P

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.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on April 18, 1997 [62 FR 19160].

DATES: Comments must be submitted on or before September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Paul Scott on (202) 366–4104.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration

Title: Developing and Recording Costs for Utility Adjustments.

OMB Number: 2125–0519.

Type of Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Affected Public: 3,000 U.S. Utilities Companies.

Form(s): N/A.

Abstract: Under the provisions of 23 U.S.C. 123, Federal-aid highway funds may be used to reimburse State highway agencies (SHAs) when they have paid for the cost of relocation of utility facilities necessitated by the construction of Federal-aid highway projects. This reimbursement is based on actual costs incurred by a utility company as a result of adjusting its facilities. Payment for ''costs incurred'' is a basic tenet of the Federal-aid program. This general principle is also established in 23 U.S.C. 121 when Federal-aid highway funds are being used to reimburse the State highway agencies for the cost of construction of Federal-aid highway projects. To implement these provisions of law, Federal Highway Administration (FHWA) regulations, 23 CFR 645, Subpart A, require that the utility be able to document its costs or expenses for adjusting its facilities. This record of costs then forms the basis for payment by the SHA to the utility company and in turn FHWA reimburses the SHA for its payments to the utility company. A utility company's cost accounting records establish a means of identifying the costs incurred in adjusting utility facilities. The SHA uses these records to verify the costs to base its payments on. The FHWA payment is based on the costs the State pays for. If the utility did not keep a record of its costs, then there would be no documentation of the expenses it would have incurred in adjusting its facilities. If this should occur, there would be no basis for Federal-aid highway fund participation in the costs and, under 23 U.S.C. 123, the FHWA would not be able to reimburse the State for utility adjustments. There are approximately 30,000 utility companies in the United States. In any one year, it is estimated that about 10 percent, or 3,000, of these utilities will be involved with reimbursable utility adjustments on Federal-aid projects. It is further estimated that each of these 3,000 utilities will have about 3 adjustments of its facilities per year on Federal-aid projects. The net impact is approximately 9,000 reimbursable utility adjustments. For a typical adjustment, about 20 hours of staff time (16 hours professional staff; 4 hours secretarial staff) are expended to establish and maintain the record of costs.

Estimated Annual Burden: 180,000 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 FHWA 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 Departments 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 20, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–22741 Filed 8–26–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Task Force on Assistance to Families in Aviation Disasters Open Meeting

AGENCY: Office of the Secretary, (DOT).

ACTION: Notice of Meeting.

SUMMARY: The Task Force on Assistance to Families in Aviation Disasters will hold a meeting to discuss assistance to families of passengers involved in aviation accidents. The meeting is open to the public.

DATES: The meeting will be held on Thursday, September 18, 1997, from 9:00 a.m. to 5:00 p.m. and on Friday, September 19, 1997, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meetings will take place in Room 2230 of Department of Transportation (DOT) Headquarters, 400 7th Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven R. Okun, Task Force Executive Director, telephone 202–366–4702, or Marc C. Owen, Task Force Staff Director, mailing address, 400 7th Street SW., Room 5424, Washington, DC 20590, telecopier 202–366–7147, and telephone 202–366–6823.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (5 U.S.C. Appendix), DOT gives notice of a meeting of the Task Force on Assistance to Families in Aviation Disasters (Task Force). The Task Force was established by the Aviation Disaster Family Assistance Act of 1996 to develop recommendations on ways to improve the treatment of families of passengers involved in aviation accidents. The meeting is open to the public both days. In particular, topics for discussion at the September 18 session include a presentation by the National Transportation Safety Board on the lessons learned from the Korean Air Flight 801 disaster as well as a review of the recommendations to be issued by the Task Force in its Final Report to Congress, including a discussion of passenger manifest requirements that could be implemented to speed family notification. On September 19, the Task Force will hear testimony regarding the treatment of families by lawyers and continue the review of the recommendations to be issued by the Task Force in its Final Report to Congress.

Issued in Washington, DC, on August 21, 1997.

Steven R. Okun,

Task Force Executive Director, Department of Transportation.

[FR Doc. 97–22740 Filed 8–26–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 97–28, Notice 2]

Cooper Tire & Rubber Co.; Grant of Application for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) has determined that some of its tires fail to comply with the labeling requirements of 49 CFR 571.119, Federal Motor Vehicle Safety Standard (FMVSS) No. 119, ''New Pneumatic Tires for Vehicles Other Than Passenger Cars'' and has filed an appropriate report pursuant to 49 CFR part 573, ''Defect and Noncompliance Reports.'' Cooper has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301,

''National Traffic and Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published, with a 30-day comment period, on April 22, 1997, in the **Federal Register** (62 FR 19651). This notice grants the application.

In FMVSS No. 119, paragraph S6.5(d) specifies that tires be marked on each sidewall with the maximum load rating and corresponding inflation pressure of the tire, and paragraph S6.5(j) specifies that each tire be marked with the letter designating the tire load range.

During the forty-seventh and forty-eighth production weeks of 1996, Cooper manufactured 553 tires with the incorrect load and inflation label on the serial side. The tires were the Dean Wildcat Radial (LT 235/85R16, tubeless, outline white letters, and 10 ply rating). The incorrect label reads ''Load Range D Max at 65 PSI.'' The correct information should have been ''Load Range E Max at 80 PSI.''

Cooper supported its application for inconsequential noncompliance with the following information:

The mislabeling on each tire does not present a safety-related defect. The involved tires are designed to carry a heavier load (load range E at 80 PSI) than the incorrect labeling specified (load range D at 65 PSI). Consequently, any misapplication of the tire would be for the user to carry a lighter load than the maximum load for which the tires are designed.

The involved tires have the correct load and inflation information on the non-serial side which is the side with the outline white letters. In addition, each tire had a paper tread label affixed to it reflecting the correct load information.

The involved tires produced from this mold during the production periods comply with all other requirements of 49 CFR 571.

The incorrect load range and inflation information is within the design parameters of the tire and would not result in any overloading or overinflation of the involved tires.

The forty-eight (48) tires remaining in Cooper's inventory will be re-stamped with the correct load and inflation information.

NHTSA received no comments on this application during the 30-day comment period.

The primary safety purpose of requiring the load range label on a motor vehicle tire is to ensure that the end-users can select a tire appropriate for their vehicles. The absence of the vehicle label specifying the tire range load would likely result in an improper tire selection by the tire dealer or vehicle owner. In this case, Cooper understated the load carrying capability of the tire. Similarly, the labeled maximum inflation pressure of 65 PSI is lower than the tire's designed maximum inflation pressure of 80 PSI. Cooper, in effect, produced a better tire than the label would indicate to the end-user. The agency agrees with Cooper's rationale that a vehicle equipped with the subject tires and loaded per the incorrect maximum load rating would not cause an unsafe condition, because the end-user would carry a lighter load than the load for which the tires are designed.

In consideration of the foregoing, NHTSA has decided that the applicant has met its burden of persuasion that the noncompliance it describes is inconsequential to safety. Accordingly, its application is granted, and the applicant is exempted from providing the notification of the noncompliance that is required by 49 U.S.C. 30118, and from remedying the noncompliance, as required by 49 U.S.C. 30120.

(49 U.S.C. 30118, delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: August 21, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–22796 Filed 8–26–97; 8:45 am]

BILLING CODE 4910–59–U

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Hogan & Hartson on behalf of Canadian Pacific Railway (WB471–2—7/7/97), for permission to use certain data from the Board's Carload Waybill Samples. A copy of the request may be obtained from the Office of Economics, Environmental Analysis, and Administration.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics, Environmental Analysis, and Administration within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.8.

Contact: James A. Nash, (202) 565–1542.

Vernon A. Williams,

Secretary.

[FR Doc. 97–22811 Filed 8–26–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33441]

Paducah & Louisville Railway—Trackage Rights Exemption—CSX Transportation, Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant overhead trackage rights to Paducah & Louisville Railway (P&L) between the P&L/CSXT connection at Madisonville, KY, at or near milepost OOH 275, and the Diamond J Mine located on CSXT's Morganfield Branch, at or near milepost MB 294.1, including access to the Western Kentucky Railroad connection at Providence, KY, at or near milepost MB–291.8, for a total distance of approximately 18.8 miles in Hopkins and Webster Counties, KY.

The transaction is scheduled to be consummated on August 25, 1997.

The purpose of the trackage rights is to allow P&L to handle movements of coal from the Diamond J Mine and from the Pyro, Kentucky Mine to the BRT Terminal, at Jessup, KY, for blending and for barge movement beyond to the Tennessee Valley Authority water destinations, and to handle empties via the reverse route under contract PAL–C–0764.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33441, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on (1) J. Thomas Garrett, Esq., Paducah & Louisville Railway, 1500 Kentucky Avenue, Paducah, KY 42003, and (2) Fred R. Birkholz, Esq., CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

Decided: August 20, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–22812 Filed 8–26–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

August 15, 1997.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Special Request

In order to begin the survey described below during October-November 1997, the Department of the Treasury is requesting that the Office of Management and Budget (OMB) review and approve this information collection by August 27, 1997. To obtain a copy of this study, please contact the Internal Revenue Service Clearance Officer at the address listed below.

Internal Revenue Service (IRS)

OMB Number: 1545–1349.

Project Number: SOI–32.

Type of Review: Revision.

Title: 1997 Third Quarter Form 941 TeleFile System Customer Satisfaction Survey.

Description: The 941 TeleFile system will be pilot tested at the Tennessee Computing Center during October-November 1997. During the test, a selected group of businesses filing their third quarter Federal tax return (Form 941) will be invited to use the 941 TeleFile system. The 941 TeleFile automated customer satisfaction survey is part of the 941 TeleFile Quality Measurement Plan and is designed as one means of evaluating the effectiveness of the TeleFile system. The survey requests information about satisfaction and whether the business filer would be willing to use the TeleFile system again. Data collected during the surveys will be kept confidential and will only be used to make recommendations and improvements to the 941 TeleFile system.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,125.

Estimated Burden Hours Per Response: 1 minute.

Frequency of Response: Quarterly.

Estimated Total Reporting Burden: 36 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, N.W., Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

Dale A. Morgan,

Departmental Reports Management Officer.

[FR Doc. 97–22833 Filed 8–26–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Financial Management Service; Proposed Collection of Information: Claim Against the United States for the Proceeds of a Government Check

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Financial Management Service, 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 a continuing information collection. By this notice, the Financial Management Service solicits comments concerning the form ''Claims Against the United States for the Proceeds of a Government Check.''

DATES: Written comments should be received on or before October 27, 1997.

ADDRESSES: Direct all written comments to Financial Management Service, 3361–L 75th Avenue, Landover, Maryland 20785.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Financial Processing Division, 3700 East-West Highway, Hyattsville, Maryland 20782, (202) 874–8445.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995, (44 U.S.C. 3506(c)(2)(A)), the Financial Management Service solicits comments on the collection of information described below.

Title: Claim Against the U.S. for the Proceeds of a Government Check.

OMB Number: 1510–0019.

Form Number: FMS 1133.

Abstract: This form is used to collect information needed to process an individual's claim for non-receipt of proceeds from a government check. Once the information is analyzed a determination is made and a recommendation is submitted to the program agency to either settle or deny the claim.

Current Actions: Extension of currently approved collection.

Type of Review: Regular.

Affected Public: Individuals or households.

Estimated Number of Respondents: 120,192.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 20,072.

Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance and purchase of services to provide information.

Dated: August 21, 1997.

Mitchell A. Levine,

Assistant Commissioner.

[FR Doc. 97–22729 Filed 8–26–97; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[Delegation Order No. 97 (Rev. 34)]

Delegation of Authority

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Delegation of Authority.

SUMMARY: The authority delegated by the Commissioner of Internal Revenue to the Assistant Commissioner (Employee Plans and Exempt Organizations), to enter into and approve certain closing agreements, may be redelegated to special assistants and division directors reporting directly to the Assistant Commissioner (Employee Plans and Exempt Organizations). The text of the delegation order appears below.

EFFECTIVE DATE: August 18, 1997.

FOR FURTHER INFORMATION CONTACT: John H. Turner, CP:E:EP:P:2, Room 6702, 1111 Constitution Avenue, NW., Washington, DC 20224, (202) 622–6214 (not a toll-free number).

Delegation Order No. 97 (Rev. 34)

Effective: August 18, 1997

Closing Agreements Concerning Internal Revenue Tax Liability (Supplemented by Delegation Orders No. 236, 245, 247 and 248)

1. Authority: To enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts) in respect to any prospective transactions or completed transactions if the request to the Chief Counsel for determination or ruling was made before any affected returns have been filed. This does not include the authority to set aside any closing agreement.

Delegated to: The Chief Counsel in cases under his/her jurisdiction.

Redelegation: This authority may be redelegated no lower than the Deputy Associate Chief Counsels for cases under their respective jurisdictions and to the Assistant Chief Counsels for cases under their respective jurisdictions that do not involve precedent issues.

2. Authority: To enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts) for a taxable period or periods ended prior to the date of agreement and related specific items affecting other taxable periods. This does not include the authority to set aside any closing agreement.

Delegated to: The Associate Chief Counsels and the Assistant Commissioners (Examination) and (International) for matters under their respective jurisdictions.

Redelegation: The authority delegated to the Associate Chief Counsels may be redelegated, by the Deputy Chief Counsel, to the Deputy Associate Chief Counsels. The authority delegated to the Assistant Commissioners (Examination) and (International) may be redelegated, respectively, to the Deputy Assistant Commissioners (Examination) and (International).

3. Authority: To enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts) with respect to the performance of his or her functions as the competent authority under the tax conventions of the United States. This does not include the authority to set aside any closing agreement.

Delegated to: The Assistant Commissioner (International).

Redelegation: This authority may be redelegated to the Deputy Assistant Commissioner (International).

4. Authority: To enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts). This does not include the authority to set aside any closing agreement.

Delegated to: The Assistant Commissioner (Employee Plans and Exempt Organizations) in cases under his or her jurisdiction.

Redelegation: This authority may be redelegated to special assistants and division directors reporting directly to the assistant commissioner.

5. Authority: To enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts), for a taxable period or periods ended prior to the date of the agreement and related specific items affecting other taxable periods. This does not include the authority to set aside any closing agreement.

Delegated to: In cases under their jurisdiction (but excluding cases docketed before the United States Tax Court), the Assistant Commissioner (International); regional commissioners; regional counsel; regional chief compliance officers; service center directors; district directors; regional directors of appeals; assistant regional directors of appeals; chiefs and associate chiefs of appeals offices; and appeals team chiefs with respect to their team cases.

Redelegation: 1. Service center directors and the Director, Austin Compliance Center, may redelegate this authority no lower than the Chief, Examination Support Unit, with respect to agreements concerning the administrative disposition of certain tax shelter cases, and no lower than the Chief, Windfall Profit Tax Staff, Austin Service Center or Austin Compliance Center, with respect to entering into and approving a written agreement with the Tax Matters Partner/Person (TMP) and one or more partners or shareholders with respect to whether the partnership or S corporation, acting through its TMP, is duly authorized to act on behalf of the partners or shareholders in the determination of partnership or S corporation items for purposes of the tax imposed by Chapter 45, and for purposes of assessment and collection of the windfall profit tax for such partnership or S corporation taxable year.

2. The Assistant Commissioner (International) and district directors may redelegate this authority no lower than the Chief, Quality Review Staff/Section with respect to all matters, and not below the Chief, Examination Support Staff/Section, or Chief, Planning and Special Programs Branch/Section, with respect to agreements concerning the administrative disposition of certain tax shelter cases, or Chief, Special Procedures function, with respect to the waiver of right to claim refunds for those responsible officers who pay the corporate liability in lieu of a trust fund recovery penalty assessment under IRC 6672.

6. Authority: In cases under their jurisdiction docketed in the United States Tax Court and in other Tax Court cases upon the request of Chief Counsel or his/her delegate, to enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he or she acts), but only in respect to related specific items affecting other taxable periods. This does not include the authority to set aside any closing agreement.

Delegated to: The associate chief counsels; the Assistant Commissioners (Employee Plans and Exempt Organizations) and (International); regional commissioners; regional counsel; regional directors of appeals; assistant regional directors of appeals; chiefs and associate chiefs of appeals offices; and appeals team chiefs with respect to their team cases.

Redelegation: This authority may not be redelegated.

7. Authority: In cases under the jurisdiction of the Assistant Commissioner (International), to enter into and approve a written agreement with any person relating to the internal revenue tax liability of such person (or of the person or estate for whom he/she

acts), and to provide for the mitigation of economic double taxation under section 3 of Revenue Procedure 64–54, 1964–2 C.B. 1008, under Revenue Procedure 72–22, 1972–1 C.B. 747, and under Revenue Procedure 69–13, 1969–1 C.B. 402, and to enter into and approve a written agreement providing the treatment available under Revenue Procedure 65–17, 1965–1 C.B. 833. This does not include the authority to set aside any closing agreement.

Delegated to: Assistant Commissioner (International).

Redelegation: This authority may not be redelegated.

Sources of Authority: 26 CFR 301.7121–1(a); Treasury Order No. 150–07; Treasury Order No. 150–09; and Treasury Order No. 150–17, subject to the transfer of authority covered in Treasury Order No. 120–01, as modified by Treasury Order No. 150–27, as revised.

To the extent that the authority previously exercised consistent with this order may require ratification, it is hereby approved and ratified.

This order supersedes Delegation Order No. 97 (Rev. 33), which was effective March 15, 1996.

Dated: August 18, 1997.

Approved:

Michael P. Dolan,

Deputy Commissioner.

[FR Doc. 97–22693 Filed 8–26–97; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0112]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 26, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0112.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: Statement of Holder or Servicer of Veteran's Loan, Form Letter 26–559.

OMB Control Number: 2900–0112.

Type of Review: Reinstatement, without change, of a previously approved collection for which approval has expired.

Abstract: Veteran-borrowers may sell their home subject to the existing VA-guaranteed mortgage lien without the prior approval of the VA if the commitment for the loan was made prior to March 1, 1988. However, if they wish to be released from personal liability to the Government in the event of a subsequent default by a transferee, the VA must determine, pursuant to 38 U.S.C. 3713(a), that: (1) The loan payments are current; (2) the transferee will assume the veteran's legal liabilities in connection with the loan; and (3) the purchaser qualifies from a credit standpoint. Also, veteran-borrowers may sell their home to veteran-transferees in accordance with 38 U.S.C. 3702(b)(2). However, eligible transferees must meet all the requirements of 38 U.S.C. 3713(a) in addition to having sufficient available loan guaranty entitlement to replace the amount of entitlement used by the seller in obtaining the original loan.

In performing the credit underwriting functions associated with processing a veteran's request for release from liability and/or substitution of entitlement, loan specialists at VA field stations must collect and verify information from the current holder or servicer of the loan. Form Letter 26–559 collects information on the mortgage loan amount, payment terms, taxes, insurance and liens which are used to compute the total monthly mortgage cost to the borrower.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on May 27, 1997 at page 28755–28756.

Affected Public: Business or other for-profit—Individuals or households.

Estimated Annual Burden: 1,167 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: One-time.

Estimated Number of Respondents: 7,000.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0112'' in any correspondence.

Dated: July 29, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–22715 Filed 8–26–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0113]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 26, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0113.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: Application for Fee Personnel Designation, VA Form 26–6681.

OMB Control Number: 2900–0113.

Type of Review: Extension of a currently approved collection.

Abstract: The form solicits information on the fee personnel applicant's background and experience in the real estate valuation field. VA

regional offices and centers use the information contained on the form to evaluate applicants' experience for the purpose of designating qualified individuals to serve on the fee roster for their stations. Qualifications are stated in 38 CFR 36.4339. Collection of this information is essential in evaluating the professional expertise of fee applicants.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on May 27, 1997 at page 28756.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,067 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 6,200.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0113'' in any correspondence.

Dated: July 29, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–22716 Filed 8–26–97; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0178]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before September 26, 1997.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to ''OMB Control No. 2900–0178.''

SUPPLEMENTARY INFORMATION:

Title and Form Number: Monthly Certification of On-the-Job and Apprenticeship Training, VA Form 22–6553d.

(**Note.** A reference to VA Form 22–6553d also includes VA Form 22–6553d–1 unless otherwise specified. VA Form 22–6553d–1 contains the same information as VA Form 22–6553d.)

OMB Control Number: 2900–0178.

Type of Review: Reinstatement, with change, of a previously approved collection for which approval has expired.

Abstract: The form is used by trainees and employers to report the number of hours worked in on-the-job training programs and apprenticeships, and to report terminations of training in such program. The information is used by the VA to determine whether a trainee's education benefits are to be continued, changed or terminated, and the effective date of such action.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** notice with a 60-day comment period soliciting comments on this collection of information was published on December 30, 1996 at page 68817–68818.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, Federal Government, and State, Local or Tribal Government.

Estimated Annual Burden: 17,782 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 12,375.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to ''OMB Control No. 2900–0178'' in any correspondence.

Dated: August 5, 1997.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 97–22717 Filed 8–26–97; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on the Readjustment of Veterans will be held September 11 through 13, 1997. This meeting will be a field meeting conducted primarily at VA facilities in New York City and White River Junction, Vermont. The committee will also visit the VA Vet Centers in Bangor, and Caribou, Maine, to review the availability of services for area rural and minority veterans. The purpose of the meeting is to provide the Committee a first-hand opportunity to review the provision and coordination of VA services for war related post-traumatic stress disorders (PTSD) and other readjustment difficulties specific to war veterans. For this purpose, the Committee will tour facilities, and engage in discussions with VA service providers and veteran consumers.

The meeting on September 11 will begin at 8 a.m. and conclude at 5 p.m. The day's agenda will be conducted concurrently at three different locations. Specifically, the Committee will visit the Manhattan, New York VA Medical Center and Vet Center. The day's agenda will consist of direct observations of VA readjustment counseling and mental health services with particular attention to PTSD programs. An additional focus for the meeting is continuity of care and clinical follow-up between area VA medical centers and Vet Centers. Two separate Committee subgroups will visit the White River Junction, Vermont, VA Medical Center and Vet Center, and the Caribou, Maine, Vet Center to review available services and meet with area veterans.

The meeting on September 12 will also begin at 8 a.m. and conclude at 5 p.m. The second day's agenda will also be conducted concurrently at three different locations. The primary agenda will consist of a continuation of direct observations of VA programs and facilities at the Harlem, and Brooklyn,

New York, Vet Centers. Concurrently, two separate full Committee subgroups will be visiting with VA service providers and local veterans at the White River Junction, Vermont, and Bangor, Maine, Vet Centers. The Committee will also tour the facility and review national operations for VA's National Center for PTSD at White River Junction, Vermont. The third day's agenda will consist of a full Committee executive meeting regarding a review of findings, conclusions, recommendations and future plans. The meeting will be conducted at the St. Moritz on the Park Hotel, 50 Central Park South, New York New York.

The meeting will be closed from 8 a.m. to 5 p.m. on Thursday, September 11, and from 8 a.m. to 5 p.m. on Friday, September 12, in accordance with the provisions cited in 5 U.S.C. 552b(c)(6) pursuant to subsection 10(d) of the Federal Advisory Committee Act. During this portion of the meeting, the Committee will be engaging in discussions with VA clinical service providers and veteran consumers. The discussions will disclose information of a personal nature for veteran patients which would constitute a clearly unwarranted invasion of personal privacy. The meeting on Saturday, September 13, from 8 a.m. to 1 p.m., will be open to the public to the seating capacity of the facility.

Anyone having questions concerning the meeting may contact Alfonso R. Batres, Ph.D., M.S.S.W., Director, Readjustment Counseling Service, Department of Veterans Affairs Central Office at (202) 273–8967.

Dated: August 19, 1997.

By Direction of the Secretary-Designate.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 97–22718 Filed 8–26–97; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 62, No. 166

Wednesday, August 27, 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

14 CFR Part 25

[Docket No. 28312; Amdt. No. 25-91]

RIN 2120-AF70

Revised Structural Loads Requirements for Transport Category Airplanes

Correction

In rule document 97–19040 beginning on page 40702 in the issue of Tuesday, July 29, 1997, make the following corrections:

1. On page 40702, in the third column, in the first full paragraph:

a. In the eighth line, ''comment'' should be ''commenter''.

b. In the 23rd line from the bottom, ''24'' should read ''25''.

§ 25.473 [Corrected]

2. On page 40705, in the first column, in § 25.473(d), in the fourth line, insert a period after ''§ 25.473(a)''.

§ 25.479 [Corrected]

3. On page 40705, in the second column, in § 25.479(d)(2)(i), in the fourth line, ''35%'' should read ''25%''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 61

[Docket No. 25910; Amendment Nos. 61-103 and 141-9]

RIN 2120-AE71

Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules; Correction

Correction

In rule document 97–19963 beginning on page 40888 in the issue of Wednesday, July 30, 1997, make the following correction:

§ 61.129 [Corrected]

On page 40905, in the first column, in § 61.129, in paragraph n., in the last line, ''work'' should read ''word''.

BILLING CODE 1505-01-D

federal register

Wednesday
August 27, 1997

Part II

Department of Energy

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

Energy Conservation Program for Consumer Products: Test Procedure for Clothes Washers and Reporting Requirements for Clothes Washers, Clothes Dryers, and Dishwashers; Final Rule

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

10 CFR Part 430

[Docket No. EE–RM–94–230A]

RIN 1904–AA68

Energy Conservation Program for Consumer Products: Test Procedure for Clothes Washers and Reporting Requirements for Clothes Washers, Clothes Dryers, and Dishwashers

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: This rule amends the Department of Energy clothes washer test procedure to test for compliance with the existing energy conservation standard. It also establishes a new clothes washer test procedure which will be used to analyze, and will apply to, anticipated revisions to the existing clothes washer energy conservation standards. This rule also modifies reporting requirements for clothes washers, clothes dryers, and dishwashers, requiring manufacturers and private labelers to submit energy factor data on their certification reports to the Department.

DATES: This rule is effective February 23, 1998.

ADDRESSES: Copies of the transcripts of the public hearings and the public comments received on any of the proposed rules, may be read and photocopied at the Department of Energy Freedom of Information Reading Room, U.S. Department of Energy, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–6020 between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Bryan Berringer and P. Marc LaFrance, U.S. Department of Energy, Energy Efficiency and Renewable Energy, Mail Station EE–43, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–0371.

Edward Levy, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507.

SUPPLEMENTARY INFORMATION:

I. Introduction
II. Background
III. Discussion
A. Clothes Washer Test Procedures—Issues Related to Both Appendices J and J1
1. Adaptive Water Fill Control System
2. Electrical Supply Requirements
3. Field Testing
4. Remaining Moisture Content
a. Energy Required to Remove Moisture from the Test Load
b. Spin Speed and Spin Time
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B. Clothes Washer Test Procedures—Issues Related to Appendix J
1. Agitator and Spin Speed Settings
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5. Temperature Measuring (Sensing) Device
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7. Water-Heating Clothes Washers
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C. Clothes Washer Test Procedures—Issues Related to Appendix J1
1. Capacity Measurement
2. Consumer Selectable Options for the Energy Test Cycle
3. Energy Test Cloth
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5. Other Issues
6. Supply Water Temperature
7. Test Load Tolerances
8. Warm Wash Temperature Selections
9. Warm Rinse
D. Related Issues, Revision to 10 CFR 430.23, ''Test procedures for measures of energy consumption.''
E. Reporting Requirements, Revision to 10 CFR 430.62, ''Submission of data.''
F. Effective Date
IV. Determination Concerning the Impact of the Amended Test Procedures on Standards
V. Procedural Requirements
A. Environmental Review
B. Regulatory Planning and Review
C. Federalism Review
D. ''Takings'' Assessment Review
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G. Review Under the Regulatory Flexibility Act of 1980
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I. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

I. Introduction

Part B of Title III of the Energy Policy and Conservation Act as amended (EPCA), establishes the Energy Conservation Program for Consumer Products Other Than Automobiles (Program).[1] The products currently subject to this Program (often referred to hereinafter as ''covered products'') include clothes washers, clothes dryers and dishwashers, the subjects of today's notice.

Under the Act, the Program consists essentially of three parts: testing, labeling, and the Federal energy conservation standards. The Department, in consultation with the National Institute of Standards and Technology (NIST, formerly the National Bureau of Standards), is required to establish new test procedures or amend existing test procedures, as appropriate, for each of the covered products. EPCA, section 323. The purposes of the test procedures are to provide uniform methods that generally must be used as the basis for any representations concerning the energy consumption of a product, and for determining whether the product complies with the applicable energy conservation standard. See EPCA, sections 323(c), 324(c), and 325(s). Test procedures appear at 10 Code of Federal Regulation (CFR) part 430, Subpart B.

A test procedure promulgated under section 323 of the Act must be reasonably designed to produce test results which measure energy efficiency, energy use, water use (in the case of shower heads, faucets, water closets and urinals), or estimated annual operating cost of a covered product during a representative average use cycle or period of use, and must not be unduly burdensome to conduct. EPCA, section 323(b)(3). A test procedure is not required if DOE determines by rule that one cannot be developed. EPCA, section 323(d)(1). One hundred and eighty days after a test procedure for a product is adopted, no manufacturer may make representations with respect to energy use, efficiency or water use of such product, or the cost of energy consumed by such product, except as reflected in tests conducted according to the DOE procedure. EPCA, section 323(c)(2). This 180-day period may be extended for up to an additional 180 days if the Secretary determines that the requirements of section 323(c)(2) would impose undue burden. EPCA, section 323(c)(3).

Section 323(e) of the Act requires DOE to determine to what extent, if any, a proposed test procedure would alter the measured energy efficiency, measured energy use or measured water use of any covered product as

[1] Part B of Title III of EPCA, as amended, is referred to in this final rule as the ''Act'' and provisions of the Act are referred to either as ''Section__of the Act.'' Part B of Title III is codified at 42 U.S.C. 6291–6309.

determined under the existing test procedure. If DOE determines that an amended test procedure would alter the measured efficiency or measured use of a covered product, DOE is required to amend the applicable energy conservation standard accordingly. EPCA, section 323(e)(2).

II. Background

Today's final rule reflects the Department's consideration of several proposed rules issued since December 1993 concerning DOE clothes washer test procedures, and of the public comment and testimony received in response to those proposals. The Department's action consolidates the issues pertaining to these proposals and reflects the most recent data submitted by clothes washer manufacturers.

The initial proposal, published on December 22, 1993, proposed to amend the clothes washer test procedure to address temperature selections that are locked out of the normal cycle (formerly Docket Number EE–RM–93–701). 58 FR 67710 (December 22, 1993) (hereinafter referred to as the December 1993 proposed rule). A public hearing was held on February 24, 1994.

The Department proposed the following approach for a clothes washer equipped with this feature: for each temperature combination in the normal cycle from which a temperature selection is locked out, hot water consumption would be prorated between the temperature combination in that cycle and the corresponding temperature combination in the cycle with the greatest hot water consumption. The unknown factor in the calculation was the frequency with which users would choose the normal versus other cycles for a particular temperature combination selection, i.e., the proration value. As stated in the December 1993 proposed rule, clothes washers equipped with a temperature selection ''lockout'' design feature had not been available previously in the marketplace. Therefore, no data regarding the effect of this feature on consumer cycle selection were available. The Department proposed a proration value representative of normal cycle use for all clothes washers (normal cycle would be selected 75 percent of the time). Many of the commenters objected to the proposed value.

Following review of the comments, on May 24, 1995, the Department revised the proposal, specifically requesting usage data for clothes washers with ''lockouts,'' and, absent receipt of valid usage data, proposing to reduce the proration value (normal cycle would be used 20 percent). 60 FR 27441 (May 24, 1995) (hereinafter referred to as the May 1995 proposed rule). The Department received data from the Whirlpool Corporation (Whirlpool), and comments from White Consolidated Industries Inc. (White Consolidated), Maytag Corporation (Maytag), and Whirlpool.

On March 23, 1995, the Department published another proposed rule to amend the clothes washer test procedure (former Docket Number EE–RM–94–230). 60 FR 15330 (hereinafter referred to as the March 1995 proposed rule). This proposal addressed: innovative technologies (high spin speed and adaptive (automatic) water fill control); water heating clothes washers; annual number of clothes washer cycles; and other general revisions.

The March 1995 proposed rule also proposed the reporting of energy factor data on manufacturer certification reports for clothes washers, clothes dryers and dishwashers. On July 12, 1995, a hearing on the proposed rule was held in Washington, DC. The Department received comments from 10 interested parties: the Association of Home Appliance Manufacturers (AHAM), General Electric Appliances (GEA), Eugene Water and Electric Board (EWEB), Miele Appliance Inc. (Miele), Proctor and Gamble (P&G), Maytag, Speed Queen Company (Speed Queen), Clorox Company (Clorox), American Council for an Energy Efficient Economy (ACEEE), and Whirlpool.

The Department believes that the existing test procedure, Appendix J, overstates the average annual energy consumption for clothes washers because of changes in consumer habits since the current test procedure was adopted.[2] The Department had planned on initiating a subsequent clothes washer test procedure rulemaking, at a later date, which would take into account current consumer habits, and would be used as the basis for considering revision of the clothes washer energy conservation standards.[3]

In its comments on the March 1995 proposed rule, however, AHAM included and requested that DOE adopt an additional new test procedure, based on current consumer habits, which would be used in considering revision of the clothes washer energy conservation standards, and would take effect when new standards take effect. On April 22, 1996, the Department proposed such a new clothes washer test procedure, Appendix J1, as well as certain additional revisions to the currently applicable test procedure in Appendix J to Subpart B of 10 CFR part 430. 61 FR 17589 (hereinafter referred to as the supplemental proposed rule). Appendix J1 would be codified in the CFR for informational purposes, would be used in the analysis and review of revised efficiency standards, and would replace Appendix J upon the effective date of such revised standards. The revised Appendix J would be a revision of the current test procedure, consistent with the existing standards, and would become effective 180 days after issuance of the final rule.

In response to the supplemental proposed rule, the Department received comments from 11 interested parties: The Consortium for Energy Efficiency (CEE), National Resources Defense Council (NRDC), Miele, Frigidaire Company (Frigidaire), Lever Brothers Company (Lever), AHAM, Maytag, Raytheon Appliances (Raytheon), Whirlpool, Fisher and Paykel Limited (Fisher and Paykel), and White Consolidated.

Since publication of the March 1995 proposed rule, several new issues emerged that were neither covered by the existing clothes washer test procedure contained in Appendix J nor addressed in the supplemental proposed rule. These issues arose in the context of interim waivers from the clothes washer test procedure, granted by DOE with respect to clothes washer features not covered by the current test procedure. Specifically, the Department granted GEA Interim Waivers for its clothes washers with unique adaptive water fill control and temperature selection features. 61 FR 18129 (April 6, 1996) and 61 FR 47115 (September 6, 1996).

Therefore, on November 8, 1996, the Department issued a notice to reopen the comment period to invite comment on options the Department was considering to address issues raised by these waiver applications. 61 FR 57794 (hereinafter referred to as the reopening notice rule). In response to the reopening notice, DOE received two comments, from Fisher and Paykel, and AHAM.

[2] Proctor & Gamble data indicates a decrease in the use of hot water.

[3] The second round of clothes washer standards rulemaking was initiated by the publication of an Advance Notice of Proposed Rulemaking (ANOPR). (59 FR 56423, November 14, 1994.) The Department has initiated the process for issuing a Supplemental ANOPR, having conducted an initial workshop in November 1996, with another workshop scheduled for July 23, 1997.

III. Discussion

A. Clothes Washer Test Procedures—Issues Related to Both Appendices J and J1

1. Adaptive Water Fill Control System

An adaptive water fill control system (AWFCS) in a clothes washer is a control scheme which determines automatically, without operator intervention, the amount of water used to wash a particular load of clothing, based on the size or weight of that clothing load. The existing test procedure provides only for testing machines with manual fill controls. In the March 1995 proposed rule, the Department proposed to amend Appendix J to include test provisions for a clothes washer that had an AWFCS [4] instead of manual controls. In the reopening notice, the Department also proposed to include test provisions for clothes washers that had both adaptive and manual water fill control capability, as well as test provisions for clothes washers with multiple AWFCS settings.

In the supplemental proposed rule, the Department proposed provisions for clothes washers with AWFCS features. Appendix J1 requires testing with maximum, average, and minimum size test loads, whereas the proposed Appendix J requires testing with only maximum and minimum size test loads. Appendices J and J1 specify different load usage factors (used to prorate energy results from various tests) for the different size loads. In addition, Appendix J1 has a new test load table with variable size loads based on clothes washer capacity, which are generally larger than the Appendix J fixed size test loads.

AWFCS Provisions for Appendix J

In response to the March 1995 proposed rule, Speed Queen commented that it supports the Department's proposal and rejects the adoption of AHAM's future AWFCS provisions (subsequently proposed for Appendix J1) for Appendix J. (Speed Queen, No. 29 at 3, Docket 230).[5] GEA cautioned the Department not to adopt any AWFCS provisions for Appendix J because ''adverse competitive impact is simply too great if notice through the waiver procedure is not available.'' (GEA, No. 36 at 3, Docket 230). Whirlpool supported incorporation into Appendix J of AHAM's proposed test provisions concerning AWFCS. The company stated that ''the AHAM proposed procedure will provide a usage that more closely approximates the consumer use habits, and since there are not currently any vertical-axis product[s] that utilize AFC [automatic fill control] and horizontal-axis product is not required to meet a specific energy standard, this would not require a new standard to be established.'' (Whirlpool, No. 37 at 3, Docket 230).

The Department rejects GEA's argument not to promulgate AWFCS test provisions in Appendix J. The Department has the responsibility to provide codified test provisions for issues that have been addressed previously by waivers. At the time of the March 1995 proposed rule, the Department had already granted a waiver to Asko Incorporated (Asko) for its clothes washers with AWFCS capability. 59 FR 15710 (April 4, 1994). Since the publication of the March 1995 proposed rule, the Department has granted a Waiver to Miele and an Interim Waiver to GEA for their clothes washers with AWFCS capability. 61 FR 11201 (March 19, 1996) and 61 FR 18125 (April 24, 1996).

The Department believes that the Appendix J1 AWFCS test provisions, which specify a new test load table based on current consumer habits, will provide more accurate results for clothes washers equipped with AWFCS. In the supplemental proposed rule, the Department requested additional information regarding the possible adoption of the proposed Appendix J1 test load table for Appendix J. If adopted, the test load table would have been applicable only to front-loader and top-loader clothes washers with AWFCS capability. The Department received an overwhelming negative response to this suggestion. Miele, AHAM, Maytag, Raytheon and White Consolidated opposed the use of the Appendix J1 test load table for any testing other than Remaining Moisture Content (RMC) testing (which is voluntary for Appendix J) because of test burden concerns and disparity of test results between front-loader and traditional top-loader clothes washers. (Miele, No. 4 at 1; AHAM, No. 7 at 1, 4, 5; Maytag, No. 8 at 3; Raytheon, No. 9 at 4; and White Consolidated, No. 11 at 1, 2 and No. 12 at 1, all Docket 230A). In response to the supplemental proposed rule, the Department did not receive any comments supporting the adoption, other than for RMC testing, of the new test load table for Appendix J.

The Department believes that the promulgation of the March 1995 proposed rule AWFCS test provisions, which use test loads that do not reflect current consumer usage habits, most likely will provide an artificial credit for clothes washers with AWFCS capability. The Department also believes, however, that the artificial credit, or reduced energy consumption rating, will be offset by the Appendix J's current overstating of energy consumption. Consequently, the rating depicted to consumers for AWFCS clothes washers generally will be representative of the actual energy consumption. Therefore, the Department is maintaining the test load requirements for energy consumption testing as proposed in the March 1995 proposed rule.

In the reopening notice, with regard to clothes washers with multiple AWFCS settings, [6] the Department proposed test provisions to average the results from the most and least energy intensive settings. AHAM commented that it supported the Department's proposal. (AHAM, No. 19 at 1, Docket 230A). Fisher and Paykel commented that this proposal would add test burden but indicated that it had no alternative. (Fisher and Paykel, No.22 at 3, Docket 230A). Based on the comments received, DOE has determined that for clothes washers with multiple AWFCS settings the test provisions proposed in the reopening notice are appropriate. Therefore they are incorporated into today's final rule for Appendix J.

AWFCS Provisions for Both Appendices J and J1

In the reopening notice, with regard to a clothes washer that had both AWFCS and manual water fill control, [7] the Department proposed requirements to test both features and to average the results. AHAM comment supported the Department's proposal. (AHAM, No. 19 at 1, Docket 230A). Fisher and Paykel stated that it believed the AWFCS

[4] In the March 1995 proposed rule, the terminology used for this feature was ''machine-controlled water fill,'' although the Department is adopting language used in the supplemental proposed rule, ''adaptive water fill control system.''

[5] Comments have been assigned to docket numbers and have been numbered consecutively. A Comment in response to the May 1995 proposed rule, Docket number EE-RM–93–701, will have its appropriate number followed by ''Docket 701'', a comment in response to the March 1995 proposed rule, Docket number EE-RM–94–230, will have its appropriate number followed by ''Docket 230'', and a comment in response to the supplemental proposed rule or reopening notice, Docket number EE-RM–94–230A, will have its appropriate number followed by ''Docket 230A.'' Statements that were presented at the July 12, 1995, public hearing are identified as Testimony.

[6] Multiple AWFCS settings allow a consumer to adjust the ''sensitivity'' of the AWFCS feature so as to permit different amounts of water for a given load of clothing and corresponding different amounts of energy consumption.

[7] In Appendix J, two types of manual fill control are defined, ''sensor filled'' and ''timed filled.''

feature would be used more frequently than the manual mode. Fisher and Paykel added, however, that it has no data concerning use of the AWFCS feature in the U.S. (Fisher and Paykel, No. 22 at 3, Docket 230A). The Department had proposed the same testing and averaging requirements for Appendix J1 in the supplemental proposed rule and received no negative comments. Based on all of these factors, the test provisions proposed for clothes washers with both AWFCS and manual water fill control are incorporated into today's final rule for Appendices J and J1.

Fisher and Paykel commented that the proposed definition of ''adaptive control system'' is ambiguous and suggested that the definition state explicitly that it does not include ''AWFCS.'' (Fisher and Paykel, No. 16 at 1, Docket 230A). The Department agrees with Fisher and Paykel. Therefore, the Department has adopted language for the ''adaptive control system'' definition for Appendices J and J1 as suggested by Fisher and Paykel. In addition, to prevent any ambiguity, the Department has made minor revisions to the rule language where the terms ''adaptive control system'' and ''adaptive water fill control system'' are used.

AWFCS Provisions for Appendix J1

In the supplemental proposed rule, with regard to clothes washers with multiple AWFCS settings, the Department proposed test provisions to average the results from tests of the most and least energy intensive settings. AHAM and Raytheon opposed this proposal and suggested an alternative method to reduce test burden. (AHAM, No. 14 at 1; and Raytheon, No. 9 at 4 and No. 13 at 2; both Docket 230A).

The alternative method would require testing the most energy intensive setting with a maximum size test load, the most and least energy intensive settings with an average size test load, and the least energy intensive setting with a minimum size test load. The Department's proposal would have required testing of the most and least energy intensive settings for the maximum, average, and minimum size test loads. Since an average size test load would be used by consumers most of the time (74 percent), the Department has determined that AHAM's proposal would account for 87 percent of the energy consumption test results (of the full compliment of tests results proposed by the Department), while only requiring 66 percent of the number of tests. In addition, the AHAM proposal would ensure that the combination of settings with the lowest possible energy consumption, i.e., the lowest energy intensive setting with a minimum size test load, and with the highest possible energy consumption, i.e., the highest energy intensive setting with a maximum size test load, would be tested. Therefore, the Department is adopting the test methodology for Appendix J1 suggested by AHAM and supported by Raytheon.

Based on AHAM's suggested test procedure, the supplemental proposed rule also specified that additional test loads be tested if an AWFCS clothes washer does not have linear results for average size test loads, i.e., non-linear between the maximum and minimum size test load results. For a clothes washer that generates non-linear test results, additional tests would be required for ''above average'' and ''below average'' test load sizes. AHAM, Fisher and Paykel, and Raytheon believe that the additional testing requirements would create an unnecessary test burden. (AHAM, No. 14 at 2, 3; Fisher and Paykel, No. 16 at 6, 10; and Raytheon, No. 13 at 2; all Docket 230A). In addition, AHAM provided an analysis which indicates that, with a worst case non-linear result, the change in resulting energy factor or modified energy factor would be small, an average of some four to five percent. (AHAM, No. 21, Docket 230A). The Department has reviewed the analysis provided by AHAM and agrees that the additional test burden is not warranted for the potential improvement in test accuracy. Furthermore, the worst case scenario analyzed by AHAM does not appear to be likely, and thus actual test result disparity would be less than four or five percent. Therefore, Appendix J1 as promulgated today does not require testing of ''above average'' and ''below average'' test loads for AWFCS clothes washers that generate non-linear test results.

2. Electrical Supply Requirements

The March 1995 proposed rule proposed deleting a provision in the existing test procedures (Appendix J) that allowed turning off console lights that did not consume more than 10 watts of power during the clothes washer test cycle. Similarly, the supplemental proposed rule did not propose to include such a provision in Appendix J1. Speed Queen supported the Department's proposal to delete the provision from Appendix J. (Speed Queen, No. 29 at 4, Docket 230). NRDC, Maytag, and Raytheon supported the Department's proposal not to include this provision in Appendix J1. (NRDC, No. 2 at 2; Maytag, No. 8 at 2; and Raytheon, No. 9 at 1; all Docket 230A). Today's final rule is consistent with the March 1995 proposed rule and supplemental proposed rule, and excludes this provision.

3. Field Testing

In the supplemental proposed rule, the Department proposed that both Appendices J and J1 would require manufacturers to field test a non-conventional clothes washer (such as one with automatic control of features other than water fill) as a basis for requesting a test procedure waiver pursuant to 10 CFR 430.27. The Department stated that field test data would be used to support the petition for waiver. Both the preamble and rule language indicate that a test procedure waiver would be required in order to test a non-conventional clothes washer, and the field testing proposal clearly assumes that a waiver would be needed to test such a machine. The supplemental proposed rule would also require field testing if a manufacturer believes that a clothes washer with both manual and adaptive fill controls is being used by consumers, in the adaptive mode, more than 50 percent of the time, and seeks a waiver from the provision of the test procedure that assumes such 50% usage. AHAM had recommended the proposed field testing provisions for both Appendices J and J1, to provide data to support waiver applications. (AHAM, No. 5 at 5, Docket 230).

In response to the supplemental proposed rule, AHAM commented that the field testing requirements should be optional, not mandatory, and recommended specific rule language revisions. (AHAM, No. 7 at 1 & 5 and No. 14 at 4, Docket 230A). AHAM's position was supported by several manufacturers. (Miele, No. 4 at 2; Maytag, No. 8 at 3; Fisher and Paykel, No. 16 at 12, 13; and Raytheon, No. 9 at 3; all Docket 230A). Neither AHAM nor the other commenters, however, questioned the need for a waiver to establish test procedures for a non-conventional clothes washer.

The Department agrees with AHAM and the commenting manufacturers that the field testing provisions should not be mandatory. For a non-conventional clothes washer such as one with an adaptive control system, the test procedures in proposed Appendices J and J1 would provide materially inaccurate data as to energy consumption. Therefore, a test procedure waiver would be required. A waiver in effect creates a new test procedure for a machine, specifying inapplicable provisions of the required test procedure and additional

requirements necessary for testing or analysis of test results, thus providing a basis for determining compliance with efficiency standards and for making efficiency representations. The proposed field testing was intended to support a test procedure waiver, by providing a generally accepted method for collecting data and adjusting test results. Although the Department continues to believe that field testing can serve this purpose, it recognizes the possibility that a waiver could be supported by means other than field testing, and by field test methods other than those in the supplemental proposed rule. Moreover, there may be instances where the proposed field testing methods are inadequate.

Therefore, today's final rule provides that the proposed field testing requirements are guidelines, rather than mandatory procedures that a manufacturer must use to gather information to support each waiver application. Although field testing should be used where appropriate, the Department will still consider a petition for waiver that is not based on field testing. In addition, the Department may reject field testing results, if warranted. As in the proposed rule, however, the final rule makes clear that a manufacturer must obtain a test procedure waiver for non-conventional clothes washers, including machines with adaptive control systems.

Fisher and Paykel provided additional comments regarding field testing provisions. The company is concerned about (1) whether the proposed rule is intended to permit field testing outside of the U.S., (2) the equation to correlate field testing results with laboratory test ratings, and (3) a requirement to record the dry clothing weight prior to washing. (Fisher and Paykel, No. 16 at 12, 13; Docket 230A). Fisher and Paykel assumes that field testing could be performed in any location, including outside of the U.S. The company did not comment whether manufacturers should be required to perform field testing in the U.S.

The Department contemplates that field testing would determine consumer behavior relative to a particular clothes washer. Such consumer behavior would be a basis for determining compliance with DOE efficiency standards (and whether the clothes washer could be sold in the U.S.) and for representations within the U.S. concerning the machine's efficiency. Thus, consumer usage data derived in the U.S. would be most applicable. Nevertheless, since today's rule makes field testing provisions optional, the Department does not believe it needs to address whether field tests should be restricted to the U.S. Field test results, however, will be subject to competitor and Department review as part of the Petition for Waiver process found at 10 CFR 430.27. A petitioner submitting consumer usage data derived outside of the U.S. most likely would be expected to show that the data applies to, and is valid for, U.S. consumer usage patterns. Therefore, today's final rule does not add a requirement to restrict field testing to the U.S. and is being promulgated as proposed.

Fisher and Paykel also questioned the field testing equation used to develop an acceptable rating of a ''test'' clothes washer (section 6.1 of the supplemental proposed rule). (Fisher and Paykel, No. 16 at 13, Docket 230A). The following paragraph is an excerpt from section 6.1 of the supplemental proposed rule.

''The field test results will be used to determine the best method to correlate the rating of the test clothes washer to the rating of the base clothes washer. If the base clothes washer is rated at A kWh per year, but field tests at B kWh per year, and the test clothes washer field tests at D kWh per year, the test unit would be rated as follows:

$$A \times (D/B) = G\,kWh \text{ per year''}$$

Fisher and Paykel suggested an alternate mathematical expression which provides the same result but ''better indicates that a ratio of the base clothes washer[8] laboratory and field energy measurements are used to correct the test clothes washer field results.'' Fisher and Paykel misunderstood the intent of the equation. The Department maintains that the rating of the ''test'' clothes washer should be derived by adjusting the established ''base'' clothes washer rating. Thus, the ''base'' clothes washer rating would be multiplied by the ratio of the field results for a ''test'' clothes washer divided by the field results of a ''base'' clothes washer. Therefore, the Department is promulgating the proposed mathematical expression without revision.

Fisher and Paykel opposed a field testing requirement to have consumers dry the clothing load prior to washing. According to Fisher and Paykel, the result may affect consumer behavior, i.e., a consumer may choose different clothes washer settings if the actual weight of the clothing is known. The company also maintains that it is unrealistic to have consumers dry dirty clothing, and that the calculations do not use the dry weight of the clothing. (Fisher and Paykel, No. 16 at 13, Docket 230A). The Department agrees with Fisher and Paykel that it is impracticable to have consumers dry soiled clothing in their clothes dryers prior to washing. This would waste energy, soil the clothes dryer for future use, and may make it more difficult to clean the clothing. Fisher and Paykel is incorrect, however, in asserting that the dry clothing weight is not required. Data regarding load size is useful to correlate tests in the field with laboratory tests which use fixed test loads. In addition, the dry clothing weight is required when a calculation is needed of the remaining moisture content result. The Department believes that this measurement can be obtained at the end of the clothes dryer drying cycle. Therefore, to establish more practicable requirements, today's final rule specifies the measurement of the dry clothing weight at the end of the laundry process.

4. Remaining Moisture Content

The March 1995 proposed rule proposed to include an optional test provision in Appendix J to address the moisture content of clothing at the completion of the clothes washer cycle (referred to herein as ''remaining moisture content'' or ''RMC''[9]). This provision included a calculation to determine the energy required to fully dry the clothing. AHAM recommended a revised test provision to test the RMC of a test load for its suggested future use test procedure, and suggested adoption of these same test provisions, on an optional basis, for Appendix J. (AHAM, No. 5 at 3, 7 and No. 8 at 1, both Docket 230). This was supported by Raytheon. (Raytheon, No. 29 at 2, Docket 230). The Department accepted AHAM's recommended test provisions to address the RMC of clothing at the completion of the clothes washer cycle, and proposed to incorporate them into Appendix J1.

The Department believes these provisions are superior to the provisions proposed in the March 1995 proposed rule, Appendix J, for calculating the energy required to remove moisture from clothing. The Appendix J1 approach is based on current consumer usage habits which reflect larger loads, account for wash loads that are not dried in clothes dryers, i.e., 16 percent of wash loads, and account for residual moisture, i.e., 4 percent remaining in the clothing at the completion of a typical clothes dryer cycle. Thus, DOE

[8] A ''base'' clothes washer refers to a machine already being sold in commerce without the unique feature being field tested.

[9] RMC represents a percentage derived by dividing the moisture weight that is remaining in the clothing at the completion of the clothes washer cycle by the weight of the dry clothes prior to the clothes washing cycle.

believes the Appendix J1 test methodology is more representative of a consumer's energy use. The provisions of Appendix J1 also provide a means to assess the water extraction capability of a clothes washer independent of any other descriptor, i.e., a RMC percentage value. Accordingly, today's final rule incorporates consistent test provisions for RMC and the energy required to remove the moisture from the clothing for both Appendices J and J1. This includes the adoption of a new test load table for testing RMC in Appendix J.

The Department also received comments concerning aspects of RMC which were addressed in the supplemental proposed rule. The following issues relate to RMC and are applicable to both Appendices J and J1.

a. Energy Required to Remove Moisture from the Test Load. The RMC value is used to calculate the energy required to remove moisture from the test load, ''D_E''. The ''D_E'' is calculated using the maximum size test load, load adjustment factor (LAF) (P&G ratio of maximum load size to average load size), nominal energy required to remove moisture from clothes (assumed constant for all clothes dryers, 0.5 kWh/lb), and the clothes dryer utilization factor (DUF) (percentage of clothes washer loads that are dried by clothes dryers). AHAM originally recommended a DUF of 83 percent, although P&G calculates the DUF to be 84.4 percent.[10] The Department stated in the supplemental proposed rule that it planned on using 84 percent for the DUF. Raytheon and Maytag support the Department's use of 84 percent for the DUF. (Maytag, No. 8 at 2; and Raytheon, No. 9 at 1, both Docket 230A). Today's final rule incorporates a DUF of 84 percent for Appendices J and J1.

b. Spin Speed and Spin Time. GEA expressed concern about the possibility of manufacturers providing manually selectable options to consumers, e.g., multiple spin speed and time selections, which would affect the resulting RMC of consumer wash loads. GEA believes that the Department should not use the lowest RMC level achieved in a clothes washer for the future minimum energy conservation standard analysis or for energy reporting, and that there should be some type of ''discounting of the RMC credit.'' According to GEA, consumers may not always choose the setting which would result in the lowest RMC value. (Testimony at 157). In response, the Department stated in the supplemental proposed rule that it was considering a requirement to average the extreme values of the multiple selections, e.g., spin speeds and times, that are available in the energy test cycle. The Department requested comments regarding this issue.

Several comments were received. AHAM provided a revised method to prorate multiple consumer options affecting RMC. AHAM believes that settings for the lowest RMC value , i.e., greatest extraction of moisture, will be used by consumers 75 percent of the time and that the highest RMC value will be used 25 percent of the time. This is based on P&G usage data for delicate and permanent press cycles. (AHAM, No. 7 at 2 and No. 14 at 4, both Docket 230A). The AHAM methodology was supported by Miele, Maytag, and Raytheon. (Miele, No. 4 at 3; Maytag, No. 8 at 2; and Raytheon, No. 9 at 1; all Docket 230A). NRDC supports some type of ''averaging'' to address this issue and believes the concern ''would be mitigated'' as proposed in the supplemental proposed rule. (NRDC, No. 2 at 2, Docket 230A). Fisher and Paykel believes that the factory default spin speed should be used for the RMC test, although in the absence of a factory default it supported the AHAM methodology. (Fisher and Paykel, No. 16 at 12, Docket 230A).

White Consolidated opposed conducting the RMC test at any speed other than the maximum spin speed because testing momie cloth (the specified test cloth) at low spin speeds does not reflect actual consumer usage. White Consolidated also indicated that mismatching the wash cycle, load size, and load type can produce RMC measurements that miss ''real world'' results by as much as 35 percent. (White Consolidated, No. 12 at 1, 2, Docket 230A).

The Department believes that some consumers will choose spin speed and spin duration options which achieve RMC values above the lowest attainable in the energy test cycle, although consumer usage habits are not known. For this reason, the Department proposed to require averaging the lowest and highest RMC values. Almost all the commenters advocated a proration of 75 percent for the lowest RMC value and 25 percent for the highest RMC value. These values are based on the use of the delicate and permanent press cycles. Use of these cycles may not correlate exactly to the use of optional spin speed and spin duration selections in the energy test cycle. This approach, however, seems reasonable because consumers who wash less durable articles of clothing in the energy test cycle to prevent possible fabric damage probably will refrain from extracting the maximum amount of water in the clothes washer. There may be some merit to White Consolidated's concern that consumer use of cycles, load size, and load type must be more accurately gauged in order to accurately represent RMC. Until such data is available, however, the optimum choice appears to be the use of the 75/25 percent proration based on delicate and permanent press cycle usage. Today's final rule incorporates the 75/25 percent proration into Appendices J and J1.

Miele expressed concern about excluding an option for no spin speed from the minimum spin speed test requirement. Miele indicated that for front loader clothes washers which have a no spin speed option, the clothing will remain submerged in water and the door will remain locked until a spin speed selection is made. (Miele, No. 4 at 3 and No. 17 at 1, both Docket 230A).

The Department agrees with Miele that, if a clothes washer is equipped with an optional no spin speed selection in the energy test cycle, such selection should not constitute the lowest spin speed selection for RMC calculations. The Department believes that a no spin speed selection is a unique feature intended for rare use by consumers. Moreover, it is unlikely that consumers would place wet clothing, without any partial drying by the clothes washer, directly into a clothes dryer. Therefore, today's final rule includes language to exclude a no spin selection from RMC testing requirements for Appendices J and J1.

c. Load Size for RMC. In response to the March 1995 proposed rule, GEA provided a graph with RMC on the ''Y'' axis and Load Size on the ''X'' axis. (GEA, No. 6 at appendix E, Docket 230). Although not quantified, the graph depicted a relatively large negative slope of approximately 0.5. Thus, according to the graph, as load size gets larger the RMC level decreases substantially.[11] If GEA's graph accurately depicts the slope, this would have a major impact on the expected energy savings to consumers and on manufacturer efficiency/energy consumption representations, because the data show that consumers use their clothes washers with an average size load 74 percent of the time. Under the proposed test procedure, RMC is first determined for a maximum size load. The RMC thus determined is then adjusted in order to determine the moisture content that would remain in an average size load. The adjustment

[10] Comment 32 on Docket number EE–RM–94–403.

[11] RMC is a percentage which decreases, although the actual remaining moisture weight increases because the larger load retains more moisture.

formula is based on the assumption, which GEA disputes, that RMC, as a percentage amount, is the same for different load sizes. If GEA is correct, the anticipated energy consumption to remove the moisture from the clothing, as determined under the foregoing calculation, would be artificially low. In the supplemental proposed rule, the Department requested data and comments concerning this issue.

The Department received confidential data from Miele and Whirlpool, and publicly available data from Raytheon and Maytag. (Miele, No. 4; Whirlpool, No. 10; Raytheon, No. 9 at 1; and Maytag, No. 15 at 1, 2; all Docket 230A). AHAM believes that the maximum test load should be used for RMC testing because the difference (RMC percentage value) with an average test load is small. (AHAM, No. 7 at 3, Docket 230A). Raytheon and Maytag support AHAM's position. Maytag also indicated that a maximum test load produces more consistent and repeatable test results. (Maytag, No. 15 at 1, 2). Miele believes that an average test load should be tested in addition to the maximum test load because RMC as a percentage is not the same for different size loads and may vary significantly for various machines. Furthermore, Miele believes the improved test results outweigh the additional test burden. (Miele, No. 4 at 4).

The Department has analyzed the individual data submissions and has determined that there is a general correlation between RMC (as a percentage value) and load size. As load size increases, RMC (percentage value) decreases. On average, the relationship appears to have a negative slope of approximately 0.05, much smaller than on GEA's graph. The data, however, show that in some cases, as load size increases, RMC actually increases (with a small positive slope). Considering the range of data received, the relatively small variation of RMC for average and maximum load sizes, the additional test burden of testing average loads, and the greater consistency of RMC test results with larger loads, the Department is maintaining the requirement to test RMC only with the maximum test load. Therefore, today's final rule maintains the test load requirements for Appendix J1 as proposed, and incorporates into Appendix J a new test load table identical to the maximum test load table requirements of Appendix J1.

5. Thermostatically Controlled Water Valves

The Department proposed a definition for thermostatically controlled water valves in the March 1995 proposed rule. AHAM provided a revised definition in its recommended test procedure, and requested adoption of this definition for the Appendix J test procedure. (AHAM, No. 8 at 1, Docket 230). Miele and Speed Queen supported the adoption of the AHAM's suggested definition. (Speed Queen, No. 29 at 5; and Miele, No. 10 at 1; both Docket 230). In the supplemental proposed rule, the Department proposed to adopt a slightly revised version of the AHAM definition language.

In response to the supplemental proposed rule, AHAM objected to the Department's revised definition. The revised definition specified that the ''valves'' sensed the water temperature and adjusted the supply water to maintain a desired temperature. AHAM wants the definition to apply to a ''clothes washer's'' ability versus the ''valve's'' ability to sense and adjust the water temperature. The predominant design concepts for thermostatically controlled water valves operate internally within the valve, but new design strategies include an interface between the valve and a clothes washer electronic controller. (AHAM, No. 7 at 5, Docket 230A). Miele, Maytag, and Raytheon support AHAM's definition. (Miele, No. 4 at 5; Maytag, No. 8 at 3; and Raytheon, No. 9 at 3, 4; all Docket 230A). Fisher and Paykel shared AHAM's concern and also believes that the definition should reflect only the clothes washer's ability to ''achieve'' a desired water temperature, rather than to ''maintain'' a desired water temperature. (Fisher and Paykel, No. 16 at 3, Docket 230A).

The Department agrees with the intent of AHAM's definition for thermostatically controlled water valves because it allows greater flexibility in achieving the desired result. Whether a particular water temperature results from the water valve's operation or the clothes washer electronic control is immaterial, as long as the clothes washer has the ability to sense and adjust the supply water temperature.

Finally the suggestion from Fisher and Paykel to change the definition from ''maintain'' to ''achieve'' a desired mixed water temperature has caused the Department to re-examine the definition. The fundamental purpose of this feature is to adjust the supply temperature in order to obtain a desired supply water temperature, or a desired wash tub temperature. In light of this purpose, the Department believes that the proposed definition and the suggested AHAM definition are too specific. To simply change the definition to ''achieve'' as suggested by Fisher and Paykel would be inappropriate because some clothes washers with this feature attempt to maintain the supply water temperature, and others seek to maintain the wash water temperature. Furthermore, this definition is used in the test procedure only to ensure that a clothes washer with these characteristics is tested with appropriate supply water temperatures. Therefore, the Department believes the definition can be simplified to be more generic, and still serve its intended purpose in the test procedure. The Department is adopting the following definition in today's final rule for Appendices J and J1: ''*Thermostatically controlled water valves* means clothes washer controls that have the ability to sense and adjust the hot and cold supply water.''

6. Water Consumption Factor

In the March 1995 proposed rule, the Department proposed a Water Consumption Factor (WCF), expressed in clothes washer capacity per gallon per cycle. The Department believes that providing a means of determining WCF may allow consumers, utilities or other organizations to compare clothes washer water consumption independent of clothes washer capacity.

In response to the March 1995 proposed rule, the Department received several comments regarding inclusion of the WCF in Appendix J. Miele and Speed Queen indicated that the WCF should be the inverse of what was proposed because many utilities already use that factor (gallons per cycle per cubic foot capacity). (Miele, No. 10 at 2; and Speed Queen, No. 29 at 3; both Docket 230). AHAM indicated that WCF on a per cycle basis can be expressed as cubic feet per gallon. (AHAM, No. 33 at 5, Docket 230) . The Department agrees with Miele and Speed Queen that the WCF should be consistent with existing utility programs and represented on a per cycle basis as gallons (weighted water consumption) per cubic foot capacity.

Accordingly, the Department proposed a revised WCF for Appendix J1 in the supplemental proposed rule, which was the inverse of the WCF in the March 1995 proposed rule. In response, the Department received positive comments. (AHAM, No. 7 at 4; Maytag No. 8 at 3; and Raytheon, No. 9 at 3; all Docket 230A). Therefore, today's final rule incorporates a WCF expressed as gallons per cycle per cubic feet in Appendices J and J1. In addition, the definition for WCF in Appendix J has been revised to be consistent with the new expression.

B. Clothes Washer Test Procedures—Issues Related to Appendix J

1. Agitator and Spin Speed Settings

In the March 1995 proposed rule, the Department proposed requirements for agitator and spin speed settings to conduct energy consumption testing because they are not addressed in the current test procedure. Speed Queen supported the Department's proposal. (Speed Queen, No. 29 at 4, Docket 230). The Department received no negative comments, and therefore DOE is adopting this proposal.

In addition, the Department is making minor language revisions with respect to these terms. The term ''agitator'' is being changed to ''agitation'' to be more generic.[12] Certain provisions relating to spin speed are being modified to address concerns regarding optional RMC testing, as discussed above.

2. Capacity Measurements

In the March 1995 proposed rule, the Department proposed minor revisions to the requirements regarding measurement of capacity to hold clothing (section 3.1). These changes were non-substantive in nature and did not attempt to change any clothes washer's capacity rating. AHAM recommended that the Department adopt simpler rule language which was generic both to front-loader and top-loader clothes washers. (AHAM, No. 5 at 3, 6 and No. 8 at 1, both Docket 230).

The Department agrees that AHAM's suggested rule language for clothes washer capacity measurement is simpler and most likely will achieve the same result. The Department, however, believes that the suggested language is not specific enough concerning the orientation of the clothes container opening during testing. The Department believes that it is reasonable to assume that a clothes washer will be placed in a position so that its opening is horizontal to the ground to conduct the capacity measurement. However, DOE prefers to remove any vagueness from the test procedure. Therefore, the Department is adding the following procedural step to the AHAM suggested language: ''Place the clothes washer in such a position that the uppermost edge of the clothes container opening is leveled horizontally, so that the container will hold the maximum amount of water.'' Therefore, the Department is adopting the language recommended by AHAM, with the above revision, in today's final rule for Appendix J. In addition, since the term ''agitator'' is no longer mentioned in the capacity measurement section, the Department is deleting the proposed ''agitator'' definition from Appendix J. The deletion of the ''agitator'' definition was supported by Speed Queen. (Speed Queen, No. 29 at 4, Docket 230).

3. Modified Energy Factor Definition

In the March 1995 proposed rule, the Department proposed to add to Appendix J an additional energy descriptor, called a modified energy factor (MEF), which would include moisture removal energy. This new descriptor would provide more comprehensive determinations, and comparisons, of the energy efficiency of clothes washers in the marketplace. It would be used for informational purposes only, such as rebate programs. The MEF was also proposed in Appendix J1 for possible future use.

The definition for the modified energy factor, as proposed in the March 1995 proposed rule, referred to both water-heating and non-water-heating clothes washers. Miele has suggested a more generic definition that excludes mention of specific types of clothes washers. (Miele, No. 10 at 2, Docket 230). The Department proposed this generic version of the definition in the supplemental proposed rule for Appendix J1 and received no negative comments. The Department believes the definition suggested by Miele is more versatile and applicable to all clothes washers, including water-heating clothes washers that use externally heated hot water. Therefore, today's final rule incorporates a definition for ''modified energy factor'' in Appendix J, which is identical to the definition which was proposed and is being adopted in Appendix J1.

4. Other Issues

In both the March 1995 proposed rule and the reopening notice, the Department proposed several minor modifications to Appendix J. The Department did not receive any negative comment relative to these proposals. Therefore, today's final rule maintains the rule language as proposed in the March 1995 proposed rule, and adopts changes discussed in the reopening notice. These modifications are provided in tabular form as follows:

Proposal	Source	Sections in appendix J
Deletion of AHAM Test Procedure References	March 1995 proposed rule	Not Applicable (Deletion of sections 1.7 & 1.8 in current Appendix J).
Clarification of Maximum Fill Testing (''available on the clothes washer'').	March 1995 proposed rule	Sections 3.2.1.2.1 & 3.2.2.1.
Similarly Labeled Temperature Use Factors (TUFs).	March 1995 proposed rule	Section 4.1.1.1.
One and Two Temperature Clothes Washer TUF Values.	Reopening notice	Section 5.

The Department also received suggestions for several minor clarifications to the rule language. The following table provides these suggested modifications:

March 1995 proposed rule section/issue	Comment	DOE action/ response
Sections 2.8.2.1 and 2.8.2.2: remove ambiguity for use of test loads.	Miele, No. 10 at 2, Docket 230	Intent incorporated.
Section 3.2.2.4: variable callouts	Miele, No. 10 at 3, Docket 230	Intent incorporated.
Section 4.1.1.2: concern about temperature rise of 90° F instead of 80° F.	Miele, No. 10 at 3, Docket 230	Not incorporated: adoption would affect efficiency ratings of existing models. (Appendix J1 has a temperature rise of 75° F.)
Section 4.3.3: reference callouts	Miele, No. 10 at 3, Docket 230	Intent incorporated.

[12] See discussion below regarding ''capacity'' where the definition for ''agitator'' is no longer required.

March 1995 proposed rule section/issue	Comment	DOE action/ response
Section 5: clarification for water-heating and non-water-heating clothes washer titles.	Miele, No. 10 at 3, Docket 230	Intent incorporated.
Need definitions for ''automatic'' and ''semi-automatic'' clothes washers.	Miele, No. 10 at 1, Docket 230	Not incorporated: these terms are already defined in 10 CFR 430.2.

5. Temperature Measuring (Sensing) Device

The March 1995 proposed rule proposed essentially to maintain the existing temperature equipment requirements, while changing its nomenclature from ''thermometer'' to ''temperature sensing device'' (section 2.5.3). AHAM suggested a revision of these requirements, both for its recommended test procedure and Appendix J. AHAM's language specified in part, that accuracy of equipment would be maintained over the range of temperatures being measured, rather than over a broader range as is currently required. AHAM also suggested revision of nomenclature in the proposed test procedure from ''Temperature sensing device'' to ''Temperature measuring device.'' (AHAM, No. 8 at 1, Docket 230). The Department believes that the revised AHAM language, on which comments were solicited in the supplemental proposed rule, will eliminate a requirement that is irrelevant to the test procedure, while maintaining its accuracy and providing manufacturer equipment flexibility. Therefore, today's rule incorporates into Appendix J the supplemental proposed rule language for a temperature measuring device.

6. Temperature Selections

Currently, and as proposed, Appendix J allows for the testing of three basic wash temperatures, cold, warm, and hot, in several combinations with two rinse temperatures, cold and warm. The test procedures set forth percentages, called temperature use factors (TUFs), that represent the proportion of time that each temperature combination selection (TCS) (wash/rinse combination offered to a consumer) is used. However, some new clothes washers have new TCSs which are not explicitly covered by the Appendix J test procedure.

a. Multiple Warm Wash Temperatures. Currently, there are clothes washers on the market that have multiple warm wash TCSs. The Department's understanding is that these TCSs are relatively straightforward. The warm wash temperatures of the TCSs are spaced so that the temperature of the middle warm wash TCS is at the mid-point between the temperatures of the warmest warm wash TCS and the coolest warm wash TCS. Also, for any other TCS above the middle warm wash TCS, there is a corresponding TCS that is an equal number of degrees below the middle warm wash TCS. In the reopening notice, the Department proposed requirements to test only the middle warm wash TCS. In addition, if a middle TCS does not exist, then the next hotter TCS above the mid-point would be tested.

AHAM agreed generally with the above proposal. Fisher and Paykel provided comments and agreed with the requirement to test only the middle TCS. (Fisher and Paykel, No. 22 at 1, 2, Docket 230A). Therefore, today's final rule includes the above described test provisions for Appendix J.

The Department's proposal also addressed situations where TCSs are not spaced equally by temperature. The Department is unaware of any current clothes washers with these types of TCSs, but wants to provide test provisions in the event they are included on future models. The Department's proposal in the reopening notice would require testing at the next hotter warm wash TCS above the mean of the temperature range for multiple warm wash TCS.

Fisher and Paykel questioned whether the reference to the mean referred to the mean temperature or to the TCS with the mean position on the control panel. Fisher and Paykel suggested that it should be applicable to the temperature and that DOE should require that the mean temperature be determined. In addition, Fisher and Paykel stated that the TCS with the mean temperature should be tested if available on the clothes washer model, or if such a TCS is not available, the next higher warm wash TCS above a theoretical mean should be tested. (Fisher and Paykel, No. 22 at 2, 3, Docket 230A).

Fisher and Paykel maintains that the actual mean TCS of the temperature range should be tested, if available, whereas the Department believes the next higher TCS should be tested. The Department believes the next higher TCS should be tested in lieu of the actual mean TCS because it is concerned about the way TCSs may be displayed to consumers. The rationale for testing the middle TCS for clothes washers with multiple warm wash TCSs, spaced equally by temperature, is that consumers are just as likely to select a TCS above the middle TCS as they are to select one below the middle TCS. In the case of clothes washers with TCSs that are not spaced equally by temperature, consumers may be given, for example, multiple selections above an actual mean TCS of the temperature range and only one selection below it. In this case, consumers may select warm wash TCSs above the mean TCS more frequently than the one warm wash TCS below the mean TCS. To test the mean TCS could give a relatively low, and hence unrepresentative, picture of the energy consumption of the clothes washer. Therefore, the Departments proposed that the next higher TCS be tested. Today's final rule includes requirements for Appendix J as stated in the reopening notice and reiterated above.

In the reopening notice, the Department also proposed test provisions for clothes washers with multiple temperature settings, i.e., a range of temperatures from which a consumer can make a selection within a specific TCS. Section 3.2.2.2 of the current test procedure requires that the ''hottest setting available'' be used for testing a hot wash TCS. In the reopening notice, the Department proposed a test methodology which requires that the hottest temperature setting within a hot, warm or cold TCS be tested.

This approach is similar to the Department's proposal in the March 1995 proposed rule for addressing similar TCSs that are labeled so as to appear to the consumer to be virtually identical. In essence, the similarly labeled TCSs are two temperature settings for one basic TCS. For example, on a given clothes washer, one cold wash/cold rinse TCS may be labeled ''cold/cold,'' with a wash temperature that is never heated, and another can be labeled ''auto cold/cold'' with a wash temperature that uses some hot water. The March 1995 proposed rule proposed that the hottest of these two selections be used for testing. The Department believes this proposal is consistent with the industry's basic interpretation of the existing test

procedure. The Department did not receive any negative comment regarding the March 1995 proposed rule's provision for similarly labeled TCSs.

Shortly before the publication of the reopening notice, Fisher & Paykel asserted that for DOE to require testing at the hottest temperature setting available within a TCS would be inconsistent with the test methodology regarding multiple warm wash TCSs (discussed above).[13] The two approaches may appear to be inconsistent, but the Department believes they would establish the best solution considering that the hottest setting available must be used in tests involving a hot wash TCS or similarly labeled TCSs. To the greatest extent possible, the Department wants to ensure that all models are tested and rated on a comparable basis.

In response to the reopening notice, AHAM commented that, in general, it supports the Department's proposal. AHAM believes that the rule language should make specific reference to a secondary control, which is how the temperature of the TCS (selected with the primary control) would be adjusted. AHAM supports the rationale to test the hottest temperature available for a TCS. (AHAM, No. 19 at 2, Docket 230A). Fisher and Paykel stated that its comments provided in response to Waiver CW–004 (discussed above) remain essentially the same. (Fisher and Paykel, No. 22 at 1, Docket 230A).

The Department agrees with AHAM that manufacturers most likely would present multiple temperature selections within a TCS with a secondary control. Therefore, today's final rule incorporates rule language to clarify this point. The Department sees some merit in Fisher and Paykel's concern about testing multiple temperature settings within a TCS at the hottest setting available. For the reasons stated above, however, the Department believes that today's rule is the best solution considering the test procedures currently in effect. Moreover, the future test procedure, Appendix J1, establishes even more consistent test procedures to address this issue. Therefore, today's final rule adopts the requirement proposed in the reopening notice to test the hottest temperature setting available within a TCS in Appendix J.

b. Temperature Selections Locked Out of the Normal Cycle. In the May 1995 proposed rule, the Department proposed that, for a clothes washer with a normal cycle temperature selection ''lockout'' feature, the hot water consumption be prorated between the TCS that has the ''lockout'' in the normal cycle and the same TCS in the cycle with the greatest hot water consumption. The unknown factor in the calculation is the frequency with which users would choose the normal versus other cycles when a temperature selection is selected, i.e., the proration values.

The Department proposed to set the proration values at 20 percent for the normal cycle and 80 percent for the most energy intensive cycle (the cycle other than normal that consumes the maximum amount of energy), unless consumer usage data becomes available that support other values. The proposed values were based on an assumption that 80 percent of the time a consumer wants the locked out temperature, it will choose a cycle that offers that particular temperature selection, and the remaining 20 percent of the time consumers will not alter the cycle and will accept the locked out temperature selection.

The frequency with which consumers use the normal cycle is important if a clothes washer is equipped with a temperature selection ''lockout.'' The clothes washer test procedure requires testing at the normal cycle because this is believed to be representative of how consumers use their clothes washers. Traditionally, consumers select the normal cycle most of the time and the remaining cycles, either more or less energy intensive, the remainder of the time. Hot water energy constitutes the greatest component of the energy consumption, approximately 90 percent or more, and the energy consumption for the various cycles, e.g. ''normal,'' ''heavy duty,'' ''delicate,'' etc., on a typical clothes washer without lockouts may not vary much from one cycle to the next, for a given temperature and fill selection. This is not true for a clothes washer with a temperature selection lockout feature. For such a clothes washer, temperature selections that appear to be the same in different cycles are in fact different, and result in consumption of different amounts of energy.

Whirlpool utilized an independent consultant to conduct a consumer survey regarding the use of clothes washers with and without the ''lockout'' feature. Whirlpool submitted a summary of the results of the survey to the Department. (Whirlpool, No. 13, Docket 701). The Department made this summary available to stakeholders for review and comment.

White Consolidated commented that it disagreed with the concept of prorating the energy consumption results from the normal and most energy intensive cycles, including the proposed 20/80 percent values. In essence, White Consolidated believes that a TCS with a lockout should be tested in the most energy intensive cycle, and the result used 100 percent for the calculations. White Consolidated believes that normal cycle operation on a particular clothes washer may be represented to consumers in such a manner that they use it significantly less than they would on a traditional clothes washer.[14] White Consolidated also asserted that the data submitted by Whirlpool did not indicate the frequency with which consumers select the normal cycle. (White Consolidated, No. 14, Docket 701). Whirlpool provided comment that the proration value for the use of the normal cycle should be 75 percent. Whirlpool believes that its survey shows no significant difference between consumers' use of the normal cycle with or without a lockout. (Whirlpool, No. 16, Docket 701). Maytag stated that it supports the Department's proposal to use 20 percent as the proration value for the normal cycle. Maytag also indicated that it believes the survey conducted by Whirlpool had minimal value because the survey did not include any Sears Kenmore models, which have the highest market share in the clothes washer industry. Maytag also stated that (1) the way the cycle selections are depicted to the consumer will have a significant impact on how often a consumer will select a normal cycle, and (2) as the normal cycle is depicted on the Whirlpool clothes washers, consumers will use the normal cycle less frequently. (Maytag, No. 17, Docket 701).

The Department reviewed the publicly available survey summary and confidential raw survey data provided by Whirlpool. The survey data indicate that consumers select a normal cycle, with a temperature selection lockout, slightly less often than they select a normal cycle without a temperature selection lockout. This supports Whirlpool's claim that the lockout feature had minimal impact on the use of the normal cycle. The results also showed, however, that consumers' overall use of the normal cycle of Whirlpool clothes washers is significantly less than their use of the normal cycle for typical clothes washers (use of the normal cycle for the industry

[13] Fisher & Paykel provided this comment to the Department regarding Interim Waiver CW–004 (61 FR 18129 on April 6, 1996) which addresses this same issue.

[14] P&G data indicates that the normal cycle on a typical clothes washer is used approximately 75 percent of the time. The DOE test procedure uses the normal cycle to approximate typical use by consumers.

is estimated to be 75 percent, based on P & G survey data). This result supports the statements made by White Consolidated and Maytag regarding use of the normal cycle.

Whirlpool, after consultation with the Department regarding its confidential data, provided public information which indicated that consumers selected the normal cycle on its clothes washers equipped with temperature selection lockouts 32 percent of the time. (Whirlpool, No. 18, Docket 701).

The Department believes that the proration value for the use of the normal cycle should reflect the frequency of consumer choice of that cycle. The Department believes that the confidential survey data, provided by Whirlpool, indicating the actual use of the normal cycle by consumers with a temperature selection lockout feature does exactly that. Therefore, the Department is promulgating today's final rule with proration values of 32 percent for the normal cycle and 68 percent for the most energy intensive cycle for the Appendix J test procedure.

7. Water-Heating Clothes Washers

Traditionally, clothes washers in the U.S. have used water heated outside of the machine, in a dwelling's water heating source. These are defined as non-water-heating clothes washers. New, predominantly imported, clothes washers have their own internal heaters which heat cold water supplied for washing. These are referred to as water-heating clothes washers. In addition, some water-heating clothes washers have the capability of using water heated externally, and can use their internal heater to increase the temperature of such water, or to maintain the temperature of water in the wash tub.

The March 1995 proposed rule proposed test provisions for water-heating clothes washers that do not use externally heated water. The test provisions included definitions for water-heating and non-water-heating clothes washers. In the supplemental proposed rule, the Department proposed to include in Appendix J provisions to test water-heating clothes washers that use externally heated water. Under the proposed Appendix J1 definition, these clothes washers are treated as water-heating clothes washers because they are equipped with an internal heater, although they are tested with a combination of test provisions for water-heating and non-water-heating clothes washers.

Generally, commenters supported these proposals, although a few modifications were suggested. AHAM requested the Department adopt in Appendix J the definitions for water-heating and non-water-heating clothes washers that AHAM suggested for Appendix J1. The AHAM definitions are generic and applicable to water-heating clothes washers that use externally heated water. (AHAM, No. 8 at 1, Docket 230). The intent of the AHAM definitions was supported by Miele. (Miele, No. 10 at 1, Docket 230). Commenters agreed that the Department should incorporate into Appendix J test provisions for water-heating clothes washers that use externally heated water. (AHAM, No. 7 at 1, 4, 5; Miele, No. 4 at 2; Maytag, No. 8 at 3; and Raytheon, No. 9 at 3: all Docket 230A).

The Department agrees with AHAM and Miele that the definitions for water-heating and non-water-heating clothes washers should address water-heating clothes washers that use externally heated water. Furthermore, the Department proposed AHAM's definitions for the Appendix J1 test procedure in the supplemental proposed rule and did not receive any negative comments. Therefore, today's final rule incorporates revised definitions in Appendix J, identical to those proposed for Appendix J1. Today's final rule also incorporates procedural steps into Appendix J for water-heating clothes washers that use externally heated water.

8. Weighing Scales for Test Cloth and Clothes Container

In the March 1995 proposed rule, the Department also proposed to maintain existing requirements for the weighing scales which are used to measure the weight of test cloth and clothes washers (for container capacity determination). AHAM revised the requirements for weighing scales in its recommended test procedure. AHAM also recommended that its rule language be adopted for Appendix J. The AHAM language eliminates requirements to have specific measuring ranges for the weighing scales, and specifies instead a maximum allowable percentage of error for a particular measured value. (AHAM, No. 8 at 1, Docket 230). The Department believes the AHAM language, on which the Department sought comments in the supplemental proposed rule but received none, will maintain the accuracy of the existing test procedure while providing manufacturer equipment flexibility, thus eliminating an unnecessary test burden. Therefore, today's rule incorporates the supplemental proposed rule language for weighing scales into Appendix J.

C. Clothes Washer Test Procedures—Issues Related to Appendix J1

1. Capacity Measurement

Both the proposed Appendix J and proposed Appendix J1 required testing to determine the capacity of the clothes container. This capacity is defined as the maximum volume which a dry clothes load could occupy. The capacity is then used as a significant component in the calculation of the Energy Factor and Modified Energy Factor, which are used to rate the efficiency of the clothes washer on a per cycle basis. The actual load, in pounds of clothing, that a clothes washer can wash is a function of many variables including the portion of the container's volume which is actually available for clothes washing, the agitation system and the motor torque. But the Department has used the measured clothes container capacity as a proxy for the actual load a clothes washer is capable of washing, and this has worked well for purposes of comparing vertical-axis clothes washers to each other. The Department believes that measured container capacity will serve the same function for horizontal-axis clothes washers. However, it is unclear whether the relationship of measured capacity to load capability is the same for vertical-axis and horizontal-axis clothes washers.

The proposed Appendix J and proposed Appendix J1 test procedures require measuring the capacity to the upper most part of the clothes washer container, which includes the volume encompassed by a ring that may be attached to the top of the clothes container. The maximum water level in any vertical-axis clothes washer may vary, but the water level cannot go to the top of the ring attached to the top of the clothes container. Maytag calculated that this current method of measuring capacity results in the measured volume of vertical-axis clothes washers exceeding the wetted volume [15] by a minimum of 15 percent to well over 20 percent. (Maytag, No. 13 at 1, Docket 230). AHAM, commenting on behalf of clothes washer manufacturers, including Maytag, asserts the current method for measuring vertical-axis clothes washer capacity is sufficient and should not be changed. (AHAM, No. 33 at 5, Docket 230).

In a horizontal-axis clothes washer, washing and rinsing occur in the entire volume of the clothes container. Thus, the measured and wetted volumes of a

[15] DOE uses the term ''wetted volume'' to refer to the space in a clothes washer within which washing and rinsing occur.

horizontal-axis clothes washer are the same, and Maytag proposed multiplying the measured volume of a horizontal-axis clothes washer by a factor of 1.2. (Maytag, No. 13 at 2, Docket 230). This factor would mathematically increase the ''measured capacity'' of horizontal-axis clothes washers and would result in a 20 percent increase in the Energy Factor and Modified Energy Factor for horizontal-axis clothes washers. A similar factor is included in the International Electrotechnical Commission (IEC) 456 test procedure for clothes washers. ACEEE supports a capacity credit for horizontal-axis clothes washers.[16] ACEEE stated that the IEC test procedure has a 15 percent credit and believes the credit may be too low. ACEEE believes the credit should be 21 percent. (ACEEE, No. 32 at 3, Docket 230).

Speed Queen opposes a horizontal-axis clothes washer capacity adjustment factor, stating that adequate time for discussion and comment is needed on this ''recently raised issue.'' (Speed Queen, No. 29 at 3, Docket 230). GEA opposes any horizontal-axis clothes washer capacity credit stating, ''In view of the evidence, from P & G, that American consumer washing habits are driven in large part by their perception of capacity, proponents of a European adjustment factor must provide hard data of its applicability to the U.S. market.'' (GEA, No. 36 at 2, Docket 230). Whirlpool also opposes any credit for horizontal-axis clothes washer capacity because there are no data that would demonstrate American loading habits for horizontal-axis clothes washers. (Whirlpool, No. 37 at 4, Docket 230).

The Department notes that the measured volume of a vertical-axis clothes washer is larger than the wetted volume, whereas, these two volumes are the same for horizontal-axis clothes washers. This suggests that, for these two types of machines, a difference may exist in the relationship of measured capacity to the amount of clothes a clothes washer is capable of washing. However, the Department has no data to indicate that this possible difference translates into an actual difference in load size capability when the other variables that affect load size are considered, or as to how U.S. consumers will use horizontal-axis clothes washers.

In the supplemental proposed rule, the Department did not propose a capacity credit for horizontal-axis clothes washers. The Department stated that, if data became available, it would consider making adjustments to the test procedures for either vertical or horizontal-axis clothes washers to ensure that the comparisons are relatively accurate. In Appendix J1, the Department did not make any changes to the measurement procedures, or adjust any calculations regarding capacity. Maytag indicated that data to support a credit, or adjustment, for horizontal-axis clothes washers currently were not available, but that it may submit subsequent comments if such data became available. (Maytag, No. 8 at 1 and No. 15 at 2, Docket 230A). Raytheon supported the Department's proposal to retain the established capacity measurement requirements. (Raytheon, No. 9 at 1, Docket 230A).

Based on the foregoing, today's final rule retains the same basic approach to capacity as was proposed in the supplemental proposed rule. However, minor language revisions were incorporated, as discussed above in section III.B.2 of this notice. If data become available which would indicate a significant impact on the comparisons between vertical and horizontal-axis clothes washers, the Department will consider initiating a rulemaking to make appropriate revisions to the test procedure.

2. Consumer Selectable Options for the Energy Test Cycle

In the supplemental proposed rule, the Department proposed test provisions for clothes washers equipped with consumer selectable options available in the energy test cycle (supplemental proposed rule Section 3.2.3.5). These provisions were proposed primarily because of the possibility that manufacturers would provide multiple spin speed and spin time selections for the energy test cycle. (See the discussion above regarding spin speed and spin time in section III.A.4b of this notice.) The proposal however, was applicable to all possible consumer selectable options available in the energy test cycle, other than wash time (which was addressed in section 2.10). The language included examples of selectable options, such as various spin speeds or adaptive water fill selections, and required testing of the extremities of the available selections and averaging of the results.

AHAM, NRDC, and clothes washer manufacturers provided specific comments regarding multiple consumer selectable options for spin speed and spin time. These comments and the Department's response, including revised requirements for these features, are discussed fully in section III.A.4b of this notice. AHAM and clothes washer manufacturers also provided specific comments regarding multiple consumer selectable options for adaptive water fill control systems. These comments and the Department's response, including revised requirements for adaptive water fill control systems, are discussed fully in section III.A.1.

AHAM recommended that the Department revise section 3.2.3.5 regarding consumer options for the energy test cycle to exclude wash time, temperature, fill levels, and extraction. AHAM also recommended that the tests be conducted on the combined maximum and combined minimum energy intensities for all such consumer options. (AHAM, No. 14, Docket 230A). Raytheon supported AHAM's recommendation. (Raytheon, No. 13 at 2, Docket 230A). Fisher and Paykel recommended that the Department convert section 3.2.3.5 into six procedural steps. Fisher and Paykel's recommended changes were consistent with AHAM's recommendation to exclude wash time, temperature, fill levels, and extraction from this section. Fisher and Paykel also recommended that other options be tested in the factory default setting or in the manufacturers ''recommended positions for a cotton and/or linen clothes cycle.'' Fisher and Paykel recommended language including exclusions for non-energy related features, as well as comprehensive testing provisions for special circumstances not covered by the generic provisions. (Fisher and Paykel, No. 16 at 9, 10, Docket 230A).

Having reviewed the AHAM and manufacturer comments, the Department sees no need to include in Appendix J1 general provisions for ''consumer options for the energy test cycle.'' In the supplemental proposed rule, the Department expressed concern regarding consumer options for multiple spin speed, spin time, and multiple adaptive water fill control system selections. These options have now been addressed in other sections of the rule language as discussed above. The Department is concerned about adopting specific test provisions to address unknown, potential options. The commenters did not provide a rationale as to why the suggested provisions were needed in the test procedure, other than that the Department had originally proposed them. The Department believes that any other feature which affects the energy consumption of clothes washers should be subject to the public comment provisions of the waiver process found at 10 CFR 430.27.

The Department acknowledges that in the supplemental proposed rule it proposed a procedure to address

[16] Commenters have used both terms ''factor'' and ''credit'' which are intended to mean the same thing.

generally consumer options in the energy test cycle. This proposal was primarily designed, however, to address specific concerns stated in the proposed rule and to elicit comment on procedures for other possible consumer options. The specific concerns have been addressed elsewhere and no other consumer options were identified in the comments. Therefore, the Department sees no reason to include in the test procedure a generic test provision for consumer options in the energy test cycle, and today's rule contains no such provision.

3. Energy Test Cloth

The supplemental proposed rule proposed requirements to precondition the energy test cloth prior to its use for energy consumption testing. These requirements generally were based on the AHAM recommended test provisions, except that the Department changed the requirement for detergent from an AHAM specification to a generic specification (commercially available detergent).

AHAM, Maytag, and Raytheon supported the Department's proposal to use commercially available detergent, although they recommended that the Department change the requirement from a specific dosage of detergent (6 grams per gallon of water) to a dosage as recommended by the manufacturer. (AHAM, No. 7 at 3; Maytag No. 8 at 2: and Raytheon No. 9 at 2; all Docket 230A). The Department agrees with the commenters that the dosage should be specified as recommended by the manufacturer because of different types and sizes of clothes washers in the marketplace. A specific dosage, such as 6 grams per gallon of water, may be too small or too large for a particular clothes washer. Therefore, today's final rule revises the requirement for clothes washer detergent dosage, as indicated above, in Appendix J1.

4. Energy Test Cycle Definition

In the supplemental proposed rule, the Department proposed a definition for ''energy test cycle,'' for Appendix J1. The energy test cycle definition is used to define the cycle on which the energy consumption tests are to be conducted, and corresponds to the cycle the manufacturer recommends for washing cotton or linen clothes. The energy test cycle is comparable to the ''normal cycle'' defined in Appendix J.

Fisher and Paykel objected to inclusion of the following language in the energy test cycle definition: ''all temperature selections available on the model, regardless of whether the wash/rinse temperature selections or water levels are available in the cycle recommended for cottons and/or linens.'' Fisher and Paykel believes it is unfair to impose testing requirements of temperature selections that are available only in other cycles, e.g., warm rinse for the delicate cycle, because the other cycles are not used as frequently as the cycle recommended for cotton and/or linen clothes. (Fisher and Paykel, No. 16 at 2, Docket 230A).

The Department believes Fisher and Paykel's comment regarding the energy test cycle raises an issue that is essentially the same as the normal cycle temperature selection lockout issue, discussed above, for Appendix J. The temperature selection lockout issue caused significant controversy among U.S. clothes washer manufacturers, and was the subject of extensive debate. (See Docket Number EE–RM–93–701).

The energy test cycle is intended to be representative of typical consumer use of a clothes washer. Absence of temperature selections from the energy test cycle of a clothes washer may mean that cycle is not representative and may lead to manufacturer representations that do not reflect true energy consumption. This may not be the case for all clothes washers with temperature selections available in cycles other than the energy test cycle, but the issue remains a significant concern to the Department. Therefore, today's final rule maintains the substance of the definition for energy test cycle, as proposed in the supplemental proposed rule. Certain changes however, solely for purposes of clarification, have been made in the definition as promulgated in today's final rule.

5. Other Issues

The supplemental proposed rule proposed several minor changes in AHAM's suggested test procedure, about which DOE received no negative comment. Therefore, in these respects, today's final rule maintains the rule language in Appendix J1 as proposed in the supplemental proposed rule. These minor changes are provided in tabular form as follows:

Proposal	Rule sections
Maximum use of five energy stuffer cloths	Section 2.7.
Water-heating clothes washer test provisions, including test room temperature requirements and externally heated water use.	Sections 2.11, 3, and 4.
Not to include a suds-saver test provision	N/A.
Temperature Use Factors	Section 4.

6. Supply Water Temperature

Under the Department's proposal in the supplemental proposed rule, supply water temperature would affect the energy consumption of water-heating clothes washers and clothes washers with thermostatically controlled water valves, whereas other non-water-heating clothes washers would not be affected by the supply water temperature. The Department's proposal, based on AHAM's recommendation, specified different tolerances for the supply water temperatures for these two situations. Clothes washers whose energy consumption is affected by the supply water temperature were required to be tested with a hot water supply of 135°F with a tolerance (+0°F − 10°F), and cold water supply of 60°F with a tolerance (+0°F − 10°F). Clothes washers whose energy consumption is not affected by the supply water temperature were required to be tested with a hot water supply of 135°F with a tolerance (± 5°F), and cold water supply of 60°F with a tolerance (± 5°F).

Fisher and Paykel asserted that, since one type of machine is not affected by supply temperature, there is no reason to specify different tolerances for the two types of clothes washers while using the same tolerance range (10°F). Fisher and Paykel also believes that in a laboratory it is easier to set a temperature to a ± 5°F tolerance than a +0°F − 10°F tolerance. Fisher and Paykel recommended that the requirements for supply water be combined for both types of clothes washers. The hot water supply would be set at 130°F with a tolerance (±5°F), and the cold water supply would be set at 55°F with a tolerance (±5°F). (Fisher and Paykel, No. 16 at 5, Docket 230A).

The Department is concerned, however, about unnecessary test burden. In many areas of the U.S., during much of the year, the temperature of the ground water remains above 60°F. Setting cold water

requirements below 65°F for clothes washers not affected by supply temperatures, which represent a majority of the current clothes washer market, would impose an unnecessary test burden. The Department also believes that the ability to establish a temperature within a 10°F tolerance range is the same regardless of how it is specified.

In light of Fisher and Paykel's comments, however, the Department agrees it is warranted to revise the proposed provisions for supply water temperatures. In order to establish an appropriate and readily apparent difference between those clothes washers affected by supply water temperatures and those which are not, the Department is eliminating the specified tolerances for clothes washers affected by supply water temperatures. In today's final rule, the Department is adopting revised requirements such that the hot water supply shall not exceed 135°F (57.2°C), and the cold water supply shall not exceed 60°F (15.6°C) for clothes washers affected by supply temperatures in Appendix J1.

7. Test Load Tolerances

In the supplemental proposed rule, the Department proposed a test load table which has loads that vary with clothes washer capacity. The table was based on the AHAM recommended test procedure, except that the Department changed the tolerance from AHAM's suggested value of ±0.10 pounds to ±0.05 pounds. The Department made this change because it believed that a tolerance of ±0.05 pounds enabled the required test load sizes to be achieved through the use of energy stuffer cloths that weigh approximately 0.04 pounds each. The Department requested comment on this proposal.

AHAM, Maytag, and Raytheon opposed the Department's proposal to establish a tolerance of ±0.05 pounds. Their concern is that the tighter tolerance has minimal impact (0.66 percent) on the test results. They also believe that the tighter tolerance imposes an unnecessary test burden because ambient, humid air, causes a dry test load to gain weight. (AHAM, No. 7 at 2; Maytag, No. 8 at 2; and Raytheon, No. 9 at 2; all Docket 230A). NRDC supported the Department's proposal to establish a tolerance of ±0.05 pounds. (NRDC, No. 2 at 2, Docket 230A).

The Department agrees that the concern raised by AHAM and manufacturers has merit because the test procedure requires the test load to be ''bone dry,'' meaning that the weight of the test load is stable within one percent after 10 minutes in a clothes dryer. Since the test procedure does not have a low humidity requirement, it is likely that the test load will gain weight during the time period after it is removed from the clothes dryer and before its weight is measured. Therefore, given the practical considerations of the testing environment, a theoretical weight for energy stuffer cloth cannot be used. For these reasons, today's final rule changes the test load table tolerance to ±0.10 pounds in Appendix J1.

8. Warm Wash Temperature Selections

The supplemental proposed rule proposed test provisions for warm wash temperature selections. These provisions included definitions for ''warm wash'' and ''uniformly distributed warm wash,'' as well as testing requirements for clothes washers with various types of intermediate warm wash temperatures. In proposed Appendix J1, if a clothes washer has uniformly distributed warm wash temperature selections (wash temperatures have a linear relationship with all discrete warm wash selections and are equally spaced, or infinite in number), the energy consumption value is determined by a calculation rather than a test. If the warm wash temperature selections are not uniformly distributed, the Department proposed testing all discrete intermediate warm wash temperature selections (i.e., all temperature selections that are below the hottest hot (≤135 °F (≤57.2 °C)) and above the coldest cold). In the case of infinite non-uniformly distributed temperature selections, testing would be conducted at the 20, 40, 60, and 80 percent positions of the temperature selection device.

The Department did not receive any comments regarding the proposed ''warm wash'' definition. AHAM, Maytag, and Raytheon stated that they supported the Department's definition for ''uniformly distributed warm wash,'' but they expressed concern about the application of the definition and about the requirements for testing. (AHAM, No. 7 at 4; Maytag, No. 8 at 3; and Raytheon, No. 9 at 2; all Docket 230A). Fisher and Paykel stated that the portion of the definition for ''uniformly distributed warm wash'' which describes the criteria for a ''linear relationship'' is unclear. The definition, in Appendix J1, stated ''In all cases, the mean of the water temperature of the warmest and the coldest warm selections must coincide with the mean of the hot and cold water temperature.'' Fisher and Paykel believes the term ''hot and cold water temperature'' is ambiguous and could refer to hot and cold wash temperatures, or could apply to hot and cold supply water temperatures. In addition, due to various temperature settings and tolerances throughout the test procedure, Fisher and Paykel suggested that a tolerance (±8 °F (±4.4 °C)) be established to qualify the term ''must coincide.'' (Fisher and Paykel, No. 16 at 3, Docket 230A).

The Department agrees with Fisher and Paykel and has revised the ''uniformly distributed warm wash'' definition, regarding the criteria for ''linear relationship,'' to remove any ambiguity. The linear relationship criterion is applicable over the temperature range between the ''hot wash'' and the ''cold wash.'' Therefore, today's final rule revises this section in Appendix J1 from ''* * * mean of the hot and cold water temperature'' to ''* * * mean of the hot wash and cold wash water temperatures.''

With regard to Fisher and Paykel's suggestion of a tolerance, the Department believes that some acceptable tolerance should be established because having the terminology ''must coincide,'' without a tolerance, would mean the linear relationship requirement would not be satisfied if any deviation existed, however slight. The Department, however, believes Fisher and Paykel's suggested tolerance value is too large. In Appendix J1, within the definition of ''uniformly distributed warm wash,'' a tolerance of ''± 5 percent'' was proposed in the sentence prior to the one that is the subject of Fisher and Paykel's comment. This tolerance was not objected to by any commenters. The Department believes this same value should be applied to the sentence where Fisher and Paykel believes a tolerance should be added. The nominal temperature range between a ''hot wash'' and ''cold wash'' is 75°F. Five percent of this range results in a tolerance of ± 3.8°F. Therefore, the Department is adopting ''± 3.8°F(± 2.1°C)'' as a tolerance for the criteria for a linear relationship in Appendix J1.

AHAM, Fisher and Paykel, and Raytheon support in part and oppose in part the Department's proposed testing method for warm wash temperature selections that are not uniformly distributed. They agree that where a clothes washer has less than three such selections, all should be tested. But they oppose testing all selections where a machine has more than three such selections, based primarily on a claim of excessive test burden. For clothes washers with more than three discrete

warm wash temperature selections, they suggest DOE give manufacturers the option of either testing all of the selections or treating this category as if it were a clothes washer with ''infinite'' temperature selections. This would reduce significantly the number of required tests if a clothes washer were equipped with numerous discrete warm wash temperature selections. In addition, AHAM, Fisher and Paykel, and Raytheon believe the number of test points for clothes washers with infinite temperature selections should be reduced from four to three, and a requirement should be added to test to the next higher temperature selection if a particular test point is not available. (AHAM, No. 14 at 2; Fisher and Paykel, No. 16 at 11, 12; and Raytheon, No. 13 at 1; all Docket 230A).

The Department is concerned with the test burden imposed by the test procedures. For example, the Department is aware of a current clothes washer model that has 32 intermediate warm wash temperature selections. To test all 32 temperature selections with all of the other test procedure provisions would be expensive, and could be considered excessive test burden. The Department agrees with the suggested option to consider clothes washers with more than three warm wash temperatures as clothes washers with infinite warm wash temperature selections. The Department believes testing at the various test points of the temperature range, with a requirement to test to the next higher selection if a temperature selection is not available at a specified test point, will provide representative data of the warm wash temperature selection offerings. In addition, DOE agrees that manufacturers should have the option of testing all temperature selections if they choose to. Therefore, the Department is adopting in Appendix J1 the suggested treatment of clothes washers with more than three warm wash temperature selections that are not uniformly distributed.

The question of whether clothes washers with infinite warm wash temperature selections should be tested at four points (20, 40, 60, and 80 percent of the temperature range) as proposed by the Department, or at three points (25, 50, and 75 percent of the temperature range) as suggested by commenters, raises a number of issues. First, the Department believes that although the accuracy of the test results will increase with more test points, the test burden also will increase. In addition, manufacturers of clothes washers with numerous discrete warm wash temperature selections would most likely provide a discrete warm wash temperature selection at approximately the 50 percent location of the temperature range, which would not be tested with the four test point requirement proposed by the Department. Therefore, today's final rule incorporates into Appendix J1 a requirement that clothes washers with infinite temperature selections be tested at three points (25, 50, and 75 percent) of the temperature range. However, if the Department were to obtain data indicating that today's requirements result in representations not reflective of a clothes washer's true energy consumption, then the Department would consider a rulemaking to reevaluate these requirements.

In addition to the above comments regarding warm wash temperature selections, AHAM and Raytheon suggested the adoption of a new procedural step with equations to determine the temperatures of warm wash water in a non-water-heating clothes washer, based on proration of hot water consumption. (AHAM, No. 14 at 1, and Raytheon, No. 13 at 3, both Docket 230A). The Department has reviewed the suggestion and believes it would be beneficial to include this in the procedure for determining warm wash water temperatures for non-water-heating clothes washers. The definition for uniformly distributed warm wash temperature selections requires the plotting of warm wash temperatures with the position of the temperature selection device. The suggestion by AHAM and Raytheon is one method which is acceptable and will be transparent to users of the test procedure. Therefore, today's final rule incorporates AHAM and Raytheon's suggestion for a procedural step to determine the temperature of a non-water-heating clothes washer warm wash temperature selection in Appendix J1.

9. Warm Rinse

In the supplemental proposed rule, the Department proposed requirements to test heated rinses (section 3.7) independent of wash temperatures. This proposal, based generally on AHAM's recommendation, required that the entire electrical energy be measured for a ''warm wash and hottest rinse cycle,'' and that the energy used in the heated rinse be derived from this measurement of the energy used in the entire clothes washer cycle. AHAM suggested, and Raytheon supported, a revision to the heated rinse testing requirements so as to measure only the energy consumption including electrical energy consumption of the warm rinse cycle. In addition, AHAM and Raytheon suggested some minor modifications to the rule language implementing these testing requirements, to make the language more consistent with the entire test procedure. (AHAM, No. 14 at 3; and Raytheon, No. 13 at 1; both Docket 230A).

The Department believes that the revisions suggested by AHAM and Raytheon will provide the same test result as DOE's proposal while reducing test burden, and will simplify the rule language in the process. Therefore, the Department is adopting these suggested revisions for warm rinse testing in Appendix J1.

D. Related Issues, Revision to 10 CFR 430.23, ''Test procedures for measures of energy consumption.''

In the March 1995 proposed rule, the Department proposed specific changes to 10 CFR 430.23(j) (1) and (2). These changes included a decrease in the number of annual cycles, changes in Appendix J section number references, and the incorporation of the Modified Energy Factor descriptor. In the supplemental proposed rule, DOE stated that if it were to adopt Appendix J1, then it would make the necessary changes to § 430.23 for Appendix J1. The Department did not receive any negative comments regarding these proposals.

In today's final rule, the Department is incorporating the proposed changes into § 430.23. In addition, the Department is making nonsubstantive changes to § 430.23 and Appendix J. The Department proposed that the Modified Energy Factor descriptor be set forth in Appendices J and J1, and referenced in § 430.23. The Department believes it would be beneficial to users of the test procedures, and would be more consistent with the foregoing proposal, if the Energy Factor descriptor now located in § 430.23, was instead referenced in § 430.23 and set forth in Appendices J and J1. Today's final rule promulgates these changes.

Section 430.23(j)(3) provides a general statement regarding other useful measures of energy consumption which are likely to assist consumers in making purchasing decisions. Currently, this section does not include any descriptors, or useful information to consumers. The Department believes that including references to the Water Consumption Factor, Remaining Moisture Content, and a calculation for annual water consumption will provide greater exposure of additional information to consumers, or users of the test procedure. These changes are nonsubstantive and provide information available in the existing test procedures.

These changes do not impose any additional requirements on manufacturers. Therefore, today's final rule includes the above references in § 430.23(j)(3).

E. Reporting Requirements, Revision to 10 CFR 430.62, ''Submission of Data''

In the March 1995 proposed rule, the Department proposed to require that, on the certification report for each basic model of a dishwasher, clothes dryer, or clothes washer the manufacturer would report the Energy Factor for the basic model. The Department did not receive any negative comments regarding this proposal. Therefore, today's final rule includes a requirement for Energy Factors to be included on manufacturers' certification reports for dishwashers, clothes dryers, and clothes washers, as proposed in the March 1995 proposed rule.

ACEEE commented, however, that the Department should require in addition the reporting of clothes washer capacity, total clothes washer water use, and RMC. ACEEE believes this data will support market incentive programs for high efficiency clothes washers. (ACEEE, No. 32 at 2). The Department already requires the reporting of clothes washer capacity in the certification report. 10 CFR 430.62(a)(2), ''Submission of Data.'' The Department believes it would not be appropriate to require manufacturers to report total water use and RMC. Today's Appendix J does not require the calculation of total water use or RMC. These criteria are provided in the test procedure for optional use by manufacturers or other testers. Imposing reporting requirements for such criteria would impose additional test burden on manufacturers. The Department does, however, support the wide dissemination of this information on a voluntary basis, as reflected in today's amendments to § 430.23(j)(3), discussed above. Therefore, today's final rule does not include reporting requirements for clothes washer total water use or RMC.

F. Effective Date

The effective date specified for today's amendments is (insert date 180 days after publication). Thus, as of that time, manufacturers must use Appendix J as amended in this rule whenever they are required to test clothes washers to determine if they comply with applicable energy conservation standards. Similarly, unless the Department receives and grants a petition for extension under section 323(c)(3) of EPCA, any representations concerning clothes washers, made after (insert date 180 days from publication) should be based on this amended test procedure.

The Department notes, in addition, that, until the amendments become effective in 180 days, they cannot be used to establish compliance with standards by clothes washers that cannot be tested under existing test procedures. Manufacturers of any products that cannot be adequately tested under the current test procedure must seek a waiver under 10 CFR 430.27 for the interim period.

As noted above and at the outset of the text of Appendix J1, Appendix J1 will not become mandatory until new energy conservation standards for clothes washers have been adopted. At that time, DOE will remove the current Appendix J. In the meantime, Appendix J1 will be used in the development of the new standards.

IV. Determination Concerning the Impact of the Amended Test Procedures on Standards

Section 323 of EPCA requires that the Department determine the extent to which an amended test procedure would alter the measured energy efficiency or measured energy use of clothes washers as compared with the existing test procedure. Such assessment is made for the purpose of assuring that revisions in test procedures do not in effect alter existing energy conservation standards by altering the compliance of existing products with those standards. Today's amendments to Appendix J would not affect measurement of the efficiency or energy use of any clothes washer, with the exception of a clothes washer with a lockout feature.

With respect to clothes washers with a lockout feature, the amendments being adopted fill a gap in the prior test procedures. Prior procedures lacked a suitable means for testing whether such clothes washers comply with applicable standards, and today's amendments provide such a means. It is the Department's understanding that very few clothes washers with a lockout feature are currently being manufactured. Moreover, the Department is not aware of any such machine that complies with applicable energy conservation standards under prior test procedures, and that would be rendered in non-compliance under Appendix J as amended today.

Appendix J1 also would not affect the measurement of compliance with existing standards. It is being promulgated for use in developing future amendments to the standards for clothes washers, and would go into effect only upon the effective date of any such future amendment.

V. Procedural Requirements

A. Environmental Review

The Department has concluded that this final rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from the National Environmental Policy Act of 1969 (NEPA) review because they would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations (10 CFR part 1021, Subpart D) implementing NEPA [42 U.S.C. 4321, 4331–35, 4341–47 (1976)]. Therefore, this rule does not require an Environmental Impact Statement or an Environmental Assessment pursuant to NEPA.

B. Regulatory Planning and Review

DOE has determined that this is not a ''significant regulatory action'' under Executive Order 12866, ''Regulatory Planning and Review,'' (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review by the Office of Information and Regulatory Affairs.

C. Federalism Review

Executive Order 12612 (52 FR 41685, October 30, 1987) requires that regulations or rules be reviewed for any 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. If there are sufficient substantial direct effects, the Executive Order requires the preparation of a Federalism assessment to be used in decisions by senior policy makers in promulgating or implementing the regulation.

The final rule published today would not alter the distribution of authority and responsibility to regulate in this area. The final rule would only revise a currently applicable DOE test procedure to improve existing testing methods, and to add provisions that DOE would use in future standard setting. Accordingly, DOE has determined that preparation of a federation assessment is unnecessary.

D. ''Takings'' Assessment Review

It has been determined pursuant to Executive Order 12630 (52 FR 8859, March 18, 1988) that this regulation would not result in any takings which might require compensation under the Fifth Amendment to the United States Constitution.

E. Paperwork Reduction Act Review

No new information or recordkeeping requirements are imposed by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

F. Unfunded Mandates Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act'') (signed into law on March 22, 1995) requires that the Department prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

The Department has determined that this action does not include a Federal mandate that may result in estimated costs of $100 million or more to state, local or to tribal governments in the aggregate or to the private sector. Therefore, the requirements of Sections 203 and 204 of the Unfunded Mandates Act do not apply to this action.

G. Review Under the Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act of 1980, 5 U.S.C. 603, requires the preparation of an initial regulatory flexibility analysis for every rule which by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. A regulatory flexibility analysis examines the impact of the rule on small entities and, if the impact is significant and widespread, the analysis considers alternate ways of reducing negative impacts.

In the March 1995 proposed rule and the May 1995 proposed rule, the Department certified that the proposed amendments, if adopted as final rules, would not have a significant economic impact on a substantial number of small entities. None of the comments on these proposed rules disagreed. In adopting final rules based on these proposals, the Department continues to adhere to this conclusion.

Certain provisions of Appendix J in today's final rules, and all of Appendix J1, arise out of the April 1996 supplemental proposed rule, and certain other provisions of Appendix J are based on the November 1996 reopening notice. The Department believes these provisions of the final rule also will not have a significant impact on either small or large manufacturers of clothes washers under the provisions of the Regulatory Flexibility Act. No comment indicated otherwise. These amendments to Appendix J incorporate: (1) Test procedures already in use by manufacturers pursuant to waivers that DOE previously granted to those manufacturers, (2) test provisions that expand or elaborate on amendments proposed in the March 1995 proposed rule, and (3) procedural refinements that do not affect test burden. These amendments to Appendix J will have virtually no impact on manufacturer costs. For Appendix J1, which may be used in the future, the Department is updating the test procedures to reflect current consumer usage habits. Appendix J1 will not have a significant economic impact, since the methods it incorporates are already in use by manufacturers, and will not cause manufacturers to purchase equipment, significantly increase testing time, or employ technical staff beyond what is required by existing DOE test procedures.

In addition, in some respects the test procedures in the final rule are less burdensome than the current procedures. For example:

- In Appendix J, the Department is relaxing specific equipment requirements which are irrelevant, and thus will provide greater flexibility in manufacturer equipment selection.
- In Appendix J1, manufacturers will not have to test warm wash temperature selections for clothes washers with uniformly distributed temperature selections.

In summary, DOE believes that the final rule does not have a ''significant economic impact on a substantial number of small entities,'' and that the preparation of a regulatory flexibility analysis was and is not warranted.

H. Review Under Executive Order 12988, ''Civil Justice Reform''

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3© of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the final regulations meet the relevant standards of Executive Order 12988.

I. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of the rule prior to its effective date. 5 U.S.C. 801. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(3).

List of Subjects in 10 CFR Part 430

Administrative practice and procedure, Energy conservation, Household appliances.

Issued in Washington, D.C., on August 20, 1997.

Brian T. Castelli,

Chief of Staff, Energy Efficiency and Renewable Energy.

For the reasons set forth in the preamble, Part 430 of Chapter II of Title 10, of the Code of Federal Regulations is amended as set forth below:

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

1. The authority citation for Part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309.

2. Section 430.23 of Subpart B is amended by revising paragraph (j) to read as follows:

§ 430.23 Test procedures for measures of energy consumption.

* * * * *

(j) *Clothes washers.* (1) The estimated annual operating cost for automatic and semi-automatic clothes washers shall be—

(i) When electrically heated water is used, the product of the following three factors:

(A) The representative average-use of 392 cycles per year,

(B) The total per-cycle energy consumption in kilowatt-hours per cycle determined according to 4.1.6 of appendix J before appendix J1 becomes mandatory and 4.1.7 of appendix J1 when appendix J1 becomes mandatory, (see the note at the beginning of appendix J1), and

(C) The representative average unit cost in dollars per kilowatt-hour as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year, and

(ii) When gas-heated or oil-heated water is used, the product of: the representative average-use of 392 cycles per year and the sum of both:

(A) The product of the per-cycle machine electrical energy consumption in kilowatt-hours per cycle, determined according to 4.1.5 of appendix J before the date that appendix J1 to the subpart becomes mandatory or 4.1.6 of appendix J1 upon the date that appendix J1 to this subpart becomes mandatory, and the representative average unit cost in dollars per kilowatt-hours as provided by the Secretary, and

(B) The product of the per-cycle water energy consumption for gas-heated or oil-heated water in BTU per cycle, determined according to 4.1.4 of appendix J before the date that appendix J1 becomes mandatory or 4.1.4 of appendix J1 upon the date that appendix J1 to this subpart becomes mandatory, and the representative average unit cost in dollars per Btu for oil or gas, as appropriate, as provided by the Secretary, the resulting product then being rounded off to the nearest dollar per year.

(2)(i) The energy factor for automatic and semi-automatic clothes washers is determined in accordance with 4.5 of appendix J before the date that appendix J1 becomes mandatory or 4.5 of appendix J1 upon the date that appendix J1 to this subpart becomes mandatory. The result shall be rounded off to the nearest 0.01 cubic foot per kilowatt-hours.

(ii) The modified energy factor for automatic and semi-automatic clothes washers is determined in accordance with 4.4 of appendix J before the date that appendix J1 becomes mandatory or 4.4 of appendix J1 upon the date that appendix J1 to this subpart becomes mandatory. The result shall be rounded off to the nearest 0.01 cubic foot per kilowatt-hours.

(3) Other useful measures of energy consumption for automatic or semi-automatic clothes washers shall be those measures of energy consumption which the Secretary determines are likely to assist consumers in making purchasing decisions and which are derived from the application of appendix J before the date that appendix J1 becomes mandatory or appendix J1 upon the date that appendix J1 to this subpart becomes mandatory. In addition, the annual water consumption of a clothes washer can be determined by the product of:

(A) The representative average-use of 392 cycles per year, and

(B) The total weighted per-cycle water consumption in gallons per cycle determined according to 4.3.2 of appendix J before the date that appendix J1 becomes mandatory or 4.2.2 of appendix J1 upon the date that appendix J1 to this subpart becomes mandatory. The water consumption factor can be determined in accordance with 4.3.3 of appendix J before the date that appendix J1 becomes mandatory or 4.2.3 of appendix J1 upon the date that appendix J1 to this subpart becomes mandatory. The remaining moisture content can be determined in accordance with 3.3 of appendix J before the date that appendix J1 becomes mandatory or 3.8 of appendix J1 upon the date that appendix J1 to this subpart becomes mandatory.

3. Appendix J to Subpart B of Part 430 is revised to read as follows:

Appendix J to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

The procedures and calculations in sections 3.3, 4.3, and 4.4 of this Appendix need not be performed to determine compliance with the energy conservation standards for clothes washers.

1. DEFINITIONS

1.1 *Adaptive control system* means a clothes washer control system, other than an adaptive water fill control system, which is capable of automatically adjusting washer operation or washing conditions based on characteristics of the clothes load placed in the clothes container, without allowing or requiring consumer intervention or actions. The automatic adjustments may, for example, include automatic selection, modification, or control of any of the following: wash water temperature, agitation or tumble cycle time, number of rinse cycles, and spin speed. The characteristics of the clothes load, which could trigger such adjustments, could, for example, consist of or be indicated by the presence of either soil, soap, suds, or any other additive laundering substitute or complementary product.

Note: Appendix J does not provide a means for determining the energy consumption of a clothes washer with an adaptive control system. Therefore, pursuant to 10 CFR 430.27, a waiver must be obtained to establish an acceptable test procedure for each such clothes washer.

1.2 *Adaptive water fill control system* means a clothes washer water fill control system which is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container, without allowing or requiring consumer intervention and/or actions.

1.3 *Bone-dry* means a condition of a load of test cloth which has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10-minute periods until the final weight change of the load is 1 percent or less.

1.4 *Clothes container* means the compartment within the clothes washer that holds the clothes during operation of the machine.

1.5 *Compact* means a clothes washer which has a clothes container capacity of less than 1.6 ft^3 (45 L).

1.6 *Deep rinse cycle* means a rinse cycle in which the clothes container is filled with water to a selected level and the clothes load is rinsed by agitating it or tumbling it through the water.

1.7 *Front-loader clothes washer* means a clothes washer which sequentially rotates or tumbles portions of the clothes load above the water level allowing the clothes load to fall freely back into the water. The principal axis of the clothes container is in a horizontal plane and the access to the clothes container is through the front of the machine.

1.8 *Lockout* means that at least one wash/rinse water temperature combination is not available in the normal cycle that is available in another cycle on the machine.

1.9 *Make-up water* means the amount of fresh water needed to supplement the amount of stored water pumped from the external laundry tub back into the clothes washer when the suds-return feature is activated in order to achieve the required water fill level in the clothes washer.

1.10 *Modified energy factor* means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of the machine electrical energy consumption, the hot water energy consumption, and the energy required for removal of the remaining moisture in the wash load.

1.11 *Most energy intensive cycle* means the non-normal cycle that uses the most energy for a given wash/rinse temperature combination.

1.12 *Non-normal cycle* means a cycle other than the normal cycle, but does not include any manually selected pre-wash, pre-soak, and extra-rinse option.

1.13 *Nonwater-heating clothes washer* means a clothes washer which does not have an internal water heating device to generate hot water.

1.14 *Normal cycle* means the cycle recommended by the manufacturer for washing cotton and/or linen clothes.

1.15 *Sensor filled* means a water fill control which automatically terminates the fill when the water reaches an appropriate level in the tub.

1.16 *Spray rinse cycle* means a rinse cycle in which water is sprayed onto the clothes load for a definite period of time without maintaining any specific water level in the clothes container.

1.17 *Standard* means a clothes washer which has a clothes container capacity of 1.6 ft^3 (45 L) or greater.

1.18 *Suds-return* means a feature or option on a clothes washer which causes the stored wash water obtained by utilizing the suds-saver feature to be pumped from the external laundry tub back into the clothes washer.

1.19 *Suds-saver* means a feature or option on a clothes washer which allows the user to store used wash water in an external laundry tub for use with subsequent wash loads.

1.20 *Temperature use factor* means the percentage of the total number of washes a user would wash with a particular wash/rinse temperature setting.

1.21 *Thermostatically controlled water valves* means clothes washer controls that have the ability to sense and adjust the hot and cold supply water.

1.22 *Time filled* means a water fill control which uses a combination of water flow controls in conjunction with time to terminate the water fill cycle.

1.23 *Top-loader-horizontal-axis clothes washer* means a clothes washer which: rotates or tumbles portions of the clothes load above the water level allowing the clothes load to fall freely back into the water with the principal axis in a horizontal plane and has access to the clothes container through the top of the clothes washer.

1.24 *Top-loader-vertical-axis clothes washer* means a clothes washer that: flexes and oscillates the submerged clothes load through the water by means of mechanical agitation or other movement; has a clothes container with the principal axis in a vertical plane; and has access to the clothes container through the top of the clothes washer.

1.25 *Water consumption factor* means the quotient of the total weighted per-cycle water consumption divided by the capacity of the clothes washer.

1.26 *Water-heating clothes washer* means a clothes washer where some or all of the hot water for clothes washing is generated by a water heating device internal to the clothes washer.

2. TESTING CONDITIONS

2.1 *Installation.* Install the clothes washer in accordance with manufacturer's instructions.

2.2 *Electrical energy supply.* Maintain the electrical supply at the clothes washer terminal block within 2 percent of 120, 120/240 or 120/208Y volts as applicable to the particular terminal block wiring system as specified by the manufacturer. If the clothes washer has a dual voltage conversion capability, conduct the test at the highest voltage specified by the manufacturer.

2.3 *Supply water.* For nonwater-heating clothes washers not equipped with thermostatically controlled water valves, the temperature of the hot and cold water supply shall be maintained at 100°F±10°F (37.8°C±5.5°C). For nonwater-heating clothes washers equipped with thermostatically controlled water valves, the temperature of the hot water supply shall be maintained at 140°F±5°F (60.0°C±2.8°C) and the cold water supply shall be maintained at 60°F±5°F (15.6°C±2.8°C). For water-heating clothes washers, the temperature of the hot water supply shall be maintained at 140°F±5°F (60.0°C±2.8°C) and the cold water supply shall not exceed 60°F (15.6°C). Water meters shall be installed in both the hot and cold water lines to measure water consumption.

2.4 *Water pressure.* The static water pressure at the hot and cold water inlet connections of the machine shall be maintained during the test at 35 pounds per square inch gauge (psig)±2.5 psig (241.3 kPa±17.2 kPa). The static water pressure for a single water inlet connection shall be maintained during the test at 35 psig±2.5 psig (241.3 kPa±17.2 kPa). Water pressure gauges shall be installed in both the hot and cold water lines to measure water pressure.

2.5 *Instrumentation.* Perform all test measurements using the following instruments, as appropriate:

2.5.1 *Weighing scales.*

2.5.1.1 *Weighing scale for test cloth.* The scale shall have a resolution no larger than 0.2 oz (5.7 g) and a maximum error no greater than 0.3 percent of the measured value.

2.5.1.2 *Weighing scale for clothes container capacity measurements.* The scale should have a resolution no larger than 0.50 lbs (0.23 kg) and a maximum error no greater than 0.5 percent of the measured value.

2.5.2 *Watt-hour meter.* The watt-hour meter shall have a resolution no larger than 1 Wh (3.6 kJ) and a maximum error no greater than 2 percent of the measured value for any demand greater than 50 Wh (180.0 kJ).

2.5.3 *Temperature measuring device.* The device shall have an error no greater than ±1°F (±0.6°C) over the range being measured.

2.5.4 *Water meter.* The water meter shall have a resolution no larger than 0.1 gallons (0.4 liters) and a maximum error no greater than 2 percent for all water flow rates from 1 gal/min (3.8 L/min) to 5 gal/min (18.9 L/min).

2.5.5 *Water pressure gauge.* The water pressure gauge shall have a resolution no larger than 1 psig (6.9 kPa) and shall have an error no greater than 5 percent of any measured value over the range of 32.5 psig (224.1 kPa) to 37.5 psig (258.6 kPa).

2.6 *Test cloths.*

2.6.1 *Energy test cloth.* The energy test cloth shall be clean and consist of the following:

2.6.1.1 Pure finished bleached cloth, made with a momie or granite weave, which is 50 percent cotton and 50 percent polyester and weighs 5.75 oz/yd^2 (195.0 g/m^2) and has 65 ends on the warp and 57 picks on the fill.

2.6.1.2 Cloth material that is 24 in by 36 in (61.0 cm by 91.4 cm) and has been hemmed to 22 in by 34 in (55.9 cm by 86.4 cm) before washing. The maximum shrinkage after five washes shall not be more than four percent on the length and width.

2.6.1.3 The number of test runs on the same energy test cloth shall not exceed 25 runs.

2.6.2 *Energy stuffer cloths.* The energy stuffer cloths shall be made from energy test cloth material and shall consist of pieces of material that are 12 in by 12 in (30.5 cm by 30.5 cm) and have been hemmed to 10 in by 10 in (25.4 cm by 25.4 cm) before washing. The maximum shrinkage after five washes shall not be more than four percent on the length and width. The number of test runs on the same energy stuffer cloth shall not exceed 25 runs.

2.7 *Composition of test loads.*

2.7.1 *Seven pound test load.* The seven pound test load shall consist of bone-dry energy test cloths which weigh 7 lbs ±0.07 lbs (3.18 kg ±0.03 kg). Adjustments to the test load to achieve the proper weight can be made by the use of energy stuffer cloths.

2.7.2 *Three pound test load.* The three pound test load shall consist of bone-dry energy test cloths which weigh 3 lbs ±0.03 lbs (1.36 kg ±0.014 kg). Adjustments to the test load to achieve the proper weight can be made by the use of energy stuffer cloths.

2.8 *Use of test loads.*

2.8.1 For a standard size clothes washer, a seven pound load, as described in section 2.7.1, shall be used to test the maximum water fill and a three pound test load, as described in section 2.7.2, shall be used to test the minimum water fill.

2.8.2 For a compact size clothes washer, a three pound test load as described in section 2.7.2 shall be used to test the maximum and minimum water fill levels.

2.8.3 A vertical-axis clothes washer without adaptive water fill control system also shall be tested without a test load for purposes of calculating the energy factor.

2.8.4 The test load sizes to be used to measure remaining moisture content (RMC) are specified in section 3.3.2.

2.8.5 Load the energy test cloths by grasping them in the center, shaking them to hang loosely and then dropping them into the clothes container prior to activating the clothes washer.

2.9 *Preconditioning.* If the clothes washer has not been filled with water in the preceding 96 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.10 *Wash time setting.* The actual wash time (period of agitation) shall be not less than 9.75 minutes.

2.11 *Agitation and spin speed settings.* Where controls are provided for agitation and spin speed selections, set them as follows:

2.11.1 For energy and water consumption tests, set at the normal cycle settings. If settings at the normal cycle are not offered, set the control settings to the maximum levels permitted on the clothes washer.

2.11.2 For remaining moisture content tests, see section 3.3.

3. TEST MEASUREMENTS

3.1 *Clothes container capacity.* Measure the entire volume which a dry clothes load could occupy within the clothes container during washer operation according to sections 3.1.1 through 3.1.5.

3.1.1 Place the clothes washer in such a position that the uppermost edge of the clothes container opening is leveled horizontally, so that the container will hold the maximum amount of water.

3.1.2 Line the inside of the clothes container with 2 mil (0.051 mm) plastic sheet. All clothes washer components which

occupy space within the clothes container and which are recommended for use with the energy test cycle shall be in place and shall be lined with 2 mil (0.051 mm) plastic sheet to prevent water from entering any void space.

3.1.3 Record the total weight of the machine before adding water.

3.1.4 Fill the clothes container manually with either 60°F ±5°F (15.6°C ±2.8°C) or 100°F ±10°F (37.8°C ±5.5°C) water to its uppermost edge. Measure and record the weight of water, W, in pounds.

3.1.5 The clothes container capacity is calculated as follows:

$C=W/d$.

where:

C=Capacity in cubic feet (or liters).

W=Mass of water in pounds (or kilograms).

d=Density of water (62.0 lbs/ft^3 for 100°F (993 kg/m^3 for 37.8°C) or 62.3 lbs/ft^3 for 60°F (998 kg/m^3 for 15.6°C)).

3.2 *Test cycle.* Establish the test conditions set forth in section 2 of this Appendix.

3.2.1 A clothes washer that has infinite temperature selections shall be tested at the following temperature settings: hottest setting available on the machine, hot (a minimum of 140°F (60.0°C) and a maximum of 145°F (62.8°C)), warm (a minimum of 100°F (37.8°C) and a maximum of 105°F (40.6°C)), and coldest setting available on the machine. These temperatures must be confirmed by measurement using a temperature measuring device. If the measured final water temperature is not within the specified range, stop testing, adjust the temperature selector accordingly, and repeat the procedure.

3.2.2 *Clothes washers with adaptive water fill control system and/or unique temperature selections.*

3.2.2.1 *Clothes washers with adaptive water fill control system.* When testing a clothes washer that has adaptive water fill control, the maximum and the minimum test loads as specified in 2.8.1 and 2.8.2 shall be used. The amount of water fill shall be determined by the control system. If the clothes washer provides consumer selection of variable water fill amounts for the adaptive water fill control system, two complete sets of tests shall be conducted. The first set of tests shall be conducted with the adaptive water fill control system set in the setting that will use the greatest amount of energy. The second set of tests shall be conducted with the adaptive water fill control system set in the setting that will use the smallest amount of energy. Then, the results from these two tests shall be averaged to determine the adaptive water fill energy consumption value. If a clothes washer with an adaptive water fill control system allows consumer selection of manual controls as an alternative, both the manual and adaptive modes shall be tested and the energy consumption values, E_T, M_E, and D_E (if desired), calculated in section 4 for each mode, shall be averaged between the manual and adaptive modes.

3.2.2.2 *Clothes washers with multiple warm wash temperature combination selections.*

3.2.2.2.1 If a clothes washer's temperature combination selections are such that the temperature of each warm wash setting that is above the mean warm wash temperature (the mean temperature of the coldest and warmest warm settings) is matched by a warm wash setting that is an equal distance below the mean, then the energy test shall be conducted at the mean warm wash temperature if such a selection is provided, or if there is no position on the control that permits selection of the mean temperature, the energy test shall be conducted with the temperature selection set at the next hotter temperature setting that is available above the mean.

3.2.2.2.2 If the multiple warm wash temperature combination selections do not meet criteria in section 3.2.2.2.1, the energy test shall be conducted with the temperature selection set at the warm wash temperature setting that gives the next higher water temperature than the mean temperature of the coldest and warmest warm settings.

3.2.2.3 *Clothes washers with multiple temperature settings within a temperature combination selection.* When a clothes washer is provided with a secondary control that can modify the wash or rinse temperature within a temperature combination selection, the secondary control shall be set to provide the hottest wash temperature available and the hottest rinse temperature available. For instance, when the temperature combination selection is set for the middle warm wash temperature and a secondary control exists which allows this temperature to be increased or decreased, the secondary control shall be set to provide the hottest warm wash temperature available for the middle warm wash setting.

3.2.3 *Clothes washers that do not lockout any wash/rinse temperature combinations in the normal cycle.* Test in the normal cycle all temperature combination selections that are required to be tested.

3.2.3.1 *Hot water consumption, cold water consumption, and electrical energy consumption at maximum fill.* Set the water level selector at maximum fill available on the clothes washer, if manually controlled, and insert the appropriate test load, if applicable. Activate the normal cycle of the clothes washer and also any suds-saver switch.

3.2.3.1.1 For automatic clothes washers, set the wash/rinse temperature selector to the hottest temperature combination setting. For semi-automatic clothes washers, open the hot water faucet valve completely and close the cold water faucet valve completely to achieve the hottest temperature combination setting.

3.2.3.1.2 Measure the electrical energy consumption of the clothes washer for the complete cycle.

3.2.3.1.3 Measure the respective number of gallons (or liters) of hot and cold water used to fill the tub for the wash cycle.

3.2.3.1.4 Measure the respective number of gallons (or liters) of hot and cold water used for all deep rinse cycles.

3.2.3.1.5 Measure the respective gallons (or liters) of hot and cold water used for all spray rinse cycles.

3.2.3.1.6 For non-water-heating automatic clothes washers repeat sections 3.2.3.1.3 through 3.2.3.1.5 for each of the other wash/rinse temperature selections available that uses heated water and is required to be tested. For water-heating clothes washers, repeat sections 3.2.3.1.2 through 3.2.3.1.5 for each of the other wash/rinse temperature selections available that uses heated water and is required to be tested. (When calculating water consumption under section 4.3 for any machine covered by the previous two sentences, also test the cold wash/cold rinse selection.) For semi-automatic clothes washers, repeat sections 3.2.3.1.3 through 3.2.3.1.5 for the other wash/rinse temperature settings in section 6 with the following water faucet valve adjustments:

	Faucet position	
	Hot valve	Cold valve
Hot	Completely open	Closed.
Warm	Completely open	Completely open.
Cold	Closed	Completely open.

3.2.3.1.7 If the clothes washer is equipped with a suds-saver cycle, repeat sections 3.2.3.1.2 to 3.2.3.1.5 with suds-saver switch set to suds return for the Warm/Cold temperature setting.

3.2.3.2 *Hot water consumption, cold water consumption, and electrical energy consumption with the water level selector at minimum fill.* Set the water level selector at minimum fill, if manually controlled, and insert the appropriate test load, if applicable. Activate the normal cycle of the clothes washer and also any suds-saver switch. Repeat sections 3.2.3.1.1 through 3.2.3.1.7.

3.2.3.3 *Hot and cold water consumption for clothes washers that incorporate a partial fill during the rinse cycle.* For clothes washers that incorporate a partial fill during the rinse cycle, activate any suds-saver switch and operate the clothes washer for the complete normal cycle at both the maximum water fill level and the minimum water fill level for each of the wash/rinse temperature selections available. Measure the respective hot and cold water consumed during the complete normal cycle.

3.2.4 *Clothes washers that lockout any wash/rinse temperature combinations in the normal cycle.* In addition to the normal cycle tests in section 3.2.3, perform the following

tests on non-normal cycles for each wash/rinse temperature combination selection that is locked out in the normal cycle.

3.2.4.1 Set the cycle selector to a non-normal cycle which has the wash/rinse temperature combination selection that is locked out. Set the water level selector at maximum fill and insert the appropriate test load, if applicable. Activate the cycle of the clothes washer and also any suds-saver switch. Set the wash/rinse temperature selector to the temperature combination setting that is locked out in the normal cycle and repeat sections 3.2.3.1.2 through 3.2.3.1.5.

3.2.4.2 Repeat section 3.2.4.1 under the same temperature combination setting for all other untested non-normal cycles on the machine that have the wash/rinse temperature combination selection that is locked out.

3.2.4.3 Total the measured hot water consumption of the wash, deep rinse, and spray rinse of each non-normal cycle tested in sections 3.2.4.1 through 3.2.4.2 and compare the total for each cycle. The cycle that has the highest hot water consumption shall be the most energy intensive cycle for that particular wash/rinse temperature combination setting.

3.2.4.4 Set the water level selector at minimum fill and insert the appropriate test load, if applicable. Activate the most energy intensive cycle, as determined in section 3.2.4.3, of the clothes washer and also any suds-saver switch. Repeat tests as described in section 3.2.4.1.

3.3 *Remaining Moisture Content (RMC).*

3.3.1 The wash temperature shall be the same as the rinse temperature for all testing.

3.3.2 Determine the test load as shown in the following table:

Container volume		Test load	
cu. ft. ≥ <	liter ≥ <	lb	kg
0–0.80	0–22.7	3.00	1.36
0.80–0.90	22.7–25.5	3.50	1.59
0.90–1.00	25.5–28.3	3.90	1.77
1.00–1.10	28.3–31.1	4.30	1.95
1.10–1.20	31.1–34.0	4.70	2.13
1.20–1.30	34.0–36.8	5.10	2.31
1.30–1.40	36.8–39.6	5.50	2.49
1.40–1.50	39.6–42.5	5.90	2.68
1.50–1.60	42.5–45.3	6.40	2.90
1.60–1.70	45.3–48.1	6.80	3.08
1.70–1.80	48.1–51.0	7.20	3.27
1.80–1.90	51.0–53.8	7.60	3.45
1.90–2.00	53.8–56.6	8.00	3.63
2.00–2.10	56.6–59.5	8.40	3.81
2.10–2.20	59.5–62.3	8.80	3.99
2.20–2.30	62.3–65.1	9.20	4.17
2.30–2.40	65.1–68.0	9.60	4.35
2.40–2.50	68.0–70.8	10.00	4.54
2.50–2.60	70.8–73.6	10.50	4.76
2.60–2.70	73.6–76.5	10.90	4.94
2.70–2.80	76.5–79.3	11.30	5.13
2.80–2.90	79.3–82.1	11.70	5.31
2.90–3.00	82.1–85.0	12.10	5.49
3.00–3.10	85.0–87.8	12.50	5.67
3.10–3.20	87.8–90.6	12.90	5.85
3.20–3.30	90.6–93.4	13.30	6.03
3.30–3.40	93.4–96.3	13.70	6.21
3.40–3.50	96.3–99.1	14.10	6.40
3.50–3.60	99.1–101.9	14.60	6.62
3.60–3.70	101.9–104.8	15.00	6.80
3.70–3.80	104.8–107.6	15.40	6.99

Notes:
(1) All test load weights are bone dry weights.
(2) Allowable tolerance on the test load weights are +/−0.10 lbs (0.05 kg).

3.3.3 For clothes washers with cold rinse only.

3.3.3.1 Record the actual bone dry weight of the test load (WI), then place the test load in the clothes washer.

3.3.3.2 Set water level selector to maximum fill.

3.3.3.3 Run the normal cycle.

3.3.3.4 Record the weight of the test load immediately after completion of the normal cycle (WC).

3.3.3.5 Calculate the remaining moisture content of the test load, RMC, expressed as a percentage and defined as:

$$RMC=[(WC-WI)/WI]\times 100\%$$

3.3.4 For clothes washers with cold and warm rinse options.

3.3.4.1 Complete steps 3.3.3.1 through 3.3.3.4 for the cold rinse. Calculate the remaining moisture content of the test load for cold rinse, RMC_{COLD}, expressed as a percentage and defined as:

$$RMC_{COLD}=[(WC-WI)/WI]\times 100\%$$

3.3.4.2 Complete steps 3.3.3.1 through 3.3.3.4 for the warm rinse. Calculate the remaining moisture content of the test load for warm rinse, RMC_{WARM}, expressed as a percentage and defined as:

$$RMC_{WARM}=[(WC-WI)/WI]\times 100\%$$

3.3.4.3 Calculate the remaining moisture content of the test load, RMC, expressed as a percentage and defined as:

$$RMC=0.73\times RMC_{COLD}+0.27\times RMC_{WARM}$$

3.3.5 Clothes washers which have options that result in different RMC values, such as multiple selection of spin speeds or spin times that are available in the normal cycle, shall be tested at the maximum and minimum settings of the available options, excluding any ''no spin'' (zero spin speed) settings, in accordance with requirements in 3.3.3 or 3.3.4. The calculated $RMC_{max\ extraction}$ and $RMC_{min\ extraction}$ at the maximum and minimum settings, respectively, shall be combined as follows and the final RMC to be used in section 4.2 shall be:

$$RMC=0.75\times RMC_{max\ extraction}+0.25\times RMC_{min\ extraction}$$

3.4 *Data recording.* Record for each test cycle in sections 3.2.1 through 3.3.5.

3.4.1 For non-water-heating clothes washers, record the kilowatt-hours of electrical energy, M_E, consumed during the test to operate the clothes washer in section

3.2.3.1.2. For water-heating clothes washers record the kilowatt-hours of electrical energy, Eh_i consumed at maximum fill in sections 3.2.3.1.2 and 3.2.3.1.6, and Eh_j consumed at minimum fill in section 3.2.3.2.

3.4.2 Record the individual gallons (or liters) of hot and cold water consumption, Vh_i and Vc_i, measured at maximum fill level for each wash/rinse temperature combination setting tested in section 3.2.3, or in both 3.2.3 and 3.2.4, excluding any fresh make-up water required to complete the fill during a suds-return cycle.

3.4.3 Record the individual gallons (or liters) of hot and cold water consumption, Vh_j and Vc_j, measured at minimum fill level for each wash/rinse temperature combination setting tested in section 3.2.3, or in both 3.2.3 and 3.2.4, excluding any fresh make-up water required to complete the fill during a suds-return cycle.

3.4.4 Record the individual gallons (or liters) of hot and cold water, Sh_H and Sc_H, measured at maximum fill for the suds-return cycle.

3.4.5 Record the individual gallons (or liters) of hot and cold water, Sh_L and Sc_L, measured at minimum fill for the suds-return cycle.

3.4.6 Data recording requirements for RMC tests are listed in sections 3.3.3 through 3.3.5.

4. CALCULATION OF DERIVED RESULTS FROM TEST MEASUREMENTS

4.1 *Energy consumption.*

4.1.1 *Per-cycle temperature-weighted hot water consumption for maximum and minimum water fill levels.* Calculate for the cycle under test the per-cycle temperature weighted hot water consumption for the maximum water fill level, Vh_{max}, and for the minimum water fill level, Vh_{min}, expressed in gallons per cycle (or liters per cycle) and defined as:

$$Vh_{max} = X_1 \sum_{i=1}^{n} \left[\left(Vh_i \times L \right) \times TUF_i \right] + X_2 \left[TUF_W \times Sh_H \right]$$

$$Vh_{min} = X_1 \sum_{j=1}^{n} \left[\left(Vh_j \times L \right) \times TUF_j \right] + X_2 \left[TUF_W \times Sh_L \right]$$

where:

Vh_i=reported hot water consumption in gallons per cycle (or liters per cycle) at maximum fill for each wash/rinse temperature combination setting, as provided in section 3.4.2. If a clothes washer is equipped with two or more different wash/rinse temperature selections that have the same basic temperature combination selection label (for example, one of them has its water temperature controlled by thermostatically controlled valves and the other one does not), then the largest Vh_i shall be used for this calculation. If a clothes washer has lockout(s), there will be ''Vh_i's'' for wash/rinse temperature combination settings available in the normal cycle and ''Vh_i's'' for wash/rinse temperature combination settings in the most energy intensive cycle.

Vh_j=reported hot water consumption in gallons per cycle (or liters per cycle) at minimum fill for each wash/rinse temperature combination setting, as provided in section 3.4.3. If a clothes washer is equipped with two or more different wash/rinse temperature selections that have the same basic temperature combination selection label (for example, one of them has its water temperature controlled by thermostatically controlled valves and the other one does not), then the largest Vh_j shall be used for the calculation. If a clothes washer has lockouts, there will be ''Vh_j's'' for wash/rinse temperature combination settings available in the normal cycle and ''Vh_j's'' for wash/rinse temperature combination settings in the most energy intensive cycle.

L=lockout factor to be applied to the reported hot water consumption. For wash/rinse temperature combination settings that are not locked out in the normal cycle, L=1. For each wash/rinse temperature combination setting that is locked out in the normal cycle, L=0.32 in the normal cycle and L=0.68, in the most energy intensive cycle.

TUF_i=applicable temperature use factor in section 5 or 6.

TUF_j=applicable temperature use factor in section 5 or 6.

n=number of wash/rinse temperature combination settings available to the user for the clothes washer under test. For clothes washers that lockout temperature selections in the normal cycle, n=the number of wash/rinse temperature combination settings on the washers plus the number of wash/rinse temperature combination settings that lockout the temperature selections in the normal cycle.

TUF_w=temperature use factor for warm wash setting.

For clothes washers equipped with the suds-saver feature:

X_1=frequency of use without the suds-saver feature=0.86.

X_2=frequency of use with the suds-saver feature=0.14.

Sh_H=fresh make-up water measured during suds-return cycle at maximum water fill level.

Sh_L=fresh hot make-up water measured during suds-return cycle at minimum water fill level.

For clothes washers not equipped with the suds-saver feature:

X_1=1.0

X_2=0.0

4.1.2 *Total per-cycle hot water energy consumption for maximum and minimum water fill levels.* Calculate the total per-cycle hot water energy consumption for the maximum water fill level, E_{max} and for the minimum water fill level, E_{min}, expressed in kilowatt-hours per cycle and defined as:

$E_{max}=[Vh_{max} \times T \times K \times MF]$

$E_{min}=[Vh_{min} \times T \times K \times MF]$

where:

T=temperature rise=90°F (50°C).

K=water specific heat=0.00240 kWh/(gal–°F) [0.00114kWh/(L–°C)].

Vh_{max}=as defined in section 4.1.1.

Vh_{min}=as defined in section 4.1.1.

MF=multiplying factor to account for absence of test load=0.94 for top-loader vertical axis clothes washers that are sensor filled, 1.0 for all other clothes washers.

4.1.3 *Total weighted per-cycle hot water energy consumption expressed in kilowatt-hours.* Calculate the total weighted per cycle hot water energy consumption, E_T, expressed in kilowatt-hours per cycle and defined as:

$E_T=[E_{max} \times F_{max}]+[E_{min} \times F_{min}]$

where:

F_{max}=usage fill factor=0.72.

F_{min}=usage fill factor=0.28.

E_{max}=as defined in section 4.1.2.

E_{min}=as defined in section 4.1.2.

4.1.4 *Per-cycle water energy consumption using gas-heated or oil-heated water.* Calculate for the normal cycle the per-cycle energy consumption, E_{TG}, using gas-heated or oil-heated water, expressed in Btu per cycle (or megajoules per cycle) and defined as:

$$E_{TG} = E_T \times \frac{1}{e} \times \left[\frac{3412\ \text{Btu}}{\text{kWh}} \right] \text{ or } E_{TG} = E_T \times \frac{1}{e} \times \left[\frac{3.6\ \text{MJ}}{\text{kWh}} \right]$$

where:
e=nominal gas or oil water heater efficiency=0.75.
E_T=as defined in section 4.1.3.

4.1.5 *Per-cycle machine electrical energy consumption.*

4.1.5.1 *Non-water-heating clothes washers.* The electrical energy value recorded for the maximum fill in section 3.4.1 is the per-cycle machine electrical energy consumption, M_E, expressed in kilowatt-hours per cycle.

4.1.5.2 *Water-heating clothes washers.*

4.1.5.2.1 Calculate for the cycle under test the per-cycle temperature weighted electrical energy consumption for the maximum water fill level, Eh_{max}, and for the minimum water fill level, Eh_{min}, expressed in kilowatt-hours per cycle and defined as:

$$Eh_{max} = \sum_{i=1}^{n}\left[Eh_i \times TUF_i\right]$$

where:
Eh_i=reported electrical energy consumption in kilowatt-hours per cycle at maximum fill for each wash/cycle temperature combination setting, as provided in section 3.4.1.
TUF_i=applicable temperature use factor in section 5 or 6.
n=number of wash/rinse temperature combination settings available to the user for the clothes washer under test.

and

$$Eh_{min} = \sum_{j=1}^{n}\left[Eh_j \times TUF_j\right]$$

where:
Eh_j=reported electrical energy consumption in kilowatt-hours per cycle at minimum fill for each wash/rinse temperature combination setting, as provided in section 3.4.1.
TUF_j=applicable temperature use factor in section 5 or 6.
n=as defined above in this section.

4.1.5.2.2 *Weighted per-cycle machine electrical energy consumption.* Calculate the weighted per cycle machine energy consumption, M_E, expressed in kilowatt-hours per cycle and defined as:

$M_E=[Eh_{max}\times F_{max}]+[Eh_{min}\times F_{min}]$

where:
F_{max}=as defined in section 4.1.3.
F_{min}=as defined in section 4.1.3.
Eh_{max}=as defined in section 4.1.5.2.1.
Eh_{min}=as defined in section 4.1.5.2.1

4.1.6 *Total per-cycle energy consumption when electrically heated water is used.* Calculate for the normal cycle the total per-cycle energy consumption, E_{TE}, using electrically heated water, expressed in kilowatt-hours per cycle and defined as:

$E_{TE}=E_T+M_E$

where:
E_T=as defined in section 4.1.3.
M_E=as defined in section 4.1.5.1 or 4.1.5.2.2.

4.2 *Per-cycle energy consumption for removal of RMC.* Calculate the amount of energy per cycle required to remove RMC. Such amount is D_E, expressed in kilowatt-hours per cycle and defined as:

D_E=(LAF)×(test load weight)×(RMC − 4%)×(DEF)×(DUF)

where:
LAF=load adjustment factor=0.52.
Test load weight=as shown in test load table in 3.3.2 expressed in lbs/cycle.
RMC=as defined in 3.3.3.5, 3.3.4.3, or 3.3.5.
DEF=nominal energy required for a clothes dryer to remove moisture from clothes=0.5 kWh/lb (1.1 kWh/kg).
DUF=dryer usage factor, percentage of washer loads dried in a clothes dryer=0.84.

4.3 *Water consumption.*

4.3.1 *Per-cycle temperature-weighted water consumption for maximum and minimum water fill levels.* To determine these amounts, calculate for the cycle under test the per-cycle temperature-weighted total water consumption for the maximum water fill level, Q_{max}, and for the minimum water fill level, Q_{min}, expressed in gallons per cycle (or liters per cycle) and defined as:

$$Q_{max} = X_1\sum_{i=1}^{n}\left[\left(Vh_i + Vc_i\right)\times TUF_i\right] + X_2\left[TUF_w \times \left(Sh_H + Sc_H\right)\right]$$

where:
Vh_i=hot water consumption in gallons per-cycle at maximum fill for each wash/rinse temperature combination setting, as provided in section 3.4.2.
Vc_i=total cold water consumption in gallons per-cycle at maximum fill for each wash/rinse temperature combination setting, cold wash/cold rinse cycle, as provided in section 3.4.2.
TUF_i=applicable temperature use factor in section 5 or 6.
n=number of wash/rinse temperature combination settings available to the user for the clothes washer under test.
TUF_w=temperature use factor for warm wash setting.

For clothes washers equipped with suds-saver feature:

X_1=frequency of use without suds-saver feature=0.86
X_2=frequency of use with suds-saver feature=0.14
Sh_H=fresh hot water make-up measured during suds-return cycle at maximum water fill level.
Sc_H=fresh cold water make-up measured during suds-return cycle at maximum water fill level.

For clothes washers not equipped with suds-saver feature:

X_1=1.0
X_2=0.0

and

$$Q_{min} = X_1\sum_{j=1}^{n}\left[\left(Vh_j + Vc_j\right)\times TUF_j\right] + X_2\left[TUF_w \times \left(Sh_L + Sc_L\right)\right]$$

where:
Vh_j=hot water consumption in gallons per cycle (or liters per cycle) at minimum fill for each wash/rinse temperature combination setting, as provided in section 3.4.3.
Vc_j=cold water consumption in gallons per cycle (or liters per cycle) at minimum fill for each wash/rinse temperature combination setting, cold wash/cold rinse cycle, as provided in section 3.4.3.
TUF_j=applicable temperature use factor in section 5 or 6.
Sh_L=fresh hot make-up water measured during suds-return cycle at minimum water fill level.
Sc_L=fresh cold make-up water measured during suds-return cycle at minimum water fill level.
n=as defined above in this section.
TUF_w=as defined above in this section.
X_1=as defined above in this section.
X_2=as defined above in this section.

4.3.2 *Total weighted per-cycle water consumption.* To determine this amount, calculate the total weighted per cycle water consumption, Q_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Q_T=[Q_{max}\times F_{max}]+[Q_{min}\times F_{min}]$

where:
F_{max}=as defined in section 4.1.3.
F_{min}=as defined in section 4.1.3.
Q_{max}=as defined in section 4.3.1.
Q_{min}=as defined in section 4.3.1.

4.3.3 *Water consumption factor.* The following calculates the water consumption factor, WCF, expressed in gallon per cycle per cubic foot (or liter per cycle per liter):

$WCF=Q_T/C$

where:

C=as defined in section 3.1.5.
Q_T=as defined in section 4.3.2.

4.4 *Modified energy factor.* The following calculates the modified energy factor, MEF, expressed in cubic feet per kilowatt-hours per cycle (or liters per kilowatt-hours per cycle):

$$MEF = \frac{C}{(M_E + E_T + D_E)}$$

where:
C=as defined in section 3.1.5.
M_E=as defined in section 4.1.5.1 or 4.1.5.2.2.
E_T=as defined in section 4.1.3.
D_E=as defined in section 4.2.

4.5 *Energy factor.* Calculate the energy factor, EF, expressed in cubic feet per kilowatt-hours per cycle (or liters per kilowatt-hours per cycle), as:

$$EF = \frac{C}{(M_E + E_T)}$$

where:
C=as defined in section 3.1.5.
M_E=as defined in section 4.1.5.1 or 4.1.5.2.2.
E_T=as defined in section 4.1.3.

5. APPLICABLE TEMPERATURE USE FACTORS FOR DETERMINING HOT WATER USAGE FOR VARIOUS WASH/RINSE TEMPERATURE SELECTIONS FOR ALL AUTOMATIC CLOTHES WASHERS

5.1 *Clothes washers with discrete temperature selections.*

5.1.1 *Five-temperature selection (n=5).*

Wash/rinse temperature setting	Temperature Use Factor (TUF)
Hot/Warm	0.18
Hot/Cold	.12
Warm/Warm	.30
Warm/Cold	.25
Cold/Cold	.15

5.1.2 *Four-temperature selection (n=4).*

Wash/rinse temperature setting	Temperature Use Factor (TUF)
Alternate I:	
Hot/Warm	0.18
Hot/Cold	.12
Warm/Cold	.55
Cold/Cold	.15
Alternate II:	
Hot/Warm	0.18
Hot/Cold	.12
Warm/Warm	.30
Warm/Cold	.40
Alternate III:	
Hot/Cold	0.12
Warm/Warm	.18
Warm/Cold	.55
Cold/Cold	.15

5.1.3 *Three-temperature selection (n=3).*

Wash/rinse temperature setting	Temperature Use Factor (TUF)
Alternate I:	
Hot/Warm	0.30
Warm/Cold	.55
Cold/Cold	.15
Alternate II:	
Hot/Cold	0.30
Warm/Cold	.55
Cold/Cold	.15
Alternate III:	
Hot/Cold	0.30
Warm/Warm	.55
Cold/Cold	.15

5.1.4 *Two-temperature selection (n=2).*

Wash/rinse temperature setting	Temperature Use Factor (TUF)
Any heated water/Cold	0.85
Cold/Cold	.15

5.1.5 *One-temperature selection (n=1).*

Wash/rinse temperature setting	Temperature Use Factor (TUF)
Any	1.00

5.2 *Clothes washers with infinite temperature selections.*

Wash/rinse temperature setting	Temperature Use Factor (TUF)	
	≤ 140°F (60°C) (n=3)	> 140°F (60°C) (n=4)
Extra-hot		0.05
Hot	0.30	0.25
Warm	0.55	0.55
Cold	0.15	0.15

6. APPLICABLE TEMPERATURE USE FACTORS FOR DETERMINING HOT WATER USAGE FOR VARIOUS WASH/RINSE TEMPERATURE SETTINGS FOR ALL SEMI-AUTOMATIC, NON-WATER-HEATING, CLOTHES WASHERS

6.1 *Six-temperature settings (n=6).*

Wash/rinse temperature setting	Temperature Use Factor (TUF)
Hot/Hot	0.15
Hot/Warm	.09
Hot/Cold	.06
Warm/Warm	.42
Warm/Cold	.13
Cold/Cold	.15

7. WAIVERS AND FIELD TESTING

7.1 *Waivers and Field Testing for Non-conventional Clothes Washers.* Manufacturers of non-conventional clothes washers, such as clothes washers with adaptive control systems, must submit a petition for waiver pursuant to 10 CFR 430.27 to establish an acceptable test procedure for that clothes washer. For these and other clothes washers that have controls or systems such that the DOE test procedures yield results that are so unrepresentative of the clothes washer's true energy consumption characteristics as to provide materially inaccurate comparative data, field testing may be appropriate for establishing an acceptable test procedure. The following are guidelines for field testing which may be used by manufacturers in support of petitions for waiver. These guidelines are not mandatory and the Department may determine that they do not apply to a particular model. Depending upon a manufacturer's approach for conducting field testing, additional data may be required. Manufacturers are encouraged to communicate with the Department prior to the commencement of field tests which may be used to support a petition for waiver. Section 7.3 provides an example of field testing for a clothes washer with an adaptive water fill control system. Other features, such as the use of various spin speed selections, could be the subject of field tests.

7.2 *Non-conventional Wash System Energy Consumption Test.* The field test may consist of a minimum of 10 of the nonconventional clothes washers (''test clothes washers'') and 10 clothes washers already being distributed in commerce (''base clothes washers''). The tests should include a minimum of 50 normal test cycles per clothes washer. The test clothes washers and base clothes washers should be identical in construction except for the controls or systems being tested. Equal numbers of both the test clothes washer and the base clothes washer should be tested simultaneously in comparable settings to minimize seasonal and/or consumer laundering conditions and/or variations. The clothes washers should be monitored in such a way as to accurately record the total energy consumption per cycle. At a minimum, the following should be measured and recorded throughout the test period for each clothes washer: Hot water usage in gallons (or liters), electrical energy usage in kilowatt-hours, and the cycles of usage. The field test results would be used to determine the best method to correlate the rating of the test clothes washer to the rating of the base clothes washer. If the base clothes washer is rated at A kWh per year, but field tests at B kWh per year, and the test clothes washer field tests at D kWh per year, the test unit would be rated as follows:

$A \times (D/B) = G$ kWh per year

7.3 *Adaptive water fill control system field test.* Section 3.2.2.1 defines the test method for measuring energy consumption for clothes washers which incorporate control systems having both adaptive and alternate manual selections. Energy consumption calculated by the method defined in section 3.2.2.1 assumes the adaptive cycle will be used 50 percent of the time. This section can be used to develop field test data in support of a petition for waiver when it is believed that the adaptive cycle will be used more than 50 percent of the time. The field test sample size should be a minimum of 10 test clothes washers. The test clothes washers should be totally representative of the design, construction,

and control system that will be placed in commerce. The duration of field testing in the user's house should be a minimum of 50 normal test cycles, for each unit. No special instructions as to cycle selection or product usage should be given to the field test participants, other than inclusion of the product literature pack which should be shipped with all units, and instructions regarding filling out data collection forms, use of data collection equipment, or basic procedural methods. Prior to the test clothes washers being installed in the field test locations, baseline data should be developed for all field test units by conducting laboratory tests as defined by section 1 through section 6 of these test procedures to determine the energy consumption values. The following data should be measured and recorded for each wash load during the test period: wash cycle selected, the mode of the clothes washer (adaptive or manual), clothes load dry weight (measured after the clothes washer and clothes dryer cycles are completed) in pounds, and type of articles in the clothes load (i.e., cottons, linens, permanent press, etc.). The wash loads used in calculating the in-home percentage split between adaptive and manual cycle usage should be only those wash loads which conform to the definition of the normal test cycle.

Calculate:

T=The total number of normal test cycles run during the field test

T_a=The total number of adaptive control normal test cycles

T_m=The total number of manual control normal test cycles

The percentage weighting factors:

$P_a=(T_a/T) \times 100$ (the percentage weighting for adaptive control selection)

$P_m=(T_m/T) \times 100$ (the percentage weighting for manual control selection)

Energy consumption values, E_T, M_E, and D_E (if desired) calculated in section 4 for the manual and adaptive modes, should be combined using P_a and P_m as the weighting factors.

4. Appendix J1 is added to Subpart B of Part 430 as follows:

Appendix J1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Automatic and Semi-Automatic Clothes Washers

Note: Appendix J1 to subpart B of part 430 is informational. It will not become mandatory until the energy conservation standards for clothes washers at 10 CFR 430.32(g) are amended and Appendix J is removed by a rule published in the **Federal Register**.

1. DEFINITIONS AND SYMBOLS

1.1 *Adaptive control system* means a clothes washer control system, other than an adaptive water fill control system, which is capable of automatically adjusting washer operation or washing conditions based on characteristics of the clothes load placed in the clothes container, without allowing or requiring consumer intervention or actions. The automatic adjustments may, for example, include automatic selection, modification, or control of any of the following: wash water temperature, agitation or tumble cycle time, number of rinse cycles, and spin speed. The characteristics of the clothes load, which could trigger such adjustments, could, for example, consist of or be indicated by the presence of either soil, soap, suds, or any other additive laundering substitute or complementary product.

Note: Appendix J1 does not provide a means for determining the energy consumption of a clothes washer with an adaptive control system. Therefore, pursuant to 10 CFR 430.27, a waiver must be obtained to establish an acceptable test procedure for each such clothes washer.

1.2 *Adaptive water fill control system* means a clothes washer water fill control system which is capable of automatically adjusting the water fill level based on the size or weight of the clothes load placed in the clothes container, without allowing or requiring consumer intervention or actions.

1.3 *Bone-dry* means a condition of a load of test cloth which has been dried in a dryer at maximum temperature for a minimum of 10 minutes, removed and weighed before cool down, and then dried again for 10 minute periods until the final weight change of the load is 1 percent or less.

1.4 *Clothes container* means the compartment within the clothes washer that holds the clothes during the operation of the machine.

1.5 *Compact* means a clothes washer which has a clothes container capacity of less than 1.6 ft^3 (45 L).

1.6 *Deep rinse cycle* means a rinse cycle in which the clothes container is filled with water to a selected level and the clothes load is rinsed by agitating it or tumbling it through the water.

1.7 *Energy test cycle* for a basic model means (A) the cycle recommended by the manufacturer for washing cotton or linen clothes, and includes all wash/rinse temperature selections and water levels offered in that cycle, and (B) for each other wash/rinse temperature selection or water level available on that basic model, the portion(s) of other cycle(s) with that temperature selection or water level that, when tested pursuant to these test procedures, will contribute to an accurate representation of the energy consumption of the basic model as used by consumers. Any cycle under (A) or (B) shall include the agitation/tumble operation, spin speed(s), wash times, and rinse times applicable to that cycle, including water heating time for water heating clothes washers.

1.8 *Load use factor* means the percentage of the total number of wash loads that a user would wash a particular size (weight) load.

1.9 *Manual control system* means a clothes washer control system which requires that the consumer make the choices that determine washer operation or washing conditions, such as, for example, wash/rinse temperature selections, and wash time before starting the cycle.

1.10 *Manual water fill control system* means a clothes washer water fill control system which requires the consumer to determine or select the water fill level.

1.11 *Modified energy factor* means the quotient of the cubic foot (or liter) capacity of the clothes container divided by the total clothes washer energy consumption per cycle, with such energy consumption expressed as the sum of the machine electrical energy consumption, the hot water energy consumption, and the energy required for removal of the remaining moisture in the wash load.

1.12 *Non-water-heating clothes washer* means a clothes washer which does not have an internal water heating device to generate hot water.

1.13 *Spray rinse cycle* means a rinse cycle in which water is sprayed onto the clothes for a period of time without maintaining any specific water level in the clothes container.

1.14 *Standard* means a clothes washer which has a clothes container capacity of 1.6 ft^3 (45 L) or greater.

1.15 *Temperature use factor* means, for a particular wash/rinse temperature setting, the percentage of the total number of wash loads that an average user would wash with that setting.

1.16 *Thermostatically controlled water valves* means clothes washer controls that have the ability to sense and adjust the hot and cold supply water.

1.17 *Uniformly distributed warm wash temperature selection(s)* means (A) multiple warm wash selections for which the warm wash water temperatures have a linear relationship with all discrete warm wash selections when the water temperatures are plotted against equally spaced consecutive warm wash selections between the hottest warm wash and the coldest warm wash. If the warm wash has infinite selections, the warm wash water temperature has a linear relationship with the distance on the selection device (e.g. dial angle or slide movement) between the hottest warm wash and the coldest warm wash. The criteria for a linear relationship as specified above is that the difference between the actual water temperature at any warm wash selection and the point where that temperature is depicted on the temperature/selection line formed by connecting the warmest and the coldest warm selections is less than ±5 percent. In all cases, the mean water temperature of the warmest and the coldest warm selections must coincide with the mean of the ''hot wash'' (maximum wash temperature ≤135°F (57.2°C)) and ''cold wash'' (minimum wash temperature) water temperatures within ±3.8°F (±2.1°C); or (B) on a clothes washer with only one warm wash temperature selection, a warm wash temperature selection with a water temperature that coincides with the mean of the ''hot wash'' (maximum wash temperature ≤135°F (57.2°C)) and ''cold wash'' (minimum wash temperature) water temperatures within ±3.8°F (±2.1°C).

1.18 *Warm wash* means all wash temperature selections that are below the hottest hot, less than 135°F (57.2°C), and above the coldest cold temperature selection.

1.19 *Water consumption factor* means the quotient of the total weighted per-cycle water consumption divided by the cubic foot (or liter) capacity of the clothes washer.

1.20 *Water-heating clothes washer* means a clothes washer where some or all of the hot water for clothes washing is generated by a water heating device internal to the clothes washer.

1.21 *Symbol usage.* The following identity relationships are provided to help clarify the symbology used throughout this procedure.

E—Electrical Energy Consumption
H—Hot Water Consumption
C—Cold Water Consumption
R—Hot Water Consumed by Warm Rinse
ER—Electrical Energy Consumed by Warm Rinse
TUF—Temperature Use Factor
HE—Hot Water Energy Consumption
F—Load Usage Factor
Q—Total Water Consumption
ME—Machine Electrical Energy Consumption
RMC—Remaining Moisture Content
WI—Initial Weight of Dry Test Load
WC—Weight of Test Load After Extraction
m—Extra Hot Wash (maximum wash temp. >135°F (57.2°C.))
h—Hot Wash (maximum wash temp. ≤135°F (57.2°C.))
w—Warm Wash
c—Cold Wash (minimum wash temp.)
r—Warm Rinse (hottest rinse temp.)
x or max—Maximum Test Load
a or avg—Average Test Load
n or min—Minimum Test Load

The following examples are provided to show how the above symbols can be used to define variables:

Em_x=''Electrical Energy Consumption'' for an ''Extra Hot Wash'' and ''Maximum Test Load''
R_a=''Hot Water Consumed by Warm Rinse'' for the ''Average Test Load''
TUF_m=''Temperature Use Factor'' for an ''Extra Hot Wash''
HE_{min}=''Hot Water Energy Consumption'' for the ''Minimum Test Load''

2. TESTING CONDITIONS

2.1 *Installation.* Install the clothes washer in accordance with manufacturer's instructions.

2.2 *Electrical energy supply.* Maintain the electrical supply at the clothes washer terminal block within 2 percent of 120, 120/240, or 120/208Y volts as applicable to the particular terminal block wiring system and within 2 percent of the nameplate frequency as specified by the manufacturer. If the clothes washer has a dual voltage conversion capability, conduct test at the highest voltage specified by the manufacturer.

2.3 *Supply Water.*

2.3.1 *Clothes washers in which electrical energy consumption or water energy consumption are affected by the inlet water temperature. (For example, water heating clothes washers or clothes washers with thermostatically controlled water valves.).* The temperature of the hot water supply at the water inlets shall not exceed 135°F (57.2°C) and the cold water supply at the water inlets shall not exceed 60°F (15.6°C). A water meter shall be installed in both the hot and cold water lines to measure water consumption.

2.3.2 *Clothes washers in which electrical energy consumption and water energy consumption are not affected by the inlet water temperature.* The temperature of the hot water supply shall be maintained at 135°F±5°F (57.2°C±2.8°C) and the cold water supply shall be maintained at 60°F±5°F (15.6°C±2.8°C). A water meter shall be installed in both the hot and cold water lines to measure water consumption.

2.4 *Water pressure.* The static water pressure at the hot and cold water inlet connection of the clothes washer shall be maintained at 35 pounds per square inch gauge (psig) ±2.5 psig (241.3 kPa±17.2 kPa) during the test. The static water pressure for a single water inlet connection shall be maintained at 35 psig±2.5 psig (241.3 kPa±17.2 kPa) during the test. A water pressure gauge shall be installed in both the hot and cold water lines to measure water pressure.

2.5 *Instrumentation.* Perform all test measurements using the following instruments, as appropriate:

2.5.1 *Weighing scales.*

2.5.1.1 *Weighing scale for test cloth.* The scale shall have a resolution of no larger than 0.2 oz (5.7 g) and a maximum error no greater than 0.3 percent of the measured value.

2.5.1.2 *Weighing scale for clothes container capacity measurements.* The scale should have a resolution no larger than 0.50 lbs (0.23 kg) and a maximum error no greater than 0.5 percent of the measured value.

2.5.2 *Watt-hour meter.* The watt-hour meter shall have a resolution no larger than 1 Wh (3.6 kJ) and a maximum error no greater than 2 percent of the measured value for any demand greater than 50 Wh (180.0 kJ).

2.5.3 *Temperature measuring device.* The device shall have an error no greater than ±1°F (±0.6°C) over the range being measured.

2.5.4 *Water meter.* The water meter shall have a resolution no larger than 0.1 gallons (0.4 liters) and a maximum error no greater than 2 percent for the water flow rates being measured.

2.5.5 *Water pressure gauge.* The water pressure gauge shall have a resolution of 1 pound per square inch gauge (psig) (6.9 kPa) and shall have an error no greater than 5 percent of any measured value.

2.6 *Test cloths.*

2.6.1 *Energy test cloth.*

2.6.1.1 The energy test cloth shall not be used for more than 25 test runs and shall be clean and consist of the following:

(A) Pure finished bleached cloth, made with a momie or granite weave, which is 50 percent cotton and 50 percent polyester and weighs 5.75 ounces per square yard (195.0 g/m²) and has 65 ends on the warp and 57 picks on the fill; and

(B) Cloth material that is 24 inches by 36 inches (61.0 cm by 91.4 cm) and has been hemmed to 22 inches by 34 inches (55.9 cm by 86.4 cm) before washing. The maximum shrinkage after five washes shall not be more than four percent on the length and width.

2.6.1.2 The new test cloths, including energy test cloths and energy stuffer cloths, shall be pre-conditioned in a clothes washer in the following manner:

2.6.1.2.1 Wash the test cloth using a commercially available clothes washing detergent that is suitable for 135°F (57.2°C) wash water as recommended by the manufacturer, with the washer set on maximum water level. Place detergent in washer and then place the new load to be conditioned in the washer. Wash the load for ten minutes in soft water (17ppm or less). Wash water is to be hot, and controlled at 135°F±5°F (57.2°C ±2.8°C). Rinse water temperature is to be cold, and controlled at 60°F ±5°F (15.6°C ±2.8°C). Rinse the load through a second rinse using the same water temperature (if an optional second rinse is available on the clothes washer, use it).

2.6.1.2.2 Dry the load.

2.6.1.2.3 A final cycle is to be hot water wash with no detergent followed by two cold water rinses.

2.6.1.2.4 Dry the load.

2.6.2 *Energy stuffer cloth.* The energy stuffer cloth shall be made from energy test cloth material and shall consist of pieces of material that are 12 inches by 12 inches (30.5 cm by 30.5 cm) and have been hemmed to 10 inches by 10 inches (25.4 cm by 25.4 cm) before washing. The maximum shrinkage after five washes shall not be more than four percent on the length and width. The number of test runs on the same energy stuffer cloth shall not exceed 25 runs.

2.7 *Test Load Sizes.* Maximum, minimum, and, when required, average test load sizes shall be determined using Table 5.1 and the clothes container capacity as measured in 3.1.1 through 3.1.5. Test loads shall consist of energy test cloths, except that adjustments to the test loads to achieve proper weight can be made by the use of energy stuffer cloths with no more than 5 stuffer clothes per load.

2.8 *Use of Test Loads.* Table 2.8 defines the test load sizes and corresponding water fill settings which are to be used when measuring water and energy consumptions. Adaptive water fill control system and manual water fill control system are defined in section 1 of this appendix:

TABLE 2.8.—TEST LOAD SIZES AND WATER FILL SETTINGS REQUIRED

Manual water fill control system		Adaptive water fill control system	
Test load size	Water fill setting	Test load size	Water fill setting
Max Min	Max Min	Max Avg Min	As determined by the Clothes Washer.

2.8.1 The test load sizes to be used to measure RMC are specified in section 3.8.1.

2.8.2 Test loads for energy and water consumption measurements shall be bone dry prior to the first cycle of the test, and dried to a maximum of 104 percent of bone dry weight for subsequent testing.

2.8.3 Load the energy test cloths by grasping them in the center, shaking them to hang loosely and then put them into the clothes container prior to activating the clothes washer.

2.9 *Pre-conditioning.*

2.9.1 *Nonwater-heating clothes washer.* If the clothes washer has not been filled with water in the preceding 96 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.9.2 *Water-heating clothes washer.* If the clothes washer has not been filled with water in the preceding 96 hours, or if it has not been in the test room at the specified ambient conditions for 8 hours, pre-condition it by running it through a cold rinse cycle and then draining it to ensure that the hose, pump, and sump are filled with water.

2.10 *Wash time setting.* If one wash time is prescribed in the energy test cycle, that shall be the wash time setting; otherwise, the wash time setting shall be the higher of either the minimum, or 70 percent of the maximum wash time available in the energy test cycle.

2.11 *Test room temperature for water-heating clothes washers.* Maintain the test room ambient air temperature at 75°F±5°F (23.9°C±2.8°C).

3. TEST MEASUREMENTS

3.1 *Clothes container capacity.* Measure the entire volume which a dry clothes load could occupy within the clothes container during washer operation according to the following procedures:

3.1.1 Place the clothes washer in such a position that the uppermost edge of the clothes container opening is leveled horizontally, so that the container will hold the maximum amount of water.

3.1.2 Line the inside of the clothes container with 2 mil (0.051 mm) plastic sheet. All clothes washer components which occupy space within the clothes container and which are recommended for use with the energy test cycle shall be in place and shall be lined with 2 mil (0.051 mm) plastic sheet to prevent water from entering any void space.

3.1.3 Record the total weight of the machine before adding water.

3.1.4 Fill the clothes container manually with either 60°F±5°F (15.6°C±2.8°C) or 100°F±10°F (37.8°C±5.5°C) water to its uppermost edge. Measure and record the weight of water, W, in pounds.

3.1.5 The clothes container capacity is calculated as follows:

$$C=W/d.$$

where:

C=Capacity in cubic feet (liters).

W=Mass of water in pounds (kilograms).

d=Density of water (62.0 lbs/ft^3 for 100 °F (993 kg/m^3 for 37.8°C) or 62.3 lbs/ft^3 for 60 °F (998 kg/m^3 for 15.6°C)).

3.2 *Procedure for measuring water and energy consumption values on all automatic and semi-automatic washers.* All energy consumption tests shall be performed under the energy test cycle(s), unless otherwise specified. Table 3.2 defines the sections below which govern tests of particular clothes washers, based on the number of wash/rinse temperature selections available on the model, and also, in some instances, method of water heating. The procedures prescribed are applicable regardless of a clothes washer's washing capacity, loading port location, primary axis of rotation of the clothes container, and type of control system.

3.2.1 *Inlet water temperature and the wash/rinse temperature settings.*

3.2.1.1 For automatic clothes washers set the wash/rinse temperature selection control to obtain the wash water temperature desired (extra hot, hot, warm, or cold) and cold rinse, and open both the hot and cold water faucets.

3.2.1.2 For semi-automatic washers: (1) For hot water temperature, open the hot water faucet completely and close the cold water faucet; (2) for warm inlet water temperature, open both hot and cold water faucets completely; (3) for cold water temperature, close the hot water faucet and open the cold water faucet completely.

3.2.1.3 *Determination of warm wash water temperature(s) to decide whether a clothes washer has uniformly distributed warm wash temperature selections.* The wash water temperature, Tw, of each warm water wash selection shall be calculated or measured.

For non-water-heating clothes washers, calculate Tw as follows:

$$Tw(°F)=((Hw\times 135°F)+(Cw\times 60°F))/(Hw+Cw)$$

or

$$Tw(°C)=((Hw\times 57.2°C)+(Cw\times 15.6°C))/(Hw+Cw)$$

where:

Hw=Hot water consumption of a warm wash

Cw=Cold water consumption of a warm wash

For water-heating clothes washers, measure and record the temperature of each warm wash selection after fill.

3.2.2 Total water consumption during the energy test cycle shall be measured, including hot and cold water consumption during wash, deep rinse, and spray rinse.

3.2.3 *Clothes washers with adaptive water fill/manual water fill control systems*

3.2.3.1 *Clothes washers with adaptive water fill control system and alternate manual water fill control systems.* If a clothes washer with an adaptive water fill control system allows consumer selection of manual controls as an alternative, then both manual and adaptive modes shall be tested and, for each mode, the energy consumption (HE_T, ME_T, and D_E) and water consumption (Q_T), values shall be calculated as set forth in section 4. Then the average of the two values (one from each mode, adaptive and manual) for each variable shall be used in section 4 for the clothes washer.

3.2.3.2 *Clothes washers with adaptive water fill control system.*

3.2.3.2.1. Not user adjustable. The maximum, minimum, and average water levels as defined in the following sections shall be interpreted to mean that amount of water fill which is selected by the control system when the respective test loads are used, as defined in Table 2.8. The load usage factors which shall be used when calculating energy consumption values are defined in Table 4.1.3.

3.2.3.2.2 User adjustable. Four tests shall be conducted on clothes washers with user adjustable adaptive water fill controls which affect the relative wash water levels. The first test shall be conducted with the maximum test load and with the adaptive water fill control system set in the setting that will give the most energy intensive result. The second test shall be conducted with the minimum test load and with the adaptive water fill control system set in the setting that will give the least energy intensive result. The third test shall be conducted with the average test load and with the adaptive water fill control system set in the setting that will give the most energy intensive result for the given test load. The fourth test shall be conducted with the average test load and with the adaptive water fill control system set in the setting that will give the least energy intensive result for the given test load. The energy and water consumption for the average test load and water level, shall be the average of the third and fourth tests.

3.2.3.3 *Clothes washers with manual water fill control system.* In accordance with Table 2.8, the water fill selector shall be set to the maximum water level available on the clothes washer for the maximum test load size and set to the minimum water level for

TABLE 3.2.—TEST SECTION REFERENCE

Max. Wash Temp. Available	≤135°F (57.2°C)			>135°F (57.2°C) [2]	
Number of Wash Temp. Selections	1	2	>2	3	>3
Test Sections Required to be Followed	.....	.....	.....	3.3	3.3
	.....	3.4	3.4	.....	3.4
	.....	.....	3.5	3.5	3.5
	3.6	3.6	3.6	3.6	3.6
	3.7 [1]	3.7 [1]	3.7 [1]	3.7 [1]	3.7 [1]
	3.8	3.8	3.8	3.8	3.8

[1] Only applicable to machines with warm rinse in any cycle.

[2] This only applies to water hearting clothes washers on which the maximum wash temperature available exceeds 135°F (57.2°C)

the minimum test load size. The load usage factors which shall be used when calculating energy consumption values are defined in Table 4.1.3.

3.3 *''Extra Hot Wash'' (Max Wash Temp >135°F (57.2°C)) for water heating clothes washers only.* Water and electrical energy consumption shall be measured for each water fill level and/or test load size as specified in 3.3.1 through 3.3.3 for the hottest wash setting available.

3.3.1 *Maximum test load and water fill.* Hot water consumption (Hm_x), cold water consumption (Cm_x), and electrical energy consumption (Em_x) shall be measured for an extra hot wash/cold rinse energy test cycle, with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per Table 5.1.

3.3.2 *Minimum test load and water fill.* Hot water consumption (Hm_n), cold water consumption (Cm_n), and electrical energy consumption (Em_n) shall be measured for an extra hot wash/cold rinse energy test cycle, with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per Table 5.1.

3.3.3 *Average test load and water fill.* For clothes washers with an adaptive water fill control system, measure the values for hot water consumption (Hm_a), cold water consumption (Cm_a), and electrical energy consumption (Em_a) for an extra hot wash/cold rinse energy test cycle, with an average test load size as determined per Table 5.1.

3.4 *''Hot Wash'' (Max Wash Temp≤135°F (57.2°C)).* Water and electrical energy consumption shall be measured for each water fill level or test load size as specified in 3.4.1 through 3.4.3 for a 135°F (57.2°C)) wash, if available, or for the hottest selection less than 135°F (57.2°C)).

3.4.1 *Maximum test load and water fill.* Hot water consumption (Hh_x), cold water consumption (Ch_x), and electrical energy consumption (Eh_x) shall be measured for a hot wash/cold rinse energy test cycle, with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per Table 5.1.

3.4.2 *Minimum test load and water fill.* Hot water consumption (Hh_n), cold water consumption (Ch_n), and electrical energy consumption (Eh_n) shall be measured for a hot wash/cold rinse energy test cycle, with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per Table 5.1.

3.4.3 *Average test load and water fill.* For clothes washers with an adaptive water fill control system, measure the values for hot water consumption (Hh_a), cold water consumption (Ch_a), and electrical energy consumption (Eh_a) for a hot wash/cold rinse energy test cycle, with an average test load size as determined per Table 5.1.

3.5 *''Warm Wash.''* Water and electrical energy consumption shall be determined for each water fill level and/or test load size as specified in 3.5.1 through 3.5.2.3 for the applicable warm water wash temperature(s).

3.5.1 *Clothes washers with uniformly distributed warm wash temperature selection(s).* The reportable values to be used for the warm water wash setting shall be the arithmetic average of the measurements for the hot and cold wash selections. This is a calculation only, no testing is required.

3.5.2 *Clothes washers that lack uniformly distributed warm wash temperature selections.* For a clothes washer with fewer than four discrete warm wash selections, test all warm wash temperature selections. For a clothes washer that offers four or more warm wash selections, test at all discrete selections, or test at 25 percent, 50 percent, and 75 percent positions of the temperature selection device between the hottest hot (≤135°F (57.2 °C)) wash and the coldest cold wash. If a selection is not available at the 25, 50 or 75 percent position, in place of each such unavailable selection use the next warmer setting. Each reportable value to be used for the warm water wash setting shall be the arithmetic average of all tests conducted pursuant to this section.

3.5.2.1 *Maximum test load and water fill.* Hot water consumption (Hw_x), cold water consumption (Cw_x), and electrical energy consumption (Ew_x) shall be measured with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per Table 5.1.

3.5.2.2 *Minimum test load and water fill.* Hot water consumption (Hw_n), cold water consumption (Cw_n), and electrical energy consumption (Ew_n) shall be measured with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per Table 5.1.

3.5.2.3 *Average test load and water fill.* For clothes washers with an adaptive water fill control system, measure the values for hot water consumption (Hw_a), cold water consumption (Cw_a), and electrical energy consumption (Ew_a) with an average test load size as determined per Table 5.1.

3.6 *''Cold Wash'' (Minimum Wash Temperature Selection).* Water and electrical energy consumption shall be measured for each water fill level or test load size as specified in 3.6.1 through 3.6.3 for the coldest wash temperature selection available.

3.6.1 *Maximum test load and water fill.* Hot water consumption (Hc_x), cold water consumption (Cc_x), and electrical energy consumption (Ec_x) shall be measured for a cold wash/cold rinse energy test cycle, with the controls set for the maximum water fill level. The maximum test load size is to be used and shall be determined per Table 5.1.

3.6.2 *Minimum test load and water fill.* Hot water consumption (Hc_n), cold water consumption (Cc_n), and electrical energy consumption (Ec_n) shall be measured for a cold wash/cold rinse energy test cycle, with the controls set for the minimum water fill level. The minimum test load size is to be used and shall be determined per Table 5.1.

3.6.3 *Average test load and water fill.* For clothes washers with an adaptive water fill control system, measure the values for hot water consumption (Hc_a), cold water consumption (Cc_a), and electrical energy consumption (Ec_a) for a cold wash/cold rinse energy test cycle, with an average test load size as determined per Table 5.1.

3.7 *Warm Rinse.* Tests in sections 3.7.1 and 3.7.2 shall be conducted with the hottest rinse temperature available. If multiple wash temperatures are available with the hottest rinse temperature, any ''warm wash'' temperature may be selected to conduct the tests.

3.7.1 For the rinse only, measure the amount of hot water consumed by the clothes washer including all deep and spray rinses, for the maximum (R_x), minimum (R_n), and, if required by section 3.5.2.3, average (R_a) test load sizes or water fill levels.

3.7.2 Measure the amount of electrical energy consumed by the clothes washer to heat the rinse water only, including all deep and spray rinses, for the maximum (ER_x), minimum (ER_n), and, if required by section 3.5.2.3, average (ER_a), test load sizes or water fill levels.

3.8 *Remaining Moisture Content:*

3.8.1 The wash temperature will be the same as the rinse temperature for all testing. Use the maximum test load as defined in Table 5.1 and section 3.1 for testing.

3.8.2 *For clothes washers with cold rinse only:*

3.8.2.1 Record the actual 'bone dry' weight of the test load (WI_{max}), then place the test load in the clothes washer.

3.8.2.2 Set water level selector to maximum fill.

3.8.2.3 Run the energy test cycle.

3.8.2.4 Record the weight of the test load immediately after completion of the energy test cycle (WC_{max}).

3.8.2.5 Calculate the remaining moisture content of the maximum test load, RMC_{MAX}, expressed as a percentage and defined as:

$$RMC_{max}=((WC_{max}-WI_{max})/WI_{max})\times 100\%$$

3.8.3 *For clothes washers with cold and warm rinse options:*

3.8.3.1 Complete steps 3.8.2.1 through 3.8.2.4 for cold rinse. Calculate the remaining moisture content of the maximum test load for cold rinse, RMC_{COLD}, expressed as a percentage and defined as:

$$RMC_{COLD}=((WC_{max}-WI_{max})/WI_{max})\times 100\%$$

3.8.3.2 Complete steps 3.8.2.1 through 3.8.2.4 for warm rinse. Calculate the remaining moisture content of the maximum test load for warm rinse, RMC_{WARM}, expressed as a percentage and defined as:

$$RMC_{WARM}=((WC_{max}-WI_{max})/WI_{max})\times 100\%$$

3.8.3.3 Calculate the remaining moisture content of the maximum test load, RMC_{max}, expressed as a percentage and defined as:

$$RMC_{max}=RMC_{COLD}\times(1-TUF_r)+RMC_{WARM}\times(TUF_r).$$

where:

TUF_r is the temperature use factor for warm rinse as defined in Table 4.1.1.

3.8.4 Clothes washers which have options that result in different RMC values, such as multiple selection of spin speeds or spin times, that are available in the energy test cycle, shall be tested at the maximum and minimum extremes of the available options, excluding any ''no spin'' (zero spin speed) settings, in accordance with requirements in 3.8.2 or 3.8.3. The calculated $RMC_{max\ extraction}$ and $RMC_{min\ extraction}$ at the maximum and minimum settings, respectively, shall be combined as follows and the final RMC to be used in section 4.3 shall be:

$$RMC = 0.75\times RMC_{max\ extraction}+0.25\times RMC_{min\ extraction}$$

4. CALCULATION OF DERIVED RESULTS FROM TEST MEASUREMENTS

4.1 *Hot water and machine electrical energy consumption of clothes washers.*

4.1.1 *Per-cycle temperature-weighted hot water consumption for maximum, average, and minimum water fill levels using each appropriate load size as defined in section 2.8 and Table 5.1.* Calculate for the cycle under test the per-cycle temperature weighted hot water consumption for the maximum water fill level, Vh_x, the average water fill level, Vh_a, and the minimum water fill level, Vh_n, expressed in gallons per cycle (or liters per cycle) and defined as:

(a) $Vh_x=[Hm_x \times TUF_m]+[Hh_x \times TUF_h]+[Hw_x \times TUF_w]+[Hc_x \times TUF_c]+[R_x \times TUF_r]$

(b) $Vh_a=[Hm_a \times TUF_m]+[Hh_a \times TUF_h]+[Hw_a \times TUF_w]+[Hc_a \times TUF_c]+[R_a \times TUF_r]$

(c) $Vh_n=[Hm_n \times TUF_m]+[Hh_n \times TUF_h]+[Hw_n \times TUF_w]+[Hc_n \times TUF_c]+[R_n \times TUF_r]$

where:

Hm_x, Hm_a, and Hm_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill, respectively, for the extra-hot wash cycle with the appropriate test loads as defined in section 2.8.

Hh_x, Hh_a, and Hh_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill, respectively, for the hot wash cycle with the appropriate test loads as defined in section 2.8.

Hw_x, Hw_a, and Hw_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill, respectively, for the warm wash cycle with the appropriate test loads as defined in section 2.8.

Hc_x, Hc_a, and Hc_n, are reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill, respectively, for the cold wash cycle with the appropriate test loads as defined in section 2.8.

R_x, R_a, and R_n are the reported hot water consumption values, in gallons per-cycle (or liters per cycle), at maximum, average, and minimum water fill, respectively, for the warm rinse cycle and the appropriate test loads as defined in section 2.8.

TUF_m, TUF_h, TUF_w, TUF_c, and TUF_r are temperature use factors for extra hot wash, hot wash, warm wash, cold wash, and warm rinse temperature selections, respectively, and are as defined in Table 4.1.1.

TABLE 4.1.1.—TEMPERATURE USE FACTORS

Max Wash Temp Available	≤135 °F (57.2 °C)	≤135 °F (57.2 °C)	≤135 °F (57.2 °C)	>135 °F (57.2 °C)	>135 °F (57.2 °C)
No. Wash Temp Selections	Single	2 Temps	>2 Temps	3 Temps	>3 Temps
TUF_m (extra hot)	NA	NA	NA	0.14	0.05
TUF_h (hot)	NA	0.63	0.14	NA	0.09
TUF_w (warm)	NA	NA	0.49	0.49	0.49
TUF_c (cold)	1.00	0.37	0.37	0.37	0.37
TUF_r (warm rinse)	0.27	0.27	0.27	0.27	0.27

4.1.2 *Total per-cycle hot water energy consumption for all maximum, average, and minimum water fill levels tested.* Calculate the total per-cycle hot water energy consumption for the maximum water fill level, HE_{max}, the minimum water fill level, HE_{min}, and the average water fill level, HE_{avg}, expressed in kilowatt-hours per cycle and defined as:

(a) $HE_{max} = [Vh_x \times T \times K]$=Total energy when a maximum load is tested.

(b) $HE_{avg} = [Vh_a \times T \times K]$=Total energy when an average load is tested.

(c) $HE_{min} = [Vh_n \times T \times K]$=Total energy when a minimum load is tested.

where:

T=Temperature rise=75 °F (41.7 °C).

K=Water specific heat in kilowatt-hours per gallon degree F=0.00240 (0.00114 kWh/L-°C).

Vh_x Vh_a, and Vh_n, are as defined in 4.1.1.

4.1.3 *Total weighted per-cycle hot water energy consumption.* Calculate the total weighted per cycle hot water energy consumption, HE_T, expressed in kilowatt-hours per cycle and defined as:

$HE_T=[HE_{max} \times F_{max}]+[HE_{avg} \times F_{avg}]+[HE_{mn} \times F_{min}]$

where:

HE_{max}, HE_{avg}, and HE_{min} are as defined in 4.1.2.

F_{max}, F_{avg}, and F_{min} are the load usage factors for the maximum, average, and minimum test loads based on the size and type of control system on the washer being tested. The values are as shown in table 4.1.3.

TABLE 4.1.3—LOAD USAGE FACTORS

Water fill control system	Manual	Adaptive
F_{max} =	0.72 [1]	0.12 [2]
F_{avg} =		0.74 [2]
F_{min}=	0.28 [1]	0.14 [2]

[1] Reference 3.2.3.3.
[2] Reference 3.2.3.2.

4.1.4 *Total per-cycle hot water energy consumption using gas-heated or oil-heated water.* Calculate for the energy test cycle the per-cycle hot water consumption, HE_{TG}, using gas heated or oil-heated water, expressed in Btu per cycle (or megajoules per cycle) and defined as:

$HE_{TG}=H_T \times 1/e \times 3412$ Btu/kWh or $HE_{TG}=HE_T \times 1/e \times 3.6$ MJ/kWh

where:

e=Nominal gas or oil water heater efficiency=0.75.

HE_T=As defined in 4.1.3.

4.1.5 *Per-cycle machine electrical energy consumption for all maximum, average, and minimum test load sizes.* Calculate the total per-cycle machine electrical energy consumption for the maximum water fill level, ME_{max}, the minimum water fill level, ME_{min}, and the average water fill level, ME_{avg}, expressed in kilowatt-hours per cycle and defined as:

(a)$ME_{max}= [Em_x \times TUF_m]+ [Eh_x \times TUF_h]+ [Ew_x \times TUF_w]+ [Ec_x \times TUF_c]+ [ER_x \times TUF_r]$

(b) $ME_{avg}= [Em_a \times TUF_m]+ [Eh_a \times TUF_h]+ [Ew_a \times TUF_w]+ [Ec_a \times TUF_c]+ [ER_a \times TUF_r]$

(c) $ME_{min}= [Em_n \times TUF_m]+ [Eh_n \times TUF_h]+ [Ew_n \times TUF_w]+ [Ec_n \times xTUF_c]+ [ER_n \times TUF_r]$

where:

Em_x, Em_a, and Em_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the extra-hot wash cycle.

Eh_x, Eh_a, and Eh_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the hot wash cycle.

Ew_x, Ew_a, and Ew_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the warm wash cycle.

Ec_x, Ec_a, and Ec_n, are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the cold wash cycle.

ER_x, ER_a, and ER_n are reported electrical energy consumption values, in kilowatt-hours per cycle, at maximum, average, and minimum test loads, respectively, for the warm rinse cycle.

TUF_m, TUF_h, TUF_w, TUF_c, and TUF_r are as defined in Table 4.1.1.

4.1.6 *Total weighted per-cycle machine electrical energy consumption.* Calculate the total per cycle load size weighted energy consumption, ME_T, expressed in kilowatt-hours per cycle and defined as:

$ME_T=[ME_{max} \times F_{max}]+[ME_{avg} \times F_{avg}]+[ME_{min} \times F_{min}]$

where:

ME_{max}, ME_{avg}, and ME_{min} are as defined in 4.1.5.

F_{max}, F_{avg}, and F_{min} are as defined in Table 4.1.3.

4.1.7 *Total per-cycle energy consumption when electrically heated water is used.* Calculate for the energy test cycle the total per-cycle energy consumption, E_{TE}, using electrical heated water, expressed in kilowatt-hours per cycle and defined as:

$E_{TE}=HE_T+ME_T$

where:

ME_T=As defined in 4.1.6.

HE_T=As defined in 4.1.3.

4.2 *Water consumption of clothes washers.* (The calculations in this Section need not be performed to determine compliance with the energy conservation standards for clothes washers.)

4.2.1 *Per-cycle water consumption.* Calculate the maximum, average, and minimum total water consumption, expressed in gallons per cycle (or liters per cycle), for the cold wash/cold rinse cycle and defined as:

$Q_{max}=[Hc_x+Cc_x]$

$Q_{avg}=[Hc_a+Cc_a]$

$Q_{min}=[Hc_n+Cc_n]$

where:

Hc_x, Cc_x, Hc_a, Cc_a, Hc_n, and Cc_n are as defined in 3.6.

4.2.2 *Total weighted per-cycle water consumption.* Calculate the total weighted per cycle consumption, Q_T, expressed in gallons per cycle (or liters per cycle) and defined as:

$Q_T=[Q_{max}\times F_{max}]+[Q_{avg}\times F_{avg}]+[Q_{min}\times F_{min}]$

where:

Q_{max}, Q_{avg}, and Q_{min} are as defined in 4.2.1.

F_{max}, F_{avg}, and F_{min} are as defined in table 4.1.3.

4.2.3 *Water consumption factor.* Calculate the water consumption factor, WCF, expressed in gallon per cycle per cubic feet (or liter per cycle per liter), as:

$WCF=Q_T / C$

where:

Q_T=as defined in section 4.2.2.

C = as defined in section 3.1.5.

4.3 *Per-cycle energy consumption for removal of moisture from test load.* Calculate the per-cycle energy required to remove the moisture of the test load, D_E, expressed in kilowatt-hours per cycle and defined as

D_E=(LAF)×(Maximum test load weight)×(RMC—4%)×(DEF)×(DUF)

where:

LAF=Load adjustment factor=0.52.

Test load weight=As required in 3.8.1, expressed in lbs/cycle.

RMC=As defined in 3.8.2.5, 3.8.3.3 or 3.8.4.

DEF=nominal energy required for a clothes dryer to remove moisture from clothes=0.5 kWh/lb (1.1 kWh/kg).

DUF=dryer usage factor, percentage of washer loads dried in a clothes dryer=0.84.

4.4 *Modified energy factor.* Calculate the modified energy factor, MEF, expressed in cubic feet per kilowatt-hour per cycle (or liters per kilowatt-hour per cycle) and defined as:

$MEF=C/(E_{TE} + D_E)$

where:

C=As defined in 3.1.5.

E_{TE}=As defined in 4.1.7.

D_E=As defined in 4.3.

4.5 *Energy factor.* Calculate the energy factor, EF, expressed in cubic feet per kilowatt-hour per cycle (or liters per kilowatt-hour per cycle) and defined as:

$EF=C/E_{TE}$

where:

C=As defined in 3.1.5.

E_{TE}=As defined in 4.1.7.

5. TEST LOADS

TABLE 5.1—TEST LOAD SIZES

Container volume		Minimum load		Maximum load		Average load	
cu. ft. ≥ <	(liter) ≥ <	lb	(kg)	lb	(kg)	lb	(kg)
0–0.8	0–22.7	3.00	1.36	3.00	1.36	3.00	1.36
0.80–0.90	22.7–25.5	3.00	1.36	3.50	1.59	3.25	1.47
0.90–1.00	25.5–28.3	3.00	1.36	3.90	1.77	3.45	1.56
1.00–1.10	28.3–31.1	3.00	1.36	4.30	1.95	3.65	1.66
1.10–1.20	31.1–34.0	3.00	1.36	4.70	2.13	3.85	1.75
1.20–1.30	34.0–36.8	3.00	1.36	5.10	2.31	4.05	1.84
1.30–1.40	36.8–39.6	3.00	1.36	5.50	2.49	4.25	1.93
1.40–1.50	39.6–42.5	3.00	1.36	5.90	2.68	4.45	2.02
1.50–1.60	42.5–45.3	3.00	1.36	6.40	2.90	4.70	2.13
1.60–1.70	45.3–48.1	3.00	1.36	6.80	3.08	4.90	2.22
1.70–1.80	48.1–51.0	3.00	1.36	7.20	3.27	5.10	2.31
1.80–1.90	51.0–53.8	3.00	1.36	7.60	3.45	5.30	2.40
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3.00–3.10	85.0–87.8	3.00	1.36	12.50	5.67	7.75	3.52
3.10–3.20	87.8–90.6	3.00	1.36	12.90	5.85	7.95	3.61
3.20–3.30	90.6–93.4	3.00	1.36	13.30	6.03	8.15	3.70
3.30–3.40	93.4–96.3	3.00	1.36	13.70	6.21	8.35	3.79
3.40–3.50	96.3–99.1	3.00	1.36	14.10	6.40	8.55	3.88
3.50–3.60	99.1–101.9	3.00	1.36	14.60	6.62	8.80	3.99
3.60–3.70	101.9–104.8	3.00	1.36	15.00	6.80	9.00	4.08
3.70–3.80	104.8–107.6	3.00	1.36	15.40	6.99	9.20	4.17

Notes:

(1) All test load weights are bone dry weights.

(2) Allowable tolerance on the test load weights are +/−0.10 lbs (0.05 kg).

6. WAIVERS AND FIELD TESTING

6.1 *Waivers and Field Testing for Non-conventional Clothes Washers.* Manufacturers of nonconventional clothes washers, such as clothes washers with adaptive control systems, must submit a petition for waiver pursuant to 10 CFR 430.27 to establish an acceptable test procedure for that clothes washer. For these and other clothes washers that have controls or systems such that the DOE test procedures yield results that are so unrepresentative of the clothes washer's true energy consumption characteristics as to provide materially inaccurate comparative data, field testing may be appropriate for establishing an acceptable test procedure. The following are guidelines for field testing which may be used by manufacturers in support of petitions for waiver. These guidelines are not mandatory and the Department may determine that they do not apply to a particular model. Depending upon a manufacturer's approach for conducting field testing, additional data may be required. Manufacturers are encouraged to communicate with the Department prior to the commencement of field tests which may be used to support a petition for waiver. Section 6.3 provides an example of field testing for a clothes washer with an adaptive water fill control system. Other features, such as the use of various spin speed selections, could be the subject of field tests.

6.2 *Nonconventional Wash System Energy Consumption Test.* The field test may consist of a minimum of 10 of the nonconventional clothes washers (''test clothes washers'') and 10 clothes washers already being distributed in commerce (''base clothes washers''). The tests should include a minimum of 50 energy test cycles per clothes washer. The test clothes washers and base clothes washers should be identical in construction except for the controls or systems being tested. Equal numbers of both the test clothes washer and the base clothes washer should be tested simultaneously in comparable settings to minimize seasonal or consumer laundering conditions or variations. The clothes washers should be monitored in such a way as to accurately record the total energy consumption per cycle. At a minimum, the following should be measured and recorded throughout the test period for each clothes washer: Hot water usage in gallons (or liters), electrical energy usage in kilowatt-hours, and the cycles of usage.

The field test results would be used to determine the best method to correlate the rating of the test clothes washer to the rating of the base clothes washer. If the base clothes washer is rated at A kWh per year, but field tests at B kWh per year, and the test clothes washer field tests at D kWh per year, the test unit would be rated as follows:

$A \times (D/B) = G$ kWh per year

6.3 *Adaptive water fill control system field test.* Section 3.2.3.1 defines the test method for measuring energy consumption for clothes washers which incorporate control systems having both adaptive and alternate cycle selections. Energy consumption calculated by the method defined in section 3.2.3.1 assumes the adaptive cycle will be used 50 percent of the time. This section can be used to develop field test data in support of a petition for waiver when it is believed that the adaptive cycle will be used more than 50 percent of the time. The field test sample size should be a minimum of 10 test clothes washers. The test clothes washers should be totally representative of the design, construction, and control system that will be placed in commerce. The duration of field testing in the user's house should be a minimum of 50 energy test cycles, for each unit. No special instructions as to cycle selection or product usage should be given to the field test participants, other than inclusion of the product literature pack which would be shipped with all units, and instructions regarding filling out data collection forms, use of data collection equipment, or basic procedural methods. Prior to the test clothes washers being installed in the field test locations, baseline data should be developed for all field test units by conducting laboratory tests as defined by section 1 through section 5 of these test procedures to determine the energy consumption, water consumption, and remaining moisture content values. The following data should be measured and recorded for each wash load during the test period: wash cycle selected, the mode of the clothes washer (adaptive or manual), clothes load dry weight (measured after the clothes washer and clothes dryer cycles are completed) in pounds, and type of articles in the clothes load (e.g., cottons, linens, permanent press). The wash loads used in calculating the in-home percentage split between adaptive and manual cycle usage should be only those wash loads which conform to the definition of the energy test cycle.

Calculate:

T=The total number of energy test cycles run during the field test

T_a=The total number of adaptive control energy test cycles

T_m=The total number of manual control energy test cycles

The percentage weighting factors:

$P_a=(T_a/T)\times 100$ (the percentage weighting for adaptive control selection)

$P_m=(T_m/T)\times 100$ (the percentage weighting for manual control selection)

Energy consumption (HE_T, ME_T, and D_E) and water consumption (Q_T), values calculated in section 4 for the manual and adaptive modes, should be combined using P_a and P_m as the weighting factors.

§ 430.62 [Amended]

5. Section 430.62(a)(2) is amended by adding ''energy factor (for clothes washers, clothes dryers, and dishwashers),'' after ''(for pool heaters),'' and before ''and annual fuel utilization efficiency.''

[FR Doc. 97–22682 Filed 8–26–97; 8:45 am]

BILLING CODE 6450–01–P

federal register

Wednesday
August 27, 1997

Part III

Department of Labor

Employment and Training Administration

Federal-State Unemployment Compensation Program; State's Experience Rating Formula; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Unemployment Compensation Program; State's Experience Rating Formula

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice; request for comments.

SUMMARY: The Unemployment Insurance Service within the Employment and Training Administration (ETA) interprets Federal law requirements pertaining to unemployment compensation (UC) as part of its role in the administration of the Federal-State UC program.

The purpose of this notice is to obtain comments on the Department of Labor's (Department) proposal to issue more definitive direction on the Federal law requirements pertaining to the minimum acceptable interval between State UC tax rates. Although the Department's position on the need for small intervals is well established, a need for more definitive direction has been identified as a result of recent State legislative initiatives creating significant intervals between rates. This ''interval requirement'' will assure that States operate experience rating systems consistent with Federal law requirements.

DATES: The Department invites written comments on this proposal. Comments are to be submitted by October 27, 1997.

ADDRESSES: Submit written comments to Grace A. Kilbane, Director, Unemployment Insurance Service (UIS), Employment and Training Administration (ETA); U.S. Department of Labor; 200 Constitution Avenue, NW., Room C–4512; Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Jerry Hildebrand, UIS, ETA; U.S. Department of Labor; 200 Constitution Avenue, NW., Room C–4512; Washington, DC 20210. Phone (202) 219–5200, extension 392 (this is not a toll-free number); fax (202) 219–8506.

SUPPLEMENTARY INFORMATION: The Federal and State governments are jointly responsible for administering the UC program. The legislative framework—the Federal Unemployment Tax Act (FUTA) and Title III of the Social Security Act—reserves most decisions regarding tax structure, qualifying requirements, benefit levels and eligibility/disqualification provisions to each State. However, these laws also give the Secretary of Labor responsibility for ensuring State conformity with certain Federal requirements as a condition for participating in the UC program.

One of these requirements relates to the use of experience in determining the tax rates of employers. Section 3303(a)(1), FUTA, requires, as a condition for employers in a State to receive the additional credit against the Federal tax, that State law provide that:

> no reduced rate of contributions to a pooled fund is permitted to a person (or group of persons) having individuals in his (or their) employ except on the basis of his (or their) experience with respect to unemployment or other factors bearing a direct relation to unemployment risk * * *.

Thus, Federal law permits conforming State UC laws to grant employers reduced rates only if those rates are related to the employer's experience with respect to unemployment or ''other factors bearing a direct relation to unemployment risk.'' Although the term ''experience'' is often used as convenient shorthand, no State actually measures ''experience.'' Instead what is used are ''other factors bearing a direct relation to unemployment risk.''

The words ''his * * * experience,'' as used in the FUTA, compel a State's experience rating system to measure each individual employer's experience. This means that an individual employer's rate must be assigned based on experience comparative or relative to the experience of other employers. S. Rep. No. 628, 74th Cong., 1st Sess. 50 (1935). This accomplishes the purposes of experience rating by equitably allocating costs, encouraging stabilization of employment and encouraging employer participation.

On July 31, 1940, the Social Security Board (Board), which at that time administered the UC program, published the first experience rating standards in *Employment Security Memorandum (ESM) No. 9. ESM No. 9's* explanation of the requirement that rates be assigned based on comparative or relative experience is repeated in Unemployment Insurance Program Letter (UIPL) No. 29–83, dated June 23, 1983. As stated in both issuances.

> Rate differentials are essential to any system under which an employer's rate is based on his experience, because only by the use of differentials is there a genuine reflection of the individual experience of an employer. Within the limits of the maximum and minimum rates, the smaller the intervals between the variant rates, the greater the effect of the individual experience upon the rate at which any given employer must pay contributions, i.e., the more nearly is his rate based on his experience with unemployment or other factors bearing a direct relation to unemployment risk. Numerous differentials make the transition from one contribution rate to another more equitable because if the interval between contribution rates is small, inequities to borderline employers are less than under a system in which the intervals are larger. In other words, using a large number of different contribution rates, with smaller intervals between such rates, would prevent slight variations in employer experience from resulting in large variations in rates assigned to different employers with nearly the same relative experience.

UIPL 29–83 further provides that—

> to assure that the differentiation of experience will be reflected in the rates assigned to individual employers, the rate schedule must contain rate intervals that will reasonably reflect their relative experience. A range of rates, for example, from 5.4 to 0.1, but with a highest reduced rate of 2.5 would not permit a reasonable reflection of relative experience.

In this example, the Department deems the interval between 2.5 percentage points and 5.4 percentage points (that is, 2.9 percentage points) to be inadequate to reasonably measure relative experience. Thus, if a State were to have only one reduced rate assigned to positive balance employers, and that one reduced rate was zero, the gap between that rate and the highest rate of 5.4 percentage points would be even higher (5.4 percentage points) and would simply be too large to reasonably measure relative experience.

In that situation, employers with almost identical experience would receive widely divergent rates while employers with widely divergent experience would receive the same rate. For example, in a reserve ratio State, an employer with only a $1 positive reserve balance would receive a zero percentage point rate while an employer with only a $1 negative balance would receive a 5.4 percentage points rate. Conversely, an employer with a $100,000 positive balance would receive the same zero percentage point rate as an employer of the same or larger size with a $1 reserve balance. Assigning widely divergent rates for similar experience or similar rates for widely divergent experience would both thwart the purpose of the experience rating system.

To assure experience rating continues to accomplish its purpose by reasonably reflecting relative experience, the Department proposes to establish a minimum acceptable interval between rates. Although States can and do assign rates with intervals as small as 0.1 percentage points, the Department recognizes, as stated in both *ESM No. 9* and UIPL No. 29–83, that ''administrative consideration indicate the desirability of some limitations on the number of differentials * * *.''

Given these administrative considerations, the Department proposes to establish an ''interval requirement'' of 0.9 percentage points as the *largest* percentage point interval acceptable in an experience rating system. This 0.9 percent acknowledges that some States may find it administratively desirable to have equally spaced intervals between the minimum and maximum rates. (That is, 0.0 percent, 0.9 percent, 1.8 percent and so forth up to 5.4 percent.)

Although the large interval of 0.9 percent between tax rates would less accurately reflect actual relative experience of an employer than a smaller interval such as 0.1 percentage points, the Department would not object if a State chooses to use such an interval. However, the Department would continue to encourage a State to use a system assigning a large number of rates with smaller intervals as a means of more accurately measuring employer experience and distributing the UC cost burden most fairly.

A State which does not have any interval between rates of greater than 0.9 percentage points would not need to change its law as a result of this more definitive guidance. A State with any interval between rates of larger than 0.9 percent would, however, be required to change its law. Such amendments would assure that States operate experience rating systems which more fairly allocate costs and encourage stabilization of employment by more accurately reflecting the relative experience of employers. States would be given, at a minimum, two years from the date of issuance of the Department's final position to obtain any necessary amendments to State law.

This ''interval requirement'' would apply only to ''reduced rates'' assigned by States. Section 3303(c)(8), FUTA, defines ''reduced rate'' as a rate ''lower than the standard rate applicable under state law.'' The same section defines ''standard rate'' as ''the rate on the basis of which variations therefore are computed.'' UIPL 15–86, dated February 17, 1984, provides guidance on determining the standard rate. In brief, the standard rate is 5.4 percent if the State's tax rate schedule contains a 5.4 percent rate that is assignable based on experience. If the State's law does not contain such a 5.4 percent rate, then the standard rate is the highest rate assignable based on experience under State law. To determine the effects of the proposed interval requirement on States laws, States will first need to identify the standard rate and then examine the intervals between rates at or below the standard rate.

Interested parties are invited to comment on this proposal concerning the minimum acceptable interval between tax rates.

Signed at Washington, DC on August 12, 1997.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 97–22793 Filed 8–26–97; 8:45 am]

BILLING CODE 4510–30–M

federal register

Wednesday
August 27, 1997

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 202

Depositaries and Financial Agents of the Federal Government; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 202

RIN 1510–AA42

Depositaries and Financial Agents of the Federal Government

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule revises regulations which govern the designation of Depositaries and Financial Agents of the Federal Government (depositaries); their authorization to accept deposits of public money and to perform other specific services; and the securing of public money. The revisions update, clarify, and simplify current requirements, but do not change them. Outdated references to specific acceptable insurers are deleted. Existing language concerning the types and valuation of acceptable collateral securities is clarified. In addition, various references are updated.

EFFECTIVE DATE: September 26, 1997.

FOR FURTHER INFORMATION CONTACT: Mark R. Matolak, (202) 874–6846 (Financial Program Specialist, Cash Management Policy and Planning Division) or Cynthia L. Johnson, (202) 874–6590 (Director, Cash Management Policy and Planning Division).

SUPPLEMENTARY INFORMATION:

Background

Depositaries accepting deposits of public money and providing other financial agency services to the United States are required to pledge adequate acceptable securities as collateral, as directed by the Secretary of the Treasury (Secretary). The Secretary previously promulgated regulations, codified at 31 CFR Part 202, setting forth the general requirements for designating depositaries and the pledging of collateral.

Under the current rule, certain identified securities are acceptable at face value, unless otherwise specified by the Secretary. Since the current rule was last amended, the Secretary has ''otherwise specified'' that certain securities, including certain of those expressly referenced in the current rule, are acceptable only at 90% of face value, rather than at 100% of face value. In order to eliminate any possible confusion regarding acceptable types and valuation of collateral security, the revised rule provides that types and valuation of acceptable collateral securities will be specified in Treasury procedural instructions. In addition, under the current rule, eligible banks insured by the Federal Deposit Insurance Corporation (FDIC) and eligible institutions insured by the Federal Savings and Loan Insurance Corporation (FSLIC) are designated as depositaries. The revised rule deletes references to the FSLIC, which has been abolished, and provides that eligible financial institutions insured by the FDIC are designated as depositaries.

Public Comments

The Financial Management Service (FMS) received two comments on its June 21, 1996, Notice of Proposed Rulemaking (NPRM) from the financial community. One commenter noted that section 202.2(a)(2) of the NPRM designates as depositaries eligible credit unions insured by the Administrator of the National Credit Union Administration (NCUA). The commenter noted that the NCUA is governed now by a three-member board of directors, rather than an administrator. The NCUA confirmed this fact. The commenter suggested that the final rule be revised to designate as depositaries eligible credit unions insured by the National Credit Union Share Insurance Fund (NCUSIF). For reasons of consistency throughout section 202.2, however, section 202.2(a)(2) of the final rule has been revised to designate as depositaries eligible credit unions insured by the NCUA, rather than the NCUSIF.

The other commenter noted that Treasury procedural instructions now will specify the types and valuation of acceptable collateral securities. The commenter expressed the desire to continue to have an opportunity to comment on changes to procedural items, including the types and valuation of acceptable collateral securities. Both the current and revised rules provide that the Secretary may specify types and valuation of acceptable collateral. There is no requirement in either to seek comments prior to this specification. The current rule provides valuation for certain listed types of acceptable collateral unless the Secretary otherwise specifies. In practice, the Secretary has utilized Treasury procedural instructions to ''otherwise specify'' types and valuation of certain acceptable collateral, including some of those specifically listed in the current rule. The revised rule clarifies and eliminates any possible confusion on this issue by providing that Treasury procedural instructions will specify the types and valuation of acceptable collateral. The revised rule does not reduce the ability of financial institutions to comment on the Secretary's determination of the types and valuation of acceptable collateral. Therefore, the revised rule is not changed as a result of this comment.

Authorities

As a result of the enactment of sections 664 and 665 of Title VI of the Omnibus Consolidated Appropriations Act, 1997, Pub. L. 104–208, subsequent to the publication of the Notice of Proposed Rulemaking, additional authorities are included in the authorities citation for the revised rule.

Rulemaking Analysis

Executive Order 12866

It has been determined that this regulation is not a significant regulatory action as defined in Executive Order 12866. Therefore, a Regulatory Assessment is not required.

Regulatory Flexibility Act

It is hereby certified pursuant to the Regulatory Flexibility Act that this revision will not have a significant economic impact on a substantial number of small business entities. This revision makes no change to current procedures and only updates, clarifies, and simplifies the current rule. Accordingly, a Regulatory Flexibility Act analysis is not required.

List of Subjects in 31 CFR Part 202

Banks, Banking.

For the reasons set out in the preamble, 31 CFR part 202 is amended as follows:

PART 202—DEPOSITARIES AND FINANCIAL AGENTS OF THE FEDERAL GOVERNMENT

1. The authority citation for part 202 is revised, and the authority citations at the end of the sections are removed, to read as follows:

Authority: 12 U.S.C. 90; 12 U.S.C. 265–266; 12 U.S.C. 391; 12 U.S.C. 1452(d); 12 U.S.C. 1464(k); 12 U.S.C. 1789a; 12 U.S.C. 2013; 12 U.S.C. 2122; 12 U.S.C. 3101–3102; 31 U.S.C. 3303; 31 U.S.C. 3336.

2. Section 202.1 is revised to read as follows:

§ 202.1 Scope of regulations.

The regulations in this part govern the designation of Depositaries and Financial Agents of the Federal Government (hereinafter referred to as depositaries), and their authorization to accept deposits of public money and to perform other services as may be required of them. Public money

includes, but is not limited to, revenue and funds of the United States, and any funds the deposit of which is subject to the control or regulation of the United States or any of its officers, agents, or employees. The designation and authorization of Treasury Tax and Loan depositaries for the receipt of deposits representing Federal taxes are governed by the regulations in part 203 of this chapter.

3. Section 202.2 is amended by revising paragraph (a)(1), removing paragraph (a)(2), by redesignating paragraphs (a)(3) and (a)(4) as (a)(2) and (a)(3), and by revising redesignated paragraphs (a)(2) and (a)(3) to read as follows:

§ 202.2 Designations.

(a) * * *

(1) Financial institutions insured by the Federal Deposit Insurance Corporation.

(2) Credit unions insured by the National Credit Union Administration.

(3) Banks, savings banks, savings and loan, building and loan, and homestead associations, credit unions created under the laws of any State, the deposits or accounts of which are insured by a State or agency thereof or by a corporation chartered by a State for the sole purpose of insuring deposits or accounts of such financial institutions, United States branches of foreign banking corporations authorized by the State in which they are located to transact commercial banking business, and Federal branches of foreign banking corporations, the establishment of which has been approved by the Comptroller of the Currency.

* * * * *

4. Section 202.3 is amended by revising paragraphs (a), (b)(1) introductory text, (b)(2) introductory text, and (b)(2)(i) to read as follows:

§ 202.3 Authorization.

(a) *To accept deposits covered by the appropriate Federal or State insurer.* Every depositary is authorized to accept a deposit of public money in an official account, other than an account in the name of the United States Treasury, in which the maximum balance does not exceed the ''Recognized Insurance Coverage.'' ''Recognized Insurance Coverage'' means the insurance provided by the Federal Deposit Insurance Corporation, the National Credit Union Administration, and by insurance organizations specifically qualified by the Secretary of the Treasury.

(b) *To perform other services.* (1) The Secretary of the Treasury may authorize a depositary to perform other services including, but not limited to:

* * * *

(2) To obtain authorization to perform services, a depositary must:

(i) File with the Secretary of the Treasury an appropriate agreement and resolution of its board of directors authorizing the agreement (both on forms prescribed by the Financial Management Service and available from Federal Reserve Banks), and

* * * * *

5. Section 202.4 is amended by revising the heading, introductory text and paragraphs (c), (d), and (e) to read as follows:

§ 202.4 Agreement of deposit.

A depositary which accepts a deposit under this part enters into an agreement of deposit with the Treasury Department. The terms of this agreement include:

* * * * *

(c) The provisions prescribed in Executive Order 11246, entitled ''Equal Employment Opportunity,'' as amended by Executive Orders 11375 and 12086, and regulations issued thereunder at 41 CFR chapter 60, as amended.

(d) The requirements of section 503 of the Rehabilitation Act of 1973, as amended, and the regulations issued thereunder at 41 CFR part 60–741, requiring Federal contractors to take affirmative action to employ and advance in employment qualified individuals with disabilities.

(e) The requirements of section 503 of the Vietnam Era Veterans' Readjustment Assistance Act of 1972, as amended, 38 U.S.C. 4212, Executive Order 11701, and the regulations issued thereunder at 41 CFR parts 60–250 and 61–250, requiring Federal contractors to take affirmative action to employ and advance in employment qualified special disabled and Vietnam Era veterans.

6. Section 202.6 is amended by revising paragraphs (b) and (e)(1) to read as follows:

§ 202.6 Collateral security.

* * * * *

(b) *Acceptable security.* Types and valuations of acceptable collateral security will be specified by the Secretary of the Treasury in Treasury procedural instructions.

* * * * *

(e) *Disposition of principal and interest payments of the pledged securities after a depositary is declared insolvent*—(1) *General.* In the event of the depositary's insolvency or closure, or in the event of the appointment of a receiver, conservator, liquidator, or other similar officer to terminate its business, the depositary agrees that all principal and interest payments on any security pledged to protect public money due as of the date of the insolvency or closure, or thereafter becoming due, shall be held separate and apart from any other assets and shall constitute a part of the pledged security available to satisfy any claim of the United States, including those not arising out of the depositary relationship.

* * * * *

7. Section 202.7 is amended by revising paragraph (a) to read as follows:

§ 202.7 Maintenance of balances within authorizations.

(a) Federal Government agencies shall contact the Department of the Treasury, Financial Management Service, before making deposits with a financial institution insured by a State or agency thereof or by a corporation chartered by a State for the sole purpose of insuring deposits or accounts. The contact should be directed to the Cash Management Policy and Planning Division, Federal Finance, Financial Management Service, Department of the Treasury, Washington, DC 20227.

* * * * *

Dated: August 21, 1997.

Russell D. Morris,

Commissioner.

[FR Doc. 97–22698 Filed 8–26–97; 8:45 am]

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