12–2–97
Vol. 62 No. 231
Pages 63627–63824

federal register

Tuesday
December 2, 1997

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

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213 and 315

RIN 3206–AH82

Student Educational Employment Program

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for written comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations governing the Student Educational Employment Program. The regulations make no fundamental changes to the Program. The regulations recodify the two components of the Program; implement Executive Order 13024, which permits noncompetitive conversion of certain employees of the Student Educational Employment Program to term appointments; clarify certain definitions; and make related editorial changes to part 315.

DATES: Effective date: December 2, 1997. Written comments will be considered if received on or before January 2, 1998.

FOR FURTHER INFORMATION CONTACT: Christina Gonzales Vay, 202–606–0830, FAX 202–606–0390, or TDD 202–606–0023.

SUPPLEMENTARY INFORMATION: On December 16, 1994, OPM published final regulations at 59 FR 64839 that consolidated 13 different student employment programs into one simplified program, the Student Educational Employment Program. The Student Educational Employment Program is comprised of two components, the Student Temporary Employment Program and the Student Career Experience Program. Each was assigned an excepted service appointing authority letter under Schedule B. The Student Temporary Employment Program was listed as 5 CFR 213.3202(a); the Student Career Experience Program was listed as 5 CFR 213.3202(b). Implementing regulations for the programs were listed separately under 5 CFR 213.3202 (c) and (d), which has caused confusion when citing the appropriate appointing authority.

We propose to rearrange the authorities so that the requirements for each program are listed under the appointing authority itself. The Student Temporary Employment Program will remain under 5 CFR 213.3202(a), and the Student Career Experience Program under 5 CFR 213.3202(b). Requirements and general instructions that apply to both components appear in each authority. Paragraphs (c) and (d) in § 213.3202 are reserved.

No fundamental changes are made to the Student Educational Employment Program; we are not entertaining any suggestions to change it. The Program will continue as it has for the last 2 years, with clarifications to three definitions.

Program Clarifications

- The current definition of ''student'' does not clearly address the situation of students who are accepted for enrollment but are not yet taking courses, taking correspondence course, or being home-schooled. We are amending the definition to make clear that individuals who are accepted for enrollment are considered to be students for the purpose of both programs. We are also clarifying that only those students who are in actual physical attendance at the school may participate in the Student Educational Employment Program. This is similar to the definition of ''student'' used in the past for summer employment.
- Under the Student Career Experience Program, the authority currently classifies students as trainees in the –99 series of an occupational group and does not address wage grade positions. We did not intend to limit Student Career Experience appointments to only positions under the General Schedule. Therefore, we are clarifying that agencies may appoint Student Career Experience eligibles to positions either under the General Schedule or the Federal Wage System.
- We are clarifying the definition of ''break in program'' to make clear that a break in program is authorized when a student is neither attending classes nor working at the agency.

Conversion to Term Appointments

On November 7, 1996, Executive Order 13024 authorized noncompetitive conversion of Student Career Experience employees to term appointments in the competitive service, in addition to career and career-conditional appointments authorized by Executive Order 12015. Before the term appointment expires, agencies may noncompetitively convert the term appointments to career or career-conditional appointments. This provides agencies an additional flexibility in managing its workforce. We are including this provision in the Student Career Experience appointment authority, and making conforming changes in part 315.

Documentation on SF–50, Notification of Personnel Action

For noncompetitive conversions from the Student Educational Employment Program to term, career, and career-conditional appointments, agencies should cite Legal Authority Code ZJM on the SF–50, Notification of Personnel Action. The legal authority is Executive Order 12015.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 533(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because this document merely recodifies paragraphs for greater clarity and ease of use. Also, the Executive Order permitting noncompetitive conversion to term appointments became effective on November 7, 1996. No substantive changes have been made in these regulations.

List of Subjects in 5 CFR Parts 213 and 315

Government employees, Reporting and recordkeeping requirements.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 213 and part 315 of title 5, Code of Federal Regulations, as follows:

PART 213—EXCEPTED SERVICE

1. The authority for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h), and 8456; E.O. 12364,

47 FR 22931, 3 CFR 1982 Comp., p. 185; and 38 U.S.C. 4301 *et seq.*

2. In § 213.104, paragraph (b)(3)(ii) is revised to read as follows:

§ 213.104 Special provisions for temporary, intermittent, or seasonal appointments in Schedule A, B, or C.

* * * * *

(b) * * *

(3) * * *

(ii) Positions are filled under an authority established for the purpose of enabling the appointees to continue or enhance their education, or to meet academic or professional qualification requirements. These include the authorities set out in paragraphs (r) and (s) of § 213.3102 and paragraph (a) of § 213.3202, and authorities granted to individual agencies for use in connection with internship, fellowship, residency, or student programs.

* * * * *

3. In § 213.3202, paragraphs (a) and (b) are revised, and paragraphs (c) and (d) are removed and reserved, to read as follows:

§ 213.3202 Entire executive civil service.

(a) *Student Educational Employment Program—Student Temporary Employment Program.* (1) Students may be appointed to the Student Temporary Employment Program if they are pursuing any of the following educational programs:

(i) High school diploma or General Equivalency Diploma (GED);

(ii) Vocational/Technical certificate;

(iii) Associate degree;

(iv) Baccalaureate degree;

(v) Graduate degree; or

(vi) Professional degree.

(2) *Definition of student.* A student is an individual who has been accepted for enrollment, or who is enrolled, as a degree (diploma, certificate, etc.) seeking resident student in an accredited high school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. If the student is enrolled, the student must be taking at least a half-time academic/vocational/or technical course load. The definition of *half-time* is the definition provided by the school in which the student is enrolled. A student must be in actual physical attendance at a school, as distinguished from a correspondence or home-schooled student. An individual who needs to complete less than the equivalent of half an academic/vocational or technical courseload in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

(3) *Schedules.* Students may work full-time or part-time schedules at any time during the year. There are no limitations on the number of hours a student can work per week, but the student's work schedule should not interfere with the student's academic schedule.

(4) *Breaks in program.* A *break in program* is defined as a period of time when a program participant is working but is unable to go to school, *or* neither attending classes nor working at the agency. Agencies may use their discretion in either approving or denying a break in program.

(5) *Employment of minors.* Participation in this program must be in conformance with Federal, State, or local laws and standards governing the employment of minors.

(6) *Citizenship.* Agencies may appoint non-citizens provided that:

(i) The student is lawfully admitted to the United States as a permanent resident or otherwise authorized to be employed; and

(ii) The agency is authorized to pay aliens under the annual appropriations act ban and any agency specific enabling and appropriation statutes.

(7) *Employment of relatives.* In accordance with part 310 of this chapter, a student may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the student's appointment, employment, promotion or advancement within the agency.

(8) *Financial need.* There is no requirement for students to meet any specific economic/income criteria to be eligible. However, agencies have the option to establish and use financial need as a criteria to select students, if they wish. OPM does not develop or distribute annual economic guidelines for use in determining financial need. An agency wishing to use the Department of Health and Human Services' poverty guidelines may call the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

(9) *Training expenses.* Agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 to pay all or part of the students' training expenses.

(10) *Appointments.* (i) Students are appointed to positions not to exceed 1 year. Appointments under this authority may be extended in one-year increments as long as the individual meets the definition of a student. Agencies may establish minimum academic requirements and on the job performance requirements for continuation in the program. Students under this appointment authority are excepted from the limitations under § 213.104.

(ii) The nature of the duties does not have to be related to the student's academic/career goals.

(iii) Students are not eligible for noncompetitive conversion to term, career, or career-conditional appointments. They may be converted to the Student Career Experience Program (refer to paragraph (a)(15) of this section).

(11) *Classification.* Classification of students is based on the occupational series for which they are hired. Grade level is to be set according to the criteria in the appropriate General Schedule (GS) or wage grade (WG) classification standard.

(12) *Qualifications.* Students may be evaluated either by agency-developed standards or by the OPM qualification requirements for the position to which appointed. Students are eligible for promotions. Promotions should be documented as a conversion to another excepted appointment, citing the same authority used for the original appointment and maintaining the original not-to-exceed (NTE) date.

(13) *Benefits.* (i) Students under this program are eligible for annual and sick leave and are generally ineligible for retirement coverage. Refer to § 831.201 and § 842.105 of this chapter for specific information.

(ii) For rules on health and life insurance coverage refer to § 870.202, § 890.102, and § 890.502 of this chapter.

(14) *Reductions-in-Force (RIF).* Students are covered by § 351.502 of this chapter for purposes of RIF. Students, provided they have completed at least 1 year of current continuous service, are in excepted service Tenure Group III.

(15) *Conversion to Student Career Experience Program.* (i) Students may be noncompetitively converted to the Student Career Experience Program whenever they meet the requirements of that program and the agency has an appropriate position available.

(ii) Work experience related to the student's academic program and career goals, gained while under the Student Temporary Employment Program, may be credited towards the 640 hour work experience necessary for noncompetitive conversion to a term, career, or career-conditional appointment.

(iii) Conversions are not subject to requirements of subparts C and D of part 302 of this chapter.

(b) *Student Educational Employment Program—Student Career Experience Program.* (1)(i) Students may be appointed to the Student Career

Experience Program if they are pursuing any of the following educational programs:

(A) High school diploma or General Equivalency Diploma (GED);

(B) Vocational/Technical certificate;

(C) Associate degree;

(D) Baccalaureate degree;

(E) Graduate degree; or

(F) Professional degree.

(ii) Student participants in the Harry S. Truman Foundation Scholarship Program under the provision of Public Law 93–842 are eligible for appointments under the Student Career Experience Program.

(2) *Definition of student.* A student is an individual who has been accepted for enrollment, or who is enrolled, as a degree (diploma, certificate, etc.) seeking resident student in an accredited high school, technical or vocational school, 2-year or 4-year college or university, graduate or professional school. If the student is enrolled, the student must be taking at least a half-time academic/vocational/ or technical course load. The definition of *half-time* is the definition provided by the school in which the student is enrolled. A student must be in actual physical attendance at a school, as distinguished from a correspondence or home-schooled student. An individual who needs to complete less than the equivalent of half an academic/ vocational or technical courseload in the class enrollment period immediately prior to graduating is still considered a student for purposes of this program.

(3) *Schedules.* Students may work full-time or part-time schedules at any time during the year. There are no limitations on the number of hours a student can work per week, but the student's work schedule should not interfere with the student's academic schedule.

(4) *Breaks in program.* A *break in program* is defined as a period of time when a program participant is working but is unable to go to school, *or* neither attending classes nor working at the agency. Agencies may use their discretion in either approving or denying a break in program.

(5) *Employment of minors.* Participation in this program must be in conformance with Federal, State, or local laws and standards governing the employment of minors.

(6) *Citizenship.* (i) Agencies may appoint non-citizens provided that:

(A) The student is lawfully admitted to the United States as a permanent resident or otherwise authorized to be employed; and

(B) The agency is authorized to pay aliens under the annual appropriations act ban and any agency specific enabling and appropriation statutes.

(ii) All students must be United States citizens at the time they are noncompetitively converted to a term, career, or career-conditional appointment.

(7) *Employment of relatives.* In accordance with part 310 of this chapter, a student may work in the same agency with a relative when there is no direct reporting relationship and the relative is not in a position to influence or control the student's appointment, employment, promotion or advancement within the agency.

(8) *Financial need.* There is no requirement for students to meet any specific economic/income criteria to be eligible. However, agencies have the option to establish and use financial need as a criteria to select students, if they wish. OPM does not develop or distribute annual economic guidelines for use in determining financial need. An agency wishing to use the Department of Health and Human Services' poverty guidelines may call the Department of Health and Human Services, Office of the Assistant Secretary for Planning and Evaluation.

(9) *Training expenses.* Agencies may use their training authority in 5 U.S.C. chapter 41 and 5 CFR part 410 of this chapter to pay all or part of the students' training expenses.

(10) *Appointments.* (i) Appointments are subject to all the requirements and conditions governing term, career, or career-conditional employment, including investigation to establish an appointee's qualifications and suitability.

(ii) Appointments of participants who have met all the requirements of the program may be noncompetitively converted to term, career, or career-conditional appointments at any time within 120 days after satisfactory completion of the requirements for his/ her diploma, certificate, or degree.

(11) *Program requirements for noncompetitive conversion.* (i) Students may be noncompetitively converted from the Student Career Experience Program to a term, career or career-conditional appointment under Executive Order 12015 (as amended by Executive Order 13024) when students have:

(A) Completed within the preceding 120 days, at an accredited school, course requirements conferring a diploma, certificate, or degree;

(B) Completed at least 640 hours of career-related work (agencies have the option of increasing this requirement for some or all of its occupational fields), before completion of, or concurrently with, the course requirements;

(C) Been recommended by the employing agency in which the career-related work was performed; and

(D) Met the qualification standards for the targeted position to which the student will be appointed.

(ii) Conversions must be to an occupation related to the student's academic training and career related work experience.

(iii) The noncompetitive conversion may be to a position within the same agency or any other agency within the Federal Government.

(iv) Agencies who noncompetitively convert Student Career Experience Program participants to term appointments may also noncompetitively convert them to career or career-conditional appointments before the term appointments expire.

(12) *Agreement by all parties.* (i) The Student Career Experience Program is a formally structured program and requires a written agreement by all parties (agency, school, student) as to the:

(A) Nature of work assignments;

(B) Schedule of work assignments and class attendance;

(C) Evaluation procedures; and

(D) Requirements for continuation and successful completion of the program.

(ii) The work experience with the agency must be related to his/her academic/career goals.

(13) *Schedule.* Agencies, participating educational institutions, and students should agree on a formally-arranged schedule of school and work to ensure that:

(i) Work responsibilities do not interfere with academic performance;

(ii) Completion of the educational program (awarding of diploma/ certificate/degree) and the Student Career Experience Program are accomplished in a reasonable and appropriate timeframe;

(iii) The agency is informed and prepared for the student's periods of employment; and

(iv) Requirements for non-competitive conversion to term, career, or career-conditional employment are understood by all parties.

(14) *Classification.* Students whose positions are covered by the General Schedule will be classified as student trainees, to the –99 series of the appropriate occupational group. Students whose positions are covered by the Federal Wage System will be classified as student trainees, to the -01 series of the appropriate occupational group.

(15) *Qualifications.* Students may be evaluated by either agency-developed standards or by the OPM qualifications requirements for the target position. Any OPM test requirements are waived. Students are eligible for promotion.

(16) *Benefits.* (i) Students appointed under this program earn annual and sick leave *and* with no prior service or with less than 5 years of prior civilian service, are generally covered by the Federal Employees Retirement System (FERS) (see part 842 of this chapter).

(ii) For life insurance and health benefits coverage refer to § 870.202 and § 890.102 of this chapter.

(17) *Tuition assistance.* Agencies may use their training authority in 5 U.S.C. Chapter 41 and part 410 of this chapter to pay all or part of the students' training expenses.

(18) *Travel and transportation.* Agencies may pay for other expenses directly related to training, such as travel and transportation between duty station and school, for participants.

(19) *Reduction-in-force (RIF).* (i) Students are in excepted service Tenure Group II for purposes of § 351.502. They are accorded the same retention rights as excepted service employees.

(ii) They may qualify for severance pay if involuntarily separated under part 550, subpart G of this chapter.

* * * * *

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

4. The authority citation for part 315 continues to read:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 8151.

Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.

Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2506.

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(d).

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

5. In § 315.201, paragraph (b)(1)(ix) is revised to read as follows:

§ 315.201 Service requirement for career tenure.

* * * * *

(b) * * *

(1) * * *

(ix) The date of nontemporary excepted appointment under § 213.3202(b) of this chapter, provided the student's appointment is converted to career or career-conditional appointment under Executive Order 12015, with or without an intervening term appointment, and without a break in service of one day.

* * * * *

[FR Doc. 97–31536 Filed 12–1–97; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 410

RIN 3206–AF99

Federal Employee Training

AGENCY: Office of Personnel Management.

ACTION: Correcting amendments.

SUMMARY: This document contains a correction to the final regulations, which were published in the **Federal Register** of Tuesday, December 17, 1996 (61 FR 66189). The regulations implemented policies related to the training of Federal employees.

DATES: Effective on December 17, 1996.

FOR FURTHER INFORMATION CONTACT: Judith Lombard, 202–606–2431, email jmlombar@opm.gov, or fax 202–606–2394.

SUPPLEMENTARY INFORMATION:

Background

The final regulations subject to this correction affect the training of Federal employees. The subsection on reports contains an inaccurate reference about records of agency training plans, expenditures, and activities. The correction removes a reference to a non-existent subsection of the final regulations and adds, in its place, a reference to the correct subsection of the final regulations.

Need for Correction

As published, the final regulations contain an error which may prove to be misleading and needs to be corrected.

List of Subjects in 5 CFR Part 410

Education, Government employees.

Accordingly, 5 CFR part 410 is corrected by making the following correcting amendment:

PART 410—TRAINING

1. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et. seq.;* E.O. 11348, 3 CFR, 1967 Comp., p. 275.

§ 410.701 (Corrected)

2. In § 410.701, remove the reference to § 410.312, and add, in its place, § 410.311.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 97–31535 Filed 12–1–97; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206–AH51

Cost-of-Living Allowance (Nonforeign Areas)—Miscellaneous Changes

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing regulations that implement four changes in the nonforeign area cost-of-living allowance (COLA) program. One change removes obsolete references to hiring authorities no longer in use. A second change clarifies the application of COLA regulations to two pay systems linked to or equivalent to the Senior Executive Service. A third change clarifies the application of COLA regulations to employees under other pay systems. The fourth change extends nonforeign area post differentials to employees on long-term temporary assignments in the same manner as is provided by the Department of State for employees in foreign areas.

DATES: These regulations become effective on December 2, 1997. These regulations are applicable on the first day of the first pay period beginning on or after December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Paul B. Malerba at (202) 606–2838, FAX: (202) 606–4264, or EMAIL: cola@opm.gov.

SUPPLEMENTARY INFORMATION: Under section 5941 of title 5, United States Code, and Executive Order 10000, as amended, certain Federal employees in nonforeign areas outside the 48 contiguous States are eligible for cost-of-living allowances (COLAs) when local living costs are substantially higher than those in the Washington, DC, area. These COLAs are paid in Alaska, Hawaii, Puerto Rico, the U.S. Virgin Islands, and Guam and the Commonwealth of the Northern Mariana Islands.

The Office of Personnel Management (OPM) published proposed rules at 60 FR 13354 on March 20, 1997, concerning four regulatory changes in the COLA program. One change would remove obsolete references to hiring authorities no longer in use. A second change would clarify the application of COLA regulations to two pay systems linked to or equivalent to the Senior Executive Service. A third change would clarify the application of COLA regulations to employees under other pay systems. The fourth change would extend nonforeign area post differentials to employees on long-term temporary assignments in the same manner as is provided by the Department of State for employees in foreign areas.

OPM received three comments in response to the publication of the proposed regulations. One commenter endorsed the proposed changes in their entirety. The second commenter recommended including in section 591.201 (Definitions) the minimum length of time required for employees on temporary assignment to receive a differential. The third commenter recommended deleting the 25 percent limitation on allowances plus post differentials combined because there is no equivalent limitation under the Department of State program, and the purpose of OPM's proposed change was to parallel that program.

OPM is not adopting the second commenter's recommendation because the minimum period is not a term used throughout the regulations, but rather a criterion that is used only once in section 591.210(b). Therefore, it is not appropriate to include it in the definitions section. OPM is not adopting the third commenter's recommendation because by law nonforeign area COLA and post differentials combined cannot exceed 25 percent.

OPM notes that it published an interim rule at 60 FR 25423 on May 9, 1997, in response to changes made by the Federal Employee Travel Reform Act of 1996. The Act affects the status of employees who are assigned to work in another location for an extended period. The interim regulations clarify that the temporary duty station during such an extended assignment must be treated as the official duty station of the employee for purposes of determining the employee's location-based pay entitlements. The interim regulations added a definition of ''official duty station'' to 5 CFR 591.201 for purposes of paying allowances and differentials and changed the term ''permanent duty station'' to ''official duty station'' in 5 CFR 591.210(a) to make these terms consistent with those used in the regulations on locality-based comparability payments. The regulations also make conforming changes in § 591.201 and in paragraphs (b)(1) (redesignated paragraph (c)(1)), and (c) (redesignated paragraph (d)) of § 591.210. OPM has incorporated these changes in this final rule.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal agencies and employees.

List of Subjects in 5 CFR Part 591

Government employees, Travel and transportation expenses, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM amends 5 CFR part 591 as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

1. The authority citation for subpart B of part 591 continues to read as follows:

Authority: 5 U.S.C. 5941; E.O. 10000, 3 CFR, 1943–1948 Comp., p. 792; E.O. 12510, 3 CFR, 1985 Comp., p. 338.

2. In § 591.203, paragraphs (a)(1), (a)(3), (a)(6), and (b) are revised to read as follows:

§ 591.203 Agencies and employees covered.

(a) * * *

(1) General Schedule.

* * * * *

(3) Foreign Service (including the Senior Foreign Service).

* * * * *

(6) Senior Executive Service (including the Federal Bureau of Investigation—Drug Enforcement Administration Senior Executive Service).

* * * * *

(b) This subpart may be applied, at the sole discretion of the employing agency, to civilian employees in other positions authorized by specific law applicable to such positions, consistent with the intent of 5 U.S.C. 5941.

3. In § 591.210, paragraph (f) is removed, paragraphs (b) through (e) are redesignated as (c) through (f), respectively, and a new paragraph (b) is added to read as follows:

§ 591.210 Payment of allowances and differentials.

* * * * *

(b) Payment of an allowance or differential will begin on the effective date of the change in the employee's official duty station to a duty station within the allowance or differential area or on the effective date of the appointment in the case of local recruitment. An employee who is detailed for temporary duty in a nonforeign area (i.e., the employee's official duty station is outside the nonforeign area) is eligible for a differential, but not an allowance, except that payment of a differential shall not begin until after 42 consecutive calendar days of temporary duty in the differential area. Payment of an allowance or differential will cease—

(1) On separation;

(2) On the effective date of assignment or transfer to a new official duty station outside the allowance or differential area; or

(3) On the ending date of a detail, in the case of an employee on detail to temporary duty in a differential area.

* * * * *

[FR Doc. 97–31537 Filed 12–1–97; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Parts 401, 454, and 457

General Crop Insurance Regulations, Various Endorsements; Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations; and Common Crop Insurance Regulations, Various Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the General Crop Insurance Regulations; Canning and Processing Tomato and Rice Endorsements; Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations; and the Common Crop Insurance Regulations, Cotton, Coarse Grains (Corn, Grain Sorghum, and Soybeans), Dry Bean, ELS Cotton, Sugar Beet, and Sunflower Seed Crop Insurance Provisions, effective for the 1998 crop year only, for counties and states with a November 30 contract change date. FCIC is extending the contract change date to December 17, 1997.

The intended effect of this rule is to extend the contract change date, which

is the date by which all contract changes must be on file in the service office, in order to provide sufficient time for FCIC to publish a final rule amending the policy for insuring the above crops.

DATES: This interim rule is effective November 26, 1997.

Submit comments on or before December 29, 1997.

ADDRESSES: Written comments on this interim rule should be sent to the Director, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131.

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

SUPPLEMENTARY INFORMATION:

Executive Order No. 12866

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

Paperwork Reduction Act of 1995

Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), there are no information collection requirements contained in this rule.

Unfunded Mandates Reform Act of 1995

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

Executive Order No. 12612

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

Regulatory Flexibility Act

This regulation will not have a significant impact on a substantial number of small entities. The extended contract change date included in this rule will not impact small entities to a greater extent than large entities. Under the current regulations, FCIC is required to have changes in policy provisions at the agent's office by November 30. If this date is not met, then the changes will not be applicable until the next crop year. This regulation merely extends that date so that companies will have more time to get the program changes to the insured. The amount of work required of the insurance companies delivering and servicing these policies will not increase significantly from the amount of work currently required. This rule does not have any greater or lesser impact on the producer. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605), and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

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

Executive Order No. 12372

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

Executive Order No. 12988

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

Environmental Evaluation

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

National Performance Review

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

Background

FCIC herewith amends the General Crop Insurance Regulations; Canning and Processing Tomato and Rice Endorsements; Fresh Market Tomato (Guaranteed Production Plan) Crop Insurance Regulations; and the Common Crop Insurance Regulations, Cotton, Coarse Grains (Corn, Grain Sorghum, and Soybeans), Dry Bean, ELS Cotton, Sugar Beet, and Sunflower Seed Crop Insurance Provisions to extend the contract change date to December 17, 1997. This action is taken in order to provide sufficient time for FCIC to make timely filing on changes in policy provisions.

The contract change date, included in the crop insurance policy, is the date by which all contract changes must be on file in the service office.

Kenneth D. Ackerman, Manager, FCIC has determined that the extension of the contract change date is necessary to provide sufficient time for FCIC to publish a final rule amending the above crop insurance policies for the 1998 crop year.

It is further determined that such extension will not be detrimental to any program recipient, and that publication of the extended contract change date as a proposed rule for notice and comment is impracticable, unnecessary, and contrary to the public interest. Therefore, good cause is shown for making this rule effective upon filing for public inspection at the Office of the Federal Register.

Lists of Subjects

7 CFR Part 401

Crop insurance, Canning and processing tomato, Rice.

7 CFR Part 454

Crop insurance, Fresh market tomato (guaranteed production plan).

7 CFR Part 457

Crop insurance, Cotton, Coarse grains (corn, grain sorghum, and soybeans), Dry bean, ELS cotton, Sugar beet, Sunflower seed.

Interim Rule

Accordingly, for the reasons set forth in the preamble, the Federal Crop Insurance Corporation hereby amends 7 CFR parts 401, 454 and 457, to read as follows:

PART 401—GENERAL CROP INSURANCE REGULATIONS—REGULATIONS FOR THE 1988 AND SUBSEQUENT CONTRACT YEARS

1. The authority citation for 7 CFR part 401 is revised to read as follows:

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

2. Section 401.114 is amended by revising 10. Contract Changes to read as follows:

§ 401.114 Canning and processing tomato endorsement.

* * * * *

10. Contract Changes

The date by which contract changes will be available in your service office is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date for counties with a February 15 cancellation date and December 31 preceding the cancellation date for all other counties.

* * * * *

3. Section 401.120 is amended by revising 9. Contract Changes to read as follows:

§ 401.120 Rice endorsement.

* * * * *

9. Contract Changes

The date by which contract changes will be available in your service office is December 31 preceding the cancellation date for counties with an April 15 cancellation date and November 30 (December 17 for the 1998 crop year only) preceding the cancellation date for all other counties.

* * * * *

PART 454—FRESH MARKET TOMATO (GUARANTEED PRODUCTION PLAN) CROP INSURANCE REGULATIONS

4. The authority citation for 7 CFR part 454 is revised to read as follows:

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

5. In § 454.7(d), the insurance policy is amended by revising section 16. Contract Changes to read as follows:

§ 454.7 Guaranteed Production Plan of Fresh Market Tomato Crop Insurance Policy.

* * * * *

16. Contract Changes

We may change any terms and provisions of the contract from year to year. If your price election at which indemnities are computed is no longer offered, the actuarial table will provide the price election which you are deemed to have elected. All contract changes will be available at your service office by November 30 (December 17 for the 1998 crop year only) preceding the cancellation date for counties with a February 15 cancellation date, and by December 31 preceding the cancellation date for counties with an April 15 cancellation date. Acceptance of changes will be conclusively presumed in the absence of notice from you to cancel the contract.

* * * * *

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

6. The authority citation for 7 CFR part 457 is revised to read as follows:

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

7. Section 457.104 is amended by revising 4. Contract Changes to read as follows:

§ 457.104 Cotton crop insurance provisions.

* * * * *

4. Contract Changes

The contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date (see the provisions of Section 4 (Contract Changes) of the Common Crop Insurance Policy).

* * * * *

8. Section 457.105 is amended by revising 4. Contract Changes to read as follows:

§ 457.105 Extra long staple cotton crop insurance provisions.

* * * * *

4. Contract Changes

The contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date (see the provisions of section 4 (Contract Changes) of the Common Crop Insurance Policy).

* * * * *

9. Section 457.108 is amended by revising 4. Contract Changes to read as follows:

§ 457.108 Sunflower seed crop insurance provisions.

* * * * *

4. Contract Changes

The contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date (see the provisions of Section 4 (Contract Changes) of the Basic Provisions).

* * * * *

10. Section 457.109 is amended by revising 4. Contract Changes to read as follows:

§ 457.109 Sugar beet crop insurance provisions.

* * * * *

4. Contract Changes

In accordance with the provisions of section 4 (Contract Changes) of the Basic Provisions, the contract change date is April 30 preceding the cancellation date for counties with a July 15 or August 31 cancellation date and November 30 (December 17 for the 1998 crop year only) preceding the cancellation date for all other counties.

* * * * *

11. Section 457.113 is amended by revising 4. Contract Changes to read as follows:

§ 457.113 Coarse grains crop insurance provisions.

* * * * *

4. Contract Changes

The contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date (see the provisions of Section 4 (Contract Changes) of the Common Crop Insurance Policy).

* * * * *

12. Section 457.150 is amended by revising 4. Contract Changes to read as follows:

§ 457.150 Dry bean crop insurance provisions.

* * * * *

4. Contract Changes

In accordance with section 4 (Contract Changes) of the Basic Provisions, the contract change date is November 30 (December 17 for the 1998 crop year only) preceding the cancellation date.

* * * * * 4

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

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–31544 Filed 11–26–97; 3:08 pm]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations, Fresh Market Tomato (Dollar Plan) Crop Insurance Provisions; Correction

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule, correction.

SUMMARY: The document contains a correction to the final rule that was published on Friday, March 28, 1997 (62 FR 14775–14780). The rule pertains to the insurance of fresh market tomatoes (dollar plan).

EFFECTIVE DATE: December 2, 1997.

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

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction was intended to provide policy changes to better meet the needs of the insured, include the current fresh market tomato (dollar plan) endorsement under the Common Crop Insurance Policy for ease of use and consistency of terms, and to restrict the effect of the current fresh market tomato (dollar plan) endorsement to the 1997 and prior crop years.

Need for Correction

As published, the final regulation contained a technical error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication on March 28, 1997, of the final regulation at 62 FR 14775–14780 is corrected as follows:

PART 457—[CORRECTED]

§ 457.139 [Corrected]

On page 14780, in the first column, in § 457.139, the paragraph following section 14(b)(4)(ii)(B) is corrected to read:

''(5) Multiplying the result of section 14(b)(4) by your share.''

Signed in Washington D.C. on November 25, 1997.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 97–31545 Filed 12–1–97; 8:45 am]

BILLING CODE 3410–08–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30 and 32

RIN 3150–AF70

Exempt Distribution of a Radioactive Drug Containing One Microcurie of Carbon-14 Urea

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to permit NRC licensees to distribute a radioactive drug containing one microcurie of carbon-14 urea to any person for ''in vivo'' diagnostic use. The NRC has determined that the radioactive component of such a drug in capsule form presents an insignificant radiation risk and, therefore, regulatory control of the drug for radiation safety is not necessary. This amendment makes the drug more widely available and reduces costs to patients, insurers, and the health care industry. This action grants a petition for rulemaking (PRM–35–12) from Tri-Med Specialties, Inc. and completes action on the petition.

EFFECTIVE DATE: January 2, 1998.

ADDRESS: Copies of the public record, including the final regulatory analysis and any public comments received on the proposed rule, may be examined and copied for a fee in the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6233 or e-mail at ANT@nrc.gov.

SUPPLEMENTARY INFORMATION:

I. The Petition for Rulemaking.
II. Proposed Rule, Public Comments, and NRC Responses.
III. Summary of the Final Amendments.
IV. Description of the Final Amendments.
V. Agreement State Compatibility.
VI. Finding of No Significant Environmental Impact: Availability.
VII. Paperwork Reduction Act Statement.
VIII. Regulatory Analysis.
IX. Regulatory Flexibility Certification.
X. Small Business Regulatory Enforcement Fairness Act.
XI. Backfit Analysis.

List of Subjects

I. The Petition for Rulemaking

On October 6, 1994, the Commission docketed a petition for rulemaking (Docket No. PRM–35–12) from Tri-Med Specialties, Inc (Tri-Med). In a letter dated August 23, 1994, Tri-Med petitioned the NRC to amend its regulations ''to allow for the general licensing and/or exemption for the commercial distribution by licensed pharmaceutical manufacturers of a capsule containing one micro-Curie (μCi) of C–14-urea for in vivo diagnostic testing.'' The purpose of this diagnostic test is to detect the presence of the bacterium Helicobacter pylori (H. pylori), a cause of peptic ulcers in humans.

Following the receipt of the petition, the NRC published for public comment a notice of receipt of petition for rulemaking in the **Federal Register** on December 2, 1994 (59 FR 61831). The comment period closed on February 15, 1995. The NRC received 315 public comment letters, of which 313 supported the petition (they were mostly form letters) and 2 letters opposed the petition.

II. Proposed Rule, Public Comments, and NRC Responses

A proposed rule was published on June 16, 1997 (62 FR 32552) that would permit NRC licensees to distribute capsules containing one microcurie C–14 urea to any person for ''in vivo'' diagnostic use. The public comment period closed on July 16, 1997.

In the preamble of the proposed rule, the NRC stated that, because the capsules present an insignificant radiological risk to the public and the environment, the NRC believes the capsules could be distributed for ''in vivo'' diagnostic use to persons exempt from licensing.

This change makes the drug more widely available and reduces costs to patients, insurers, and the health care industry.

The NRC received seven public comment letters on the proposed rule: three from industry, three from State agencies, and one from a physician associated with a university medical facility. Four commenters supported the rule, one opposed the rule, and two provided comments but did not explicitly state whether they supported or opposed the rule. Public comments and NRC's responses are presented below.

Comment 1: Under the proposed distribution, the NRC should not be forbidding research use of this drug by the same physicians who may use it clinically. Research use also should be permitted under this exemption because the radiological risk for using C–14 capsules is insignificant.

Response: The NRC did not change the final rule in response to this comment. A common rule entitled ''Federal Policy for the Protection of Human Subjects; Notices and Rules'' was promulgated by 16 Federal agencies on June 18, 1991 (56 FR 28002) and was intended to ensure the protection of human research subjects. This rule was adopted to implement a recommendation of the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research which was established on November 9, 1978, by Public Law 95–622. The Federal Policy requires that Federal agencies that conduct, fund, support, or regulate research involving human subjects ensure adequate protection of the rights of the human subjects. The Federal policy represents a societal determination that any research (including research involving radioactive material) must provide for

the following minimal protections for the human subjects: (1) that the research is approved by an Institutional Review Board (IRB) and (2) that the human subject gives informed consent to participate in the research. Further, these protections must be provided regardless of whether or not there is any risk of consequences (including radiological consequences). This view is supported by the fact that during the public comment period of the common rule, a commenter suggested that all minimal risk research be exempt from the regulations; however, the final rule did not adopt this comment.

NRC did not participate in the promulgation of the common rule. Subsequently, the NRC adopted 10 CFR 35.6 that requires a licensee who conducts research involving human subjects using byproduct material to obtain informed consent from the human subjects and obtain prior approval by an IRB. Although the NRC did not adopt the common rule, the intention is to follow the essential requirements of the common rule. Because the common rule does not provide an exemption for research involving minimal risk, the Commission has determined that such research use should not be exempt from 10 CFR 35.6.

Comment 2: Two commenters expressed concerns that the proposed rule language, ''not exceeding one microcurie,'' appeared to indicate that the upper limit of the radioactivity in a capsule is exactly one microcurie of C–14. Both stated that it is not possible to make the capsules to exactly one microcurie because of statistical deviations during the manufacturing process.

Response: The NRC agrees with the commenters. The proposed rule did not intend to limit the radioactivity of C–14 to exactly one microcurie. The final rule language has been modified to read ''capsules containing one microcurie C–14 urea (allowing for nominal variation that may occur during the manufacturing process).''

Comment 3: One commenter stated that, when the total amount of energy released from complete decay of a radionuclide is considered, one microcurie of C–14 has the largest energy release, because of its long half-life, when compared to one microcurie of Tc–99m or I–131. The commenter concluded that, given the insignificant radiation risk from the diagnostic use of C–14 urea, the radiation risk from the diagnostic use of Tc–99m or I–131 also would be insignificant.

Response: In comparing the hazard significance of the one microcurie C–14 Urea diagnostic test to the extensive use of Tc–99m and I–131, the NRC did not evaluate the dose to the patient because this dose would be justified for medical reasons. Justification for retaining some licensing control on the medical use of Tc–99m and I–131 while exempting the one microcurie carbon-14 urea capsules relies on the relative occupational hazards to technicians and physicians administering the radiopharmaceuticals.

Administering an encapsulated dosage of one microcurie C–14 involves virtually no occupational dose due to the low energy beta radiation and minimal possibility for contamination of personnel or facilities. On the other hand dosages of Tc–99m and I–131 entail extracting 10s to 100s of millicurie amounts, often in liquid form, from shielded sources of even higher activity. The possibility of direct exposure to gamma radiation and the possibility of contamination requires that radiation protection measures be in place to maintain exposure to staff as low as is reasonably achievable.

Tc–99m and I–131, having relatively short half-lives, present minimal environmental hazard. C–14 as urea is excreted from the patient as carbon dioxide (CO_2) which diffuses into the atmosphere. Based on a calculation found in the regulatory analysis for this rule, the current world inventory of naturally occurring C–14 results in an average dose to members of the public of about 1.25 mrem/yr. A release of 0.6 curies of C–14 from the 600,000 tests expected to be administered annually, would result in an additional average annual dose of 2×10^{-7} mrem. Comparing this estimate to the EPA Clean Air Act reporting level of 1 mrem/year, this new test is environmentally insignificant.

Comment 4: Because of the small quantity of radioactive material in C–14 capsules, this product may be disposed of in the general trash. To avoid unnecessary concern for health risks in the disposal of the product, labels should contain a statement that the product may be disposed of in the general trash.

Response: In the final rule, the label requirements include a statement that the product may be disposed of in ordinary trash.

Comment 5: The Commenter agrees that the widespread use of this product will require uniform regulations and that Agreement States will need to make appropriate regulatory provisions to enable persons to receive the drug for ''in vivo'' diagnostic use. To avoid confusing licensees and users, these changes to NRC and Agreement State regulations should be made simultaneously. The commenter urges that the NRC take action to expedite the Agreement State regulatory changes.

Response: The NRC has urged the Agreement States to adopt compatible changes in their regulations expeditiously. However, under NRC's Adequacy and Compatibility Policy, Agreement States have up to three years to change their regulations for amendments or program requirements that are items of compatibility.

Comment 6: The NRC should address this rule in its ongoing effort to revise 10 CFR Part 35 in its entirety. The commenter believes that (1) this rule represents a piecemeal effort to respond to a narrow issue and (2) the issue of reduced regulation for medical use of C–14 capsules is applicable to the same extent for virtually the entire range of diagnostic radioisotopes.

Response: If this rule is combined with the overall 10 CFR part 35 revision, the C–14 capsules would only be available to authorized user physicians during the revision period. Thus, the NRC decided to proceed with this rule now because the benefits of making this capsule available to anyone, including primary-care physicians, outweigh the benefits of addressing this issue in the overall revision of 10 CFR part 35.

Comment 7: An appropriate function of the regulatory regime is to assure that personnel handling and administering radioactive drugs meet certain basic training and qualification requirements. The proposed exemption would impose no training or qualification requirements on users.

Response: The amount of radiation safety training needed for personnel depends on the level of radiation risk associated with the radioactive drug. Because C–14 capsules present insignificant radiation risk, radiation safety training for personnel handling and administering the capsule is not necessary, and thus, not required.

Comment 8: If the NRC promulgates the proposed rule in its present form, the exemption will divest the Agreement States of any authority to regulate this product under a general or specific license. Had the NRC instead simply proposed a general license, Agreement State agencies would retain the authority to adopt the general license or continue to require specific licensing.

Response: In the draft rulemaking plan, the NRC suggested using the general license approach. The NRC received nine comment letters from Agreement States on the draft rulemaking plan; three suggested that an exemption approach would be more appropriate because it would be less costly to the Agreement States and their

licensees than the general license approach.

Based on these comments, the NRC chose the exemption approach in the final rule plan as more cost-effective than a general license approach. The final rulemaking plan was revised accordingly and was provided to the Agreement States. No Agreement States expressed opposition to the NRC on the exemption approach.

Among the seven public comment letters received on the proposed rule, two were from Agreement States and one from a non Agreement State. All three supported the proposed rule.

Comment 9: The environmental assessment fails to consider the fact that another equally noninvasive, but nonradiological, diagnostic procedure (such as C–13 test) is available and provides a comparable alternative to the C–14 test. The apparent assumption underlying the environmental assessment is that in the absence of the C–14 test, the only alternative for the detection of H. pylori is invasive gastroendoscopy.

Response: Because the C–14 urea capsules are already available to authorized user physicians, the only regulatory issue in this rulemaking is whether the C–14 method should be made available to individuals who are not authorized users. The purpose of the environmental assessment is to consider and document whether the subject rule is expected to have any significant impact to the environment. In this environment assessment, the NRC has determined that the environmental impact is expected to be insignificant because of the extremely low radiological hazards associated with the use of capsules containing one microcurie C–14 urea. The presence of an additional non-invasive alternative procedure does not affect NRC's determination of no significant environmental impact.

Comment 10: NRC's policy in the past has been not to exempt byproduct material that is ingested. Any change in this policy would be a significant departure from existing NRC regulations.

Response: This change is a departure from existing NRC regulations. In the statement of consideration for the proposed rule, under the heading ''Current NRC Regulations on Exemptions From Licensing,'' the NRC stated that, although two broad material exemptions (§ 30.14, ''Exempt concentrations,'' and § 30.18, ''Exempt quantities'') exclude the transfer of byproduct material contained in any product designed for ingestion or inhalation by a human being, the C–14 capsules manufactured or prepared as a radioactive drug can be distributed to persons exempt from licensing for ''in vivo'' diagnostic use because the capsules present an insignificant radiological risk to the public and the environment. This exemption only applies to the diagnostic use of capsules containing one microcurie C–14 manufactured or prepared as a radioactive drug to make a clear distinction between this radioactive drug that is intended for ingestion by humans and other uses of C–14 urea and byproduct material distributed under §§ 30.14 and 30.18.

Comment 11: The ACMUI's (Advisory Committee on Medical Uses of Radioisotopes) conclusions that either an exemption or general license is appropriate for the C–14 product do not address the fundamental aspects of nuclear safety. Its judgment was based partially on the assumptions: (1) the product may only be dispensed by prescription, (2) the product is approved by the Food and Drug Administration, and (3) the office/facility using the product will be subject to Clinical Laboratory Improvement Amendment (CLIA) regulation.

Response: The transcript from the ACMUI meeting shows the Committee did include radiation safety in its considerations and did not consider it to be an issue. Further, as stated in the supplemental material supporting the proposed rule, there are no nuclear safety issues associated with the use of the C–14 capsules for clinical diagnostic testing. Therefore, use of either an exemption or general license is appropriate.

Comment 12: The exemption approach does not provide the NRC with flexibility to impose a limitation on the amount of C–14 capsules any physician can possess in an office. In the event there is a recall of the product, or a large amount of product becomes unusable, the NRC will have no control over the disposal of the product.

Response: It is not necessary to impose a possession limit on the amount of C–14 capsules because the radiation risk is insignificant. The earth's atmosphere contains an inventory of naturally occurring C–14 of about 3.8 million curies which is in addition to the huge inventory of about 240 million curies in the world's oceans. The small amount of C–14 released into the atmosphere from the use of this test would mix with the global inventory and would have no impact on public health. The current world inventory of naturally occurring C–14 results in an average dose to the public of about 1.25 mrem per year, and the release of 0.6 curies of C–14 from the total of 600,000 tests assumed to be administered annually would result in an additional average annual dose of 2×10^{-7} mrem. In the event that a recall is necessary, the manufacturer may use the same process for recalling any other non-radioactive drugs. If C–14 urea capsules are returned to the manufacturers, they will be disposed of in accordance with the manufacturer's possession license. A user, however, can dispose the C–14 urea capsules as ordinary trash. Medical users of the C–14 urea test would be unlikely to acquire significant quantities of capsules because they can be ordered within a few days. Thus, even under a recall, the impact of disposing of C–14 urea capsules into landfills by the user would also be insignificant.

Comment 13: It is essential that end users be adequately informed of the product's radioactive characteristics, so that some form of storage, use, and disposal precautions can be followed. Thus, the labeling must be conspicuously and prominently placed. The commenter suggested the following: (1) the phrase ''conspicuously and prominently'' in front of the proposed labeling ''bears the words Radioactive Material'' should be added, and (2) the NRC should require that the radioactive material legend, ''Radioactive Material,'' be included on promotional brochures.

Response: Because the radiation risk from C–14 capsules is insignificant, regulatory control of the use, storage, and disposal of the drug for purpose of radiation safety is not necessary. In fact, the label accompanying C–14 capsules is required to indicate that the capsules may be disposed of by users as ordinary trash. Paragraph(a)(6) of § 32.21 requires that applicants submit copies of prototype labels and brochures for NRC approval. The NRC will ensure that the labels meet the requirements of § 32.21a before they are approved. Since paragraph (a) of § 32.21a specifies that the label must be durable and legible, the use of an additional phrase such as ''conspicuously and prominently'' is unnecessary. Promotional brochures are for information only; manufacturers are not required to indicate on the promotional brochures that C–14 is a radioactive material.

III. Summary of the Final Amendments

Final Amendment to 10 CFR Part 32

The regulations in 10 CFR part 32 are amended to add new §§ 32.21 and 32.21a, to provide requirements for a specific license to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution,

capsules containing one microcurie of C–14 urea, as a radioactive drug, to be distributed to any person for ''in vivo'' diagnostic use. These requirements are consistent with the existing requirements on other items under the heading ''Exemptions'' in 10 CFR part 30. The amendment includes a reminder that licensees distributing the radioactive drug to persons exempt from licensing would not be relieved from other applicable Federal (e.g., FDA) or State requirements governing the manufacture and distribution of drugs.

The amendment requires that the manufacture or preparation of capsules containing one microcurie of C–14 urea be prepared by persons who meet the current NRC regulations to manufacture and commercially distribute radioactive drugs. The NRC believes regulatory control is needed to provide high confidence that the drug contains one microcurie of C–14 urea and does not contain any other radioactive contaminants.

Final Amendment to 10 CFR Part 30

The NRC has determined that the drug in capsule form presents an insignificant radiological safety and environmental risk, and that it is not necessary to regulate the use of this drug for its radioactive component. Therefore, the NRC can not justify requiring physicians, or any other person, to meet NRC training and experience criteria directed at the safe use of radioactive drugs, or to become an ''authorized user.'' Hence, the capsules can be distributed to any person. However, other Federal or State agencies may limit the receipt and use of the capsules in accordance with their own requirements.

The regulations in 10 CFR part 30 are amended to add a new § 30.21, to permit any person to receive, possess, use, transfer, own, or acquire for ''in vivo'' diagnostic use, capsules containing one microcurie of C–14 urea without a license. The final regulation includes a reminder that persons receiving the capsules would not be relieved from other Federal or State law governing drugs. Further, in accordance with the NRC's provisions for research involving human subjects (10 CFR 35.6), the exemption permitting receipt and use of the capsules for ''in vivo'' diagnostic use does not extend to use of the capsules for research involving human subjects. Any person desiring to use the capsules for human research would still be required to submit an application for a specific license under part 35. The phrase ''in vivo diagnostic use'' was selected to describe the activity authorized in § 30.21 to differentiate it from the term ''medical use'' because:

(1) ''Medical use'' limits administration to authorized users; use of this drug would not be so limited; and

(2) ''Medical use'' includes the administration of the drug to a human research subject, which would continue to require a specific license pursuant to part 35 under this rulemaking.

Effects of the Final Amendments

The final amendments make the drug available to any person, for ''in vivo'' diagnostic use, without need for an NRC or Agreement State license. Because the receipt and use of the drug are exempt from NRC licensing, Agreement States need to make appropriate provisions in their regulations to recognize the exempt distribution of the drug, for ''in vivo'' diagnostic use. Thus after the manufacture and distribution of the drug, the NRC and the Agreement States will not regulate the use of the drug as long as its use is for ''in vivo'' diagnostic use. This means that, under NRC and Agreement State regulations, primary-care physicians do not need to be ''authorized users'' in order to administer the drug, and do not need to refer their patients to nuclear medicine physicians. This should result in cost savings to patients. Other Federal and State organizations with responsibilities for regulating drugs will determine and regulate who can receive and use the drug for ''in vivo'' diagnostic use. NRC will continue to regulate the use of the drug for research involving human subjects under a specific part 35 license.

IV. Description of the Final Amendments

The final amendments are the same as the proposed amendments except for two minor changes. Public comments suggested that the phrase ''carbon-14 urea capsules not exceeding one microcurie'' used in the proposed rule may be interpreted as an exact limit of one microcurie per capsule (See Comment 2 under the heading ''Public Comment and NRC Responses). The final rule has been modified and the phrase ''capsules containing one microcurie carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process)'' is used. Another public comment suggested that labels should contain a statement that the product may be disposed of in the general trash. In the final rule, the label requirements include such a statement.

Manufacturer and Distributors

A new section is added to 10 CFR Part 32 to permit the distribution of the capsules to persons who are exempt from licensing.

Section 32.21 Radioactive Drug: Manufacture, Preparation, or Transfer for Commercial Distribution of Capsules Containing one Microcurie Carbon-14 Urea Each for ''in Vivo'' Diagnostic use for Humans to Persons Exempt From Licensing; Requirements for a License

Paragraph (a)

This paragraph establishes the requirements for approval of a license application to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution, capsules containing one microcurie carbon-14 urea each for ''in vivo'' diagnostic use, to persons exempt from licensing.

Paragraph (a)(1)

This paragraph limits issuance of an ''exempt distribution license'' for distribution of the capsules to persons exempt from licensing to only those who possess either a NRC or Agreement State ''specific license'' for possession and use of byproduct material.

Paragraph (a)(2)

To assure that the capsules contain one microcurie of carbon-14 and present no other radiological risks, this paragraph requires that the persons manufacturing and/or commercially distributing the capsules for ''in vivo'' diagnostic use must also meet the requirements of § 32.72(a)(2). Specifically, these persons must be:

(1) Registered with or licensed by the FDA as a drug manufacturer; or

(2) Registered with or licensed by a state agency as a drug manufacturer; or

(3) Licensed as a pharmacy by a State Board of Pharmacy; or

(4) Operating as a nuclear pharmacy within a Federal medical institution.

Paragraph (a)(3)

This paragraph requires applicants to provide evidence that each carbon-14 urea capsule contains one microcurie. The NRC's evaluation that the capsules would result in insignificant radiation risks was based on the capsules containing one microcurie of carbon-14 urea. Therefore, applicants must demonstrate that the activity of each carbon-14 capsule contains one microcurie, allowing for nominal variation that may occur during the manufacturing process.

Paragraph (a)(4)

This paragraph prohibits carbon-14 urea from being contained in any food, beverage, cosmetic, drug or other commodity designed for ingestion or

inhalation by, or topical application to, a human being except for the capsules as described in this section, because exempt distribution of this drug has only been evaluated for ''in vivo'' diagnostic use in the form of a capsule containing one microcurie of carbon-14 urea. There is no prohibition against the capsule being combined with food or beverage at the time of administration so that the capsule can be ingested by the patient.

Paragraph (a)(5)

Because the exempt distribution of this drug has only been evaluated for ''in vivo'' diagnostic use in the form of a capsule containing one microcurie of carbon-14 urea, this paragraph prohibits incorporation of the capsules into any manufactured or assembled commodity, product, or device intended for commercial distribution. Further, although the drug is being distributed to persons exempt from licensing, this paragraph requires the carbon-14 urea to be identified as radioactive because the drug is being used for its radioactive content; therefore, the end user must be provided with information that the drug contains a radioactive material.

Paragraph (a)(6)

As with any product approved for distribution to persons exempt from licensing, this paragraph requires persons who apply for a license to manufacture or commercially distribute these capsules to submit copies of prototype labels or brochures for NRC approval. This will allow the NRC to confirm that the labels or brochures meet the requirements of § 32.21a (a) and (b).

Paragraph (b)

This paragraph declares that the regulations do not relieve licensees or applicants from complying with applicable FDA, other Federal, and State requirements governing the manufacture and distribution of drugs.

Section 32.21a Same: Conditions of License

This section establishes the conditions required for a licensee to commercially distribute the capsules to persons exempt from licensing.

Paragraph (a)

To inform the end user of the identity of the radioisotope, the physical and chemical form, and the dosage of radioactivity, this paragraph establishes that the immediate container of each capsule or capsules must bear a durable, legible label that:

(1) Identifies the radioisotope, the physical and chemical form of the radioisotope, the quantity of radioactivity contained in each container at a specific date; and

(2) Bears the words ''Radioactive Material.''

The date requirement is consistent with labeling requirements for other radioactive drugs with a half life of greater than 100 days.

Paragraph (b)

This paragraph establishes that, consistent with the intended use of the capsules, the label affixed to the immediate container, or an accompanying brochure, must:

(1) State that the contents are exempt from NRC or Agreement State licensing requirements;

(2) Bear the words ''Radioactive Material. For ''In Vivo'' Diagnostic Use Only. This Material Is Not To Be Used for Research Involving Human Subjects, and Must Not Be Introduced into Foods, Beverages, Cosmetics, or Other Drugs or Medicinals, or into Products Manufactured for Commercial Distribution. This Product May Be Disposed of in Ordinary Trash.''

The intent of the requirement set out in Paragraph (b)(2) is to make clear that the capsule must remain in the form of a capsule and is not to be combined with one of the listed items such as food or beverages which would result in a radioactive product other than in the form of a capsule for commercial distribution. There is no prohibition against the capsule being combined with food or beverage at the time of administration so that the capsule can be ingested by the patient. This label also informs the user that this product may be disposed of in ordinary trash.

''In Vivo'' Diagnostic use by Persons Exempt From Licensing

A new section is added to 10 CFR Part 30 to exempt any person from NRC or the Agreement State regulations to receive the drug for ''in vivo'' diagnostic use for humans.

Section 30.21 Radioactive Drug: Capsules Containing one Microcurie of Carbon-14 Urea for ''in Vivo'' Diagnostic use for Humans

Paragraph (a)

This paragraph provides an exemption to any person from the requirements for a license to receive, possess, use, transfer, own, or acquire capsules containing one microcurie of carbon-14 urea for ''in vivo'' diagnostic purposes. It should be noted that the ''transfer'' in this paragraph does not include ''transfer for commercial distribution,'' which is covered in paragraph (c) of this section.

Paragraph (b)

This paragraph establishes that persons who desire to use the drug for research involving human subjects must apply for and receive a specific part 35 license. Such a license would ensure the protection of the rights of the human subjects by requiring that the research be approved by an IRB and that the human subjects give their informed consent to participate in the research.

Paragraph (c)

This paragraph specifies that a specific license is needed to manufacture, prepare, process, produce, package, repackage or transfer such capsules for commercial distribution.

Paragraph (d)

This paragraph declares that the regulations do not relieve end users from complying with applicable FDA, other Federal, or State requirements governing the receipt, administration, and use of drugs.

V. Agreement State Compatibility

Under the Atomic Energy Act, certain regulatory functions are reserved to the NRC. Among these are the distribution of products to persons exempt from licensing, as discussed in 10 CFR part 150. Hence, amendments related to the manufacture and commercial distribution of the capsules (10 CFR part 32) is a Division 4 item of compatibility (Category NRC under the new adequacy and compatibility policy). However, amendments related to possession and use (10 CFR part 30) are a Division 1 item of compatibility (Category B under the new adequacy and compatibility policy) because of the need for nationwide consistency in the use of products which are widely distributed. Therefore, the Agreement States will need to make appropriate provisions in their regulations to allow any person to receive capsules containing one microcurie of carbon-14 urea for ''in vivo'' diagnostic use in humans without need for a license.

VI. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR part 51, that the final rule is not a major Federal action significantly affecting the quality of the human environment; therefore, an environmental impact statement is not

required. The final rule establishes requirements for the manufacture and commercial distribution of carbon-14 urea capsules to persons exempt from licensing and establishes regulations to permit any person to receive the capsules without an NRC license. The Commission believes that the radioactive component of this drug presents an insignificant radiation risk and, therefore, regulatory control of the ''in vivo'' diagnostic use of the capsules for radiation safety is not necessary. It is expected that this final rule will not cause any significant increase in radiation exposure to the public or radiation release to the environment beyond the exposures or releases resulting from the use of the carbon-14 capsules under the current regulations. Also, it is expected that there will be no non-radiological impacts. One public comment on the draft environmental assessment has been received (See Comment 9 under the heading ''Proposed Rule, Public Comments, and NRC Responses'').

The environmental assessment and finding of no significant impact on which this determination is based is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6233 or e-mail at ANT@nrc.gov.

VII. Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval numbers 3150–0001, 3150–0017, and 3150–0120.

The public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on any aspect of this collection of information, including suggestions for reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail at BJS1@NRC.GOV; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0001, 3150–0017, and 3150–0120), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

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

VIII. Regulatory Analysis

The NRC has prepared a regulatory analysis for the final rule. The analysis examines the benefits and impacts considered by the NRC. No public comments on the draft regulatory analysis have been received during the public comment period. The regulatory analysis is available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the regulatory analysis are available from Dr. Anthony N. Tse, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6233 or e-mail at ANT@nrc.gov.

IX. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule does not have a significant economic impact upon a substantial number of small entities. The final rule permits physicians and other health care providers to use an additional diagnostic test without having to obtain an NRC license, thus, would provide cost savings to patients, insurers, and the health care industry. The final rule does not impose any additional obligations on entities that may fall within the definition of ''small entities'' as set forth in Section 601(3) of the Regulatory Flexibility Act; or within the definition of ''small business'' as found in Section 3 of the Small Business Act, 15 U.S.C. 632; or within the size standards adopted by the NRC on April 11, 1995 (60 FR 18344).

X. Small Business Regulatory Enforcement Fairness Act

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

XI. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, a backfit analysis is not required because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR 50.109(a)(1).

XII. List of Subjects

10 CFR Part 30

Byproduct material, Criminal penalties, Government contracts, Intergovernmental relations, Isotopes, Nuclear materials, Radiation protection, Reporting and record keeping requirements.

10 CFR Part 32

Byproduct material, Criminal penalties, Labeling, Nuclear materials, Radiation protection, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Parts 30 and 32.

PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 81, 82, 161, 182, 183, 186, 68 Stat. 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2111, 2112, 2201, 2232, 2233, 2236, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 30.7 also issued under Pub. L. 95–601, sec.10, 92 Stat. 2951 as amended by Pub. L. 102–486, sec. 2902, 106 Stat. 3123, (42 U.S.C. 5851). Section 30.34(b) also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 30.61 also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

2. In § 30.8, paragraph (b) is revised to read as follows:

§ 30.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 30.9, 30.11, 30.15, 30.18, 30.19, 30.20, 30.21, 30.32, 30.34, 30.35, 30.36, 30.37, 30.38, 30.41, 30.50, 30.51, 30.55, appendices A and C to this part.

* * * * *

3. A new § 30.21 is added under the undesignated center heading ''Exemptions'' to read as follows:

§ 30.21 Radioactive drug: Capsules containing carbon-14 urea for ''in vivo'' diagnostic use for humans.

(a) Except as provided in paragraphs (b) and (c) of this section, any person is exempt from the requirements for a license set forth in Section 81 of the Act and from the regulations in this part and part 35 of this chapter provided that such person receives, possesses, uses, transfers, owns, or acquires capsules containing 37 kBq (1μ Ci) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each, for ''in vivo'' diagnostic use for humans.

(b) Any person who desires to use the capsules for research involving human subjects shall apply for and receive a specific license pursuant to part 35 of this chapter.

(c) Any person who desires to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution such capsules shall apply for and receive a specific license pursuant to § 32.21 of this chapter.

(d) Nothing in this section relieves persons from complying with applicable FDA, other Federal, and State requirements governing receipt, administration, and use of drugs.

PART 32—SPECIFIC DOMESTIC LICENSES TO MANUFACTURE OR TRANSFER CERTAIN ITEMS CONTAINING BYPRODUCT MATERIAL

4. The authority citation for Part 32 continues to read as follows:

Authority: Secs. 81, 161, 182, 183, 68 Stat. 935, 948, 953, 954, as amended (42 U.S.C. 2111, 2201, 2232, 2233); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

5. In § 32.8, paragraph (b) is revised to read as follows:

§ 32.8 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 32.11, 32.12, 32.14, 32.15, 32.16, 32.17, 32.18, 32.19, 32.20, 32.21, 32.21a, 32.22, 32.23, 32.25, 32.26, 32.27, 32.29, 32.51, 32.51a, 32.52, 32.53, 32.54, 32.55, 32.56, 32.57, 32.58, 32.61, 32.62, 32.71, 32.72, 32.74, and 32.210.

* * * * *

6. A new § 32.21 is added to read as follows:

§ 32.21 Radioactive drug: Manufacture, preparation, or transfer for commercial distribution of capsules containing carbon-14 urea each for ''in vivo'' diagnostic use for humans to persons exempt from licensing; Requirements for a license.

(a) An application for a specific license to manufacture, prepare, process, produce, package, repackage, or transfer for commercial distribution capsules containing 37 kBq (1μ Ci) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process) each for ''in vivo'' diagnostic use, to persons exempt from licensing under § 30.21 of this chapter or the equivalent regulations of an Agreement State will be approved if:

(1) The applicant satisfies the general requirements specified in § 30.33 of this chapter, provided that the requirements of § 30.33(a)(2) and (3) of this chapter do not apply to an application for a license to transfer byproduct material manufactured, prepared, processed, produced, packaged, or repackaged pursuant to a license issued by an Agreement State;

(2) The applicant meets the requirements under § 32.72(a)(2) of this part;

(3) The applicant provides evidence that each capsule contains 37 kBq (1μ Ci) carbon-14 urea (allowing for nominal variation that may occur during the manufacturing process);

(4) The carbon-14 urea is not contained in any food, beverage, cosmetic, drug (except as described in this section) or other commodity designed for ingestion or inhalation by, or topical application to, a human being;

(5) The carbon-14 urea is in the form of a capsule, identified as radioactive, and to be used for its radioactive properties, but is not incorporated into any manufactured or assembled commodity, product, or device intended for commercial distribution; and

(6) The applicant submits copies of prototype labels and brochures and the NRC approves these labels and brochures.

(b) Nothing in this section relieves the licensee from complying with applicable FDA, other Federal, and State requirements governing drugs.

7. A new § 32.21a is added to read as follows:

§ 32.21a Same: Conditions of license.

Each license issued under § 32.21 of this part is subject to the following conditions:

(a) The immediate container of the capsule(s) must bear a durable, legible label which:

(1) Identifies the radioisotope, the physical and chemical form, the quantity of radioactivity of each capsule at a specific date; and

(2) Bears the words ''Radioactive Material.''

(b) In addition to the labeling information required by paragraph (a) of this section, the label affixed to the immediate container, or an accompanying brochure also must:

(1) State that the contents are exempt from NRC or Agreement State licensing requirements; and

(2) Bear the words ''Radioactive Material. For ''In Vivo'' Diagnostic Use Only. This Material Is Not To Be Used for Research Involving Human Subjects and Must Not Be Introduced into Foods, Beverages, Cosmetics, or Other Drugs or Medicinals, or into Products Manufactured for Commercial Distribution. This Material May Be Disposed of in Ordinary Trash.''

Dated at Rockville, Maryland, this 24th day of November, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–31514 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AF53

Changes to Nuclear Power Plant Security Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is revising its regulations to delete certain security requirements associated with an internal threat. This action follows the NRC's reconsideration of nuclear power plant physical security requirements to identify those requirements that are marginal to safety, redundant, or no longer effective. This action will reduce the regulatory burden on licensees without compromising physical protection against radiological sabotage required for public health and safety.

EFFECTIVE DATE: January 16, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. Sandra Frattali, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6261, e-mail sdf@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On February 20, 1997, the NRC published a proposed rule in the **Federal Register** (62 FR 7721) that would revise the NRC's regulations associated with an internal threat to nuclear power plants that are contained in 10 CFR part 73, ''Physical Protection of Plants and Materials.'' The five changes, which provide significant relief to licensees without compromising the physical security of the plants, involve changes to—

1. Search requirements for on-duty guards, § 73.55(d)(1);
2. Requirements for vehicle escort, § 73.55(d)(4);
3. Control of contractor employee badges, § 73.55(d)(5);
4. Maintenance of access lists for each vital area, § 73.55(d)(7)(i)(A); and
5. Key controls for vital areas, § 73.55(d)(8).

The Commission received 9 letters commenting on the proposed rule. Eight were from utilities and one was from an industry group. Copies of the letters are available for public inspection and copying for a fee at the Commission's Public Document Room, located at 2120 L Street, NW (Lower Level), Washington, DC.

Discussion

The public comments supported the proposed rulemaking in general. Seven of the nine commenters recommended additional relief from the vehicle escort provisions. One commenter recommended additional relief from the search requirements for armed guards. Two commenters recommended changes to the regulations without support that were outside the scope of this rulemaking.

For three of the changes in the proposed rule, only the language that had been changed was provided in the proposed rule language. The language that did not change in those paragraphs was inadvertently omitted. This language has been put back in the final rule. The three paragraphs affected are: search requirements for on-duty guards, § 73.55(d)(1); requirements for vehicle escort, § 73.55(d)(4); and maintenance of access lists for each vital area, § 73.55(d)(7)(i)(A).

The comments are discussed below.

Comment Resolution

1. Search Requirements for On-duty Guards (§ 73.55(d)(1))

Under the current regulations, armed security guards who leave the protected area as part of their duties must be searched for firearms, explosives, and incendiary devices upon re-entry into the protected area. Requiring a guard to go through an explosives detector or searching packages carried by the guard protects against the introduction of contraband. Because an armed guard carries a weapon onsite, passage of the guard through the metal detector, the principal purpose of which is to detect firearms, serves little purpose. The guard has to either remove the weapon while passing through the detector or be subject to a hands on search. Either approach makes little sense for the guard who is authorized to carry a weapon onsite. Further, removing and handling the guard's weapon could present a safety risk to the guard and other personnel. This rule will allow armed security guards who are on duty and have exited the protected area to reenter the protected area without being searched for firearms (by a metal detector).

Comment. All commenters supported this action. One commenter recommended that the words ''on official business'' be removed.

Response. The term ''on official business'' has been replaced by the term ''on duty.'' The rationale given in the proposed rule to eliminate the searches would also apply when the guard reenters the protected area at other times, for example, after lunch where the lunch area is outside the protected area, as is the case at some facilities. The meaning of ''on duty'' is not meant to extend to ''on call'' or to personal activities.

The amended rule allows armed security guards who are on duty and have exited the protected area to reenter the protected area without being searched for firearms (by a metal detector). Note that the rule says ''reenter.'' This means that the guards have been searched on their initial entry into the protected area. Unarmed guards and watchpersons will continue to meet all search requirements. All guards will continue to be searched for explosives and incendiary devices because they are not permitted to carry these devices into the plant.

2. Requirements for Vehicle Escort (§ 73.55(d)(4))

The present requirement that a searched, licensee-owned vehicle within the protected area must be escorted by a member of the security organization, even when the driver is badged for unescorted access, does not contribute significantly to the security of the plant. Under the current regulations, all vehicles must be searched prior to entry into the protected area except under emergency conditions. Also under the current regulations, all vehicles must be escorted by a member of the security organization while inside the protected area except for ''designated licensee vehicles.'' ''Designated licensee vehicles'' are those vehicles that are limited in their use to onsite plant functions and remain in the protected area except for operational, maintenance, repair, security, and emergency purposes. Under the current requirement, all other vehicles that are not ''designated licensee vehicles'' must be escorted at all times while in the protected area even when they are driven by personnel with unescorted access.

Comment. Seven commenters were concerned that the proposed rule would only allow a vehicle to be unescorted when being operated by licensee employees having unescorted access. These commenters wanted this extended to contractor employees who are cleared for unescorted access as well.

Response. This change has been made. Since both licensee employees and contractor employees are subject to equivalent access authorization programs, the level of trustworthiness is deemed to be equivalent. There is no compelling reason to distinguish between the two. The amended rule eliminates the requirement for escort of licensee-owned or leased vehicles entering the protected area for work-related purposes provided these vehicles are driven by personnel who have unescorted access. This change provides burden relief to licensees without significantly increasing the level of risk to the plant.

Comment. Five comments were made that limiting unescorted vehicles to those that were licensee-owned was unduly restrictive, and wanted this extended to licensee-owned or leased vehicles. One commenter wanted it further extended to contractor- or vendor-owned or leased vehicles.

Response. The rule language was changed to allow for licensee-leased vehicles to be unescorted when driven by personnel who have unescorted access. The NRC staff recognizes that licensees may lease rather than buy vehicles. However, the staff believes that this provision should not be extended indiscriminately to contractor or vendor vehicles because licensees have no knowledge or control over how contractor or vendor vehicles may be used for purposes other than those for which the licensee has contracted.

3. Control of Contractor Employee Badges (§ 73.55(d)(5))

Contractor employees with unescorted access are required to return their badges when leaving the protected area. Current regulatory practice allows licensee employees to leave the protected area with their badges if adequate safeguards are in place to ensure that the proper use of the badge is not compromised or that a system such as biometrics is in place to ensure that only the proper person uses the badge for gaining access to the protected area. Because contractors and licensees are subject to the same programs required for unescorted access, there is no reason to employ more stringent badge control requirements for contractor employees.

This amended rulemaking allows contractor employees to take their badges offsite under the same conditions as licensee employees.

Comment. All commenters supported this provision.

Response. The final rule will be published as proposed, with a sentence added to ensure that the integrity of the access controls are not adversely affected.

Comment. One commenter wanted the physical differentiation between contractor and employee badges eliminated.

Response. This comment provided no reason for changing the current requirement of having employee and contractor badges distinguishable. Further the staff has no reason to make such a change. Because of this and the fact that this comment is outside the scope of this rulemaking this change is not being made.

4. Maintenance of Access Lists for Each Vital Area (§ 73.55(d)(7)(i)(A))

Maintaining separate access lists for each vital area and reapproval of these lists on a monthly basis is of marginal value. At many sites, persons granted access to one vital area also have access to most or all vital areas. Licensees presently derive little additional benefit from maintaining discrete lists of individuals allowed access to each separate vital area in the facility. Also, licensee managers or supervisors are required to update the access lists at least once every 31 days to add or delete individuals from these lists as appropriate. There is also a requirement to reapprove the list every 31 days. However, reapproval of all individuals on the lists at least every 31 days, to validate that the lists have been maintained accurately is unnecessarily burdensome.

This rulemaking replaces separate access authorization lists for each vital area of the facility with a single list of all persons who have access to any vital area. It also changes the requirement to reapprove the list at least once every 31 days to quarterly. Reapproval consists of a review to ensure that the list is current and that only those individuals requiring routine access to a vital area are included. Because a manager or supervisor must update the list, conducting this comprehensive reapproval every 31 days is of marginal value.

Comment. All commenters supported these provisions.

Response. The final rule will be published as proposed.

The Commission desires to remind licensees that they are responsible for properly controlling access, and that the changes to § 73.55(d)(7)(i)(A) do not remove their responsibility to establish procedures to ensure that persons no longer needing unescorted access are not granted such access.

5. Key Controls for Vital Areas (§ 73.55(d)(8))

Under the current regulations, licensees must change or rotate all keys, locks, combinations, and related access control devices at least once every twelve months. The rule also requires that these be changed whenever there is a possibility they have been compromised, or when an individual with access to the keys, locks, or combinations has been terminated for reasons of trustworthiness, reliability, or inadequate work performance. Additionally requiring such change every 12 months has been determined by the NRC to be only marginal to security.

This amended rule removes the requirement for changing access control devices at least every 12 months while retaining the requirement to make changes for cause, and when an access control device has been, or there is a suspicion that it may have been, compromised.

Comment. One commenter requested that the words ''inadequate work performance'' in the rule language be removed or defined.

Response. The NRC sees no need to define ''inadequate work performance'' because the term characterizes many factors and judgements involving removal for cause. Further, the comment is outside the scope of this rulemaking.

Regulatory Action

The final rule will be promulgated with the changes made to the proposed rule in response to the public comments. Two of the public comments were not accommodated because they requested changes to the regulations that were not put forward in the proposed rule.

Environmental Impact: Categorical Exclusion

The Commission has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(3)(i). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0002.

Because the rule will reduce existing information collection requirements, the public burden for this collection of information is expected to be decreased by 100 hours per licensee. This reduction includes the time required for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on any aspect of this collection of information, including suggestions for further reducing the burden, to the Information and Records Management Branch (T–6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by Internet electronic mail to BJS1@NRC.Gov; and to the Desk Officer, Office of information and Regulatory Affairs, NEOB–10202, (3150–0002), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

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

Regulatory Analysis

A discussion of each of the five changes in this final rule is provided above in the supplementary information section. The costs and benefits for each of the changes in this rulemaking are as follows.

1. Search Requirements for On-Duty Guards (§ 73.55(d)(1))

The regulatory burden on licensees will be reduced by eliminating unnecessary weapon searches of guards who are already allowed to carry a

weapon on site, which will result in better utilization of licensee resources. There will be no reduction in plant security, and there is no reduction in the total size of the security force. Further, the potential safety risk to personnel caused by removing and handling a guard's weapon will be eliminated.

2. Requirements for Vehicle Escort (§ 73.55(d)(4))

The regulatory burden on licensees will be reduced by requiring fewer vehicle escorts, which will allow personnel to be utilized more effectively or for other purposes. Resources could be redirected to areas in which they will be more cost effective. The decrease in security will be marginal, because unescorted access will be restricted to vehicles owned or leased by the licensee being driven by personnel with unescorted access.

Assuming the number of such entries of licensee owned or leased vehicles driven by personnel having unescorted access is 10 per day per site, the average time needed for escort is 3 hours, and the cost per hour for security personnel is $30 (loaded), a rough estimate of the potential savings per site per year is about $330,000 (10 escorts/day/site × 365 days/year × 3 hrs/escort × $30/hr). With 75 sites, the savings to the industry per year will be approximately $24,000,000.

3. Control of Contractor Employee Badges (§ 73.55(d)(5))

The regulatory burden on licensees will be reduced by a more effective use of security personnel, who will no longer need to handle badges for contractor personnel who have unescorted access. There will be no reduction in plant security because adequate safeguards will be in place to ensure that badges are properly used and not compromised, and a system such as biometrics is in place to ensure that only the proper person uses the badge to gain access to the protected area.

Assuming that two security persons per working shift change, 5 shifts per day, one hour per shift are relieved from the duties of controlling contractor employee badges during an outage lasting 3 months. Further, assuming that the cost per hour for security personnel is $30 (loaded), a rough estimate of the potential savings per site per year is about $27,000 (10 hours/day × 90 days/year × $30 hr). With 75 sites, the savings to the industry per year will be approximately $2,000,000.

4. Maintenance of Access Lists for Each Vital Area (§ 73.55(d)(7)(i)(A))

The regulatory burden on licensees will be reduced because licensees will have to keep only one access list for all vital areas and reapprove it quarterly, rather than keep individual access lists for each vital area that must be reapproved monthly.

Assuming that the time to reapprove each of the individual lists is 1 hour per month, that a combined list will take 1.5 hours per month, that the average number of vital areas per site is 10, and that the cost of a clerk including overhead is $30 per hour (loaded), a rough estimate of the potential savings per site per year is about $3,400 [(1×10 vital areas/month × 12 months/yr-1.5×1 combined vital area/quarter × 4 quarters/yr) × $30/hr]. With 75 sites, the savings to the industry per year will be approximately $260,000.

5. Key Controls for Vital Areas (§ 73.55(d)(8))

The regulatory burden on the licensees will be reduced because fewer resources will be needed to maintain the system.

Assuming that, of approximately 60 locks that are changed each year under the current requirement, half of them were changed because an individual was removed for cause or the lock may have been compromised, 30 locks remain in need of change. Assuming that it takes a locksmith 10 hours to change all 30 locks at a cost (loaded) of $45 per hour, a rough estimate of the potential savings per site per year is about $450 (10 hrs/year × $45/hr). With 75 sites, the savings to the industry per year will be approximately $34,000.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act as amended, 5 U.S.C. 605(b), the Commission certifies that this final rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This final rule will affect only licensees authorized to operate nuclear power reactors. These licensees do not fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act, or the Small Business Size Standards set out in regulations issued by the Small Business Administration Act, 13 CFR part 121.

Small Business Regulatory Enforcement Fairness Act

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

Backfit Analysis

The Commission has determined that the backfit rule, 10 CFR 50.109, does not apply to this final amendment because this amendment will not impose new requirements on existing 10 CFR part 50 licensees. The changes to physical security are voluntary and should the licensee decide to implement this amendment, will be a reduction in burden to the licensee. Therefore, a backfit analysis has not been prepared for this amendment.

List of Subjects in 10 CFR Part 73

Criminal penalties, Hazardous materials transportation, Export, Import, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for Part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. Section 73.55 is amended by revising paragraphs (d)(1), (d)(4), (d)(5), (d)(7)(i)(A), and (d)(8) to read as follows:

§ 73.55 Requirements for physical protection of licensed activities in nuclear power reactors against radiological sabotage.

* * * * *

(d) * * *

(1) The licensee shall control all points of personnel and vehicle access into a protected area. Identification and search of all individuals unless otherwise provided in this section must be made and authorization must be checked at these points. The search

function for detection of firearms, explosives, and incendiary devices must be accomplished through the use of both firearms and explosive detection equipment capable of detecting those devices. The licensee shall subject all persons except bona fide Federal, State, and local law enforcement personnel on official duty to these equipment searches upon entry into a protected area. Armed security guards who are on duty and have exited the protected area may reenter the protected area without being searched for firearms. When the licensee has cause to suspect that an individual is attempting to introduce firearms, explosives, or incendiary devices into protected areas, the licensee shall conduct a physical pat-down search of that individual. Whenever firearms or explosives detection equipment at a portal is out of service or not operating satisfactorily, the licensee shall conduct a physical pat-down search of all persons who would otherwise have been subject to equipment searches. The individual responsible for the last access control function (controlling admission to the protected area) must be isolated within a bullet-resisting structure as described in paragraph (c)(6) of this section to assure his or her ability to respond or to summon assistance.

* * * * *

(4) All vehicles, except under emergency conditions, must be searched for items which could be used for sabotage purposes prior to entry into the protected area. Vehicle areas to be searched must include the cab, engine compartment, undercarriage, and cargo area. All vehicles, except as indicated in this paragraph, requiring entry into the protected area must be escorted by a member of the security organization while within the protected area and, to the extent practicable, must be off loaded in the protected area at a specific designated materials receiving area that is not adjacent to a vital area. Escort is not required for designated licensee vehicles or licensee-owned or leased vehicles entering the protected area and driven by personnel having unescorted access. Designated licensee vehicles shall be limited in their use to onsite plant functions and shall remain in the protected area except for operational, maintenance, repair, security and emergency purposes. The licensee shall exercise positive control over all such designated vehicles to assure that they are used only by authorized persons and for authorized purposes.

(5)(i) A numbered picture badge identification system must be used for all individuals who are authorized access to protected areas without escort. An individual not employed by the licensee but who requires frequent and extended access to protected and vital areas may be authorized access to such areas without escort provided that he or she displays a licensee-issued picture badge upon entrance into the protected area which indicates:

(A) Non-employee no escort required;

(B) Areas to which access is authorized; and

(C) The period for which access has been authorized.

(ii) Badges shall be displayed by all individuals while inside the protected area. Badges may be removed from the protected area when measures are in place to confirm the true identity and authorization for access of the badge holder upon entry into the protected area.

* * * * *

(7) * * *

(i) * * *

(A) Establish a current authorization access list for all vital areas. The access list must be updated by the cognizant licensee manager or supervisor at least once every 31 days and must be reapproved at least quarterly. The licensee shall include on the access list only individuals whose specific duties require access to vital areas during nonemergency conditions.

* * * * *

(8) All keys, locks, combinations, and related access control devices used to control access to protected areas and vital areas must be controlled to reduce the probability of compromise. Whenever there is evidence or suspicion that any key, lock, combination, or related access control devices may have been compromised, it must be changed or rotated. The licensee shall issue keys, locks, combinations and other access control devices to protected areas and vital areas only to persons granted unescorted facility access. Whenever an individual's unescorted access is revoked due to his or her lack of trustworthiness, reliability, or inadequate work performance, keys, locks, combinations, and related access control devices to which that person had access, must be changed or rotated.

* * * * *

Dated at Rockville, Maryland, this 24th day of November, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–31515 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB78

Loan Policies and Operations; Loan Sales Relief

AGENCY: Farm Credit Administration.

ACTION: Direct final rule with opportunity for comment.

SUMMARY: The Farm Credit Administration (FCA), through the FCA Board (Board), issues a direct final rule amending its regulations relating to loan sales into a secondary market. This action conforms FCA regulations to recent statutory amendments to the Farm Credit Act of 1971, as amended, (Act) made by sections 206 and 208 of the Farm Credit System Reform Act of 1996 (1996 Act). These amendments provide that loans designated by Farm Credit System institutions for sale into a secondary market are not subject to minimum stock purchase or borrower rights requirements.

DATES: If no significant adverse comment is received on or before January 2, 1998, these regulations shall be effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**. If significant adverse comment is received, the FCA will publish a notice of withdrawal of the regulations and indicate how the Agency expects to proceed with further rulemaking.

ADDRESSES: Comments may be submitted via electronic mail to ''reg-comm@fca.gov'' or facsimile transmission to (703) 734–5784. Comments also may be mailed or delivered to Patricia W. DiMuzio, Director, Regulation Development Division, Office of Policy Development and Risk Control, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090. Copies of all communications received will be available for review by interested parties in the Office of Policy Development and Risk Control, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

John J. Hays, Policy Analyst, Regulation Development Division, Office of Policy Development and Risk Control, (703) 883–4498, TDD (703) 883–4444;

or

William Larsen, Senior Attorney, Legal Counsel Division, Office of General Counsel, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION: The Farm Credit System Reform Act of 1996[i] made significant changes in title VIII of the Act, which governs the secondary market for agricultural loans. The 1996 Act also provided regulatory relief to Farm Credit System (FCS) institutions. This rulemaking conforms FCA regulations with provisions of the 1996 Act that grant relief from minimum stock purchase requirements and borrower rights for Loans designated by FCS institutions for sale into a secondary market.[ii]

I. Changes Pursuant to Section 206 of The 1996 Act

Section 206 of the 1996 Act amended section 4.3A of the Act by granting relief from stock purchase requirements for loans designated for sale into a secondary market. As amended, section 4.3A of the Act establishes that an institution's bylaws may provide that: (1) For loans made on or after enactment of section 206 that are designated for sale into a secondary market, no voting stock or participation certificate (collectively, equity or equities) purchase requirement shall apply; and (2) for loans made before the enactment of section 206 that are sold into a secondary market, all equities purchased with respect to these loans shall, subject to the institution meeting its regulatory minimum permanent capital requirements, be retired. Section 206 further provides that if such designated loans are not sold into a secondary market within 180 days, the otherwise applicable equity purchase requirement shall then apply. However, an institution's bylaws may provide that if a designated loan is subsequently sold into a secondary market, the equities relating to the loan shall be retired.

Pursuant to these amendments to section 4.3A of the Act, the FCA is making conforming amendments to § 614.4335 pertaining to borrower stock requirements. Amended § 614.4335(a) provides that, in general, a borrower must meet the institution's minimum borrower stock purchase requirement as a condition of obtaining a loan. However, under amended § 614.4335(b), an institution's bylaws may provide that the institution's minimum borrower stock purchase requirement does not apply if a loan is designated, at the time the loan is made, for sale into a secondary market. Amended § 614.4335(b) also implements the statutory requirement that if a designated loan is not sold into a secondary market upon the expiration of 180 days, the minimum borrower stock purchase requirement will apply to the loan.

Further reflecting the 1996 Act amendments to section 4.3A of the Act, § 614.4335 is amended to add provisions concerning the retirement of borrower stock for loans sold into a secondary market. Amended § 614.4335(c)(2) states that an institution's bylaws may provide that all outstanding voting stock held by a borrower with respect to a loan shall be retired when the loan is sold into a secondary market. Thus, if the institution's bylaws so provide, if a designated loan is sold into a secondary market after 180 days, all outstanding stock with respect to the loan shall be retired. An institution's bylaws also may provide that all stock held by a borrower with respect to a loan made before the enactment of the 1996 Act and sold into a secondary market shall be retired.

Existing provisions of § 614.4335 that require an institution to meet minimum permanent capital requirements and specify the treatment of loans sold with or without recourse are not affected by the 1996 Act amendments and are redesignated to § 614.4335(c)(1). Finally, amended § 614.4335(d) provides that paragraphs (b)(1) and (c)(2) apply regardless of whether the institution retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.

II. Changes Pursuant to Section 208 of The 1996 Act

Section 208 of the 1996 Act amended section 4.14A of the Act by changing the definition of the term ''loan'' to exclude from that definition loans designated, at the time the loans are made, for sale into a secondary market. The effect of this statutory change is that the borrower rights provisions of the Act do not apply to loans designated, at the time the loans are made, for sale into a secondary market.[iii] As is the case with respect to the reattachment of stock purchase requirements under section 206 of the 1996 Act, if a designated loan is not sold into a secondary market within 180 days of designation, borrower rights become applicable unless and until the loan is subsequently sold into a secondary market.

The FCA is amending § 614.4336 in order to conform it to amended section 4.14A of the Act. Amended § 614.4336 sets forth treatment of borrower rights in three loan sale situations: (1) Loan sales to Farm Credit System institutions; (2) loans designated for sale into a secondary market; and (3) other loan sales. Under amended § 614.4336(a), a loan sold to another qualified lender retains borrower rights. Under amended § 614.4336(b), loans made on or after February 10, 1996, that are designated at the time they are made for sale into a secondary market are not subject to borrower rights, unless the loan is not sold within 180 days of the date of designation. After 180 days, borrower rights apply to a designated loan unless and until it is subsequently sold into a secondary market. Amended § 614.4336(c) retains the notice and relinquishment provisions that currently apply to loan sales to other lenders.

In addition to amending the definition of ''loan'' in section 4.14A of the Act to remove borrower rights protections from loans designated for sale into a secondary market, section 208(b) of the 1996 Act applied the amended definition of ''loan'' to section 8.9(b) of the Act, effectively removing the section 8.9(b) borrower rights protections that applied before a loan was sold into the secondary market for agricultural loans established by title VIII of the Act. This statutory change requires the removal of current § 614.4367(b) to conform FCA regulations to the amended Act. In its current form, § 614.4367(b) implemented section 8.9(b) of the Act by requiring certain disclosures for loans that will or may be pooled for sale into the secondary market. The required disclosures included notice that an applicant could refuse to have his or her loan pooled and thus retain statutory borrower rights.

Disclosure was also required that, within 3 days of commitment, the applicant had the right to refuse to allow the loan to be pooled. Because section 208 of the 1996 Act effectively provides that borrower rights do not apply to loans designated for sale into a secondary market, the disclosures and approvals required by § 614.4367(b) no longer apply. Accordingly, the FCA is removing paragraph (b) of § 614.4367 and redesignating the remaining paragraphs.

In the event that a designated loan is not sold into the secondary market within 180 days, the terms of the borrower's loan will change in two material respects. The borrower is required to purchase stock, which will increase the effective interest rate on the loan. The borrower will also be entitled to borrower rights under the Act. Institutions should ensure that borrowers fully understand their obligations and rights at the time the loan is made. The FCA has not included special disclosure obligations for loans designated for sale into the secondary market because the existing requirements of § 614.4367 are sufficient to ensure that borrowers are appropriately informed of: (1) Their obligation to purchase stock if the loan

is not sold as intended; (2) the change in the effective interest rate resulting from the stock purchase requirement; and (3) the borrower rights that will apply.

III. Direct Final Rulemaking

With the promulgation of these regulations, the FCA is using, for the first time, the ''direct final'' procedure for rulemaking. Direct final rulemaking permits agencies to adopt noncontroversial rules on an expedited basis, without going through the usual proposal and final stages of notice-and-comment rulemaking. Direct final rulemaking was recommended for promulgation of noncontroversial rules by the Administrative Conference of the United States (ACUS) in its Recommendation 95–4, adopted June 15, 1995. Vice President Gore also recommended direct final rulemaking in his report on the National Performance Review (NPR) as a means for agencies to streamline the rulemaking process. See ''Improving Regulatory Systems,'' Accompanying Report of the NPR, September, 1993.

The FCA is committed to the use of innovative rule-making techniques to further its strategic goal of implementing effective and efficient regulations. The FCA believes that the use of direct final rulemaking in appropriate circumstances offers the means to streamline the rulemaking process for noncontroversial rules by reducing the time and resources needed for development, review, clearance, and publication, while still affording the public adequate opportunity to comment on or object to a rule.

In direct final rulemaking, the agency gives notice that a rule will become final at a specified future date unless the agency receives significant adverse comment on the rule during the comment period established in the rulemaking notice. The Administrative Procedure Act, 5 U.S.C. 551–59, *et seq.* (APA), supports this streamlined technique of rulemaking. Direct final rulemaking is justified under section 553(b)(B) of the APA. Section 553(b)(B) is the APA's ''good cause'' exemption for omitting notice and comment on a rule where an agency finds ''that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' In direct final rulemaking, the agency finds that the rule is sufficiently straightforward and noncontroversial to make normal notice and comment unnecessary under the APA. However, rather than eliminating public comment altogether, as would be permissible under section 553(b)(B), the agency gives the public an opportunity to rebut the agency's conclusion that public input on the rule is unnecessary.

Notwithstanding this ''good cause'' rationale under section 553(b)(B), direct final rulemaking also meets the basic notice-and-comment requirements of the APA, although the timing and format of notice and opportunity for comment necessarily differs from a typical notice-and-comment rulemaking. If, during the comment period provided, the agency receives a significant adverse comment on a direct final rule, the agency commits to withdraw the rule and may either issue another direct final rule or promulgate the rule in proposed form. A significant adverse comment is defined as one where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. In general, a significant adverse comment would raise an issue serious enough to warrant a substantive response from the agency in a notice-and-comment proceeding.

The FCA believes that the secondary market loan sale amendments fit the category of rules appropriate for direct final rulemaking. These changes merely conform the regulations to the 1996 Act. The changes remove or amend current regulatory requirements that do not reflect the changes in the Act. As such, the changes are straightforward and noncontroversial. For these reasons, the FCA does not anticipate that there will be significant adverse comment on this rulemaking. Nonetheless, in keeping with the procedures recommended by ACUS for direct final rulemaking, the FCA is providing a 30-day period from publication during which members of the public may comment on the rule. If significant adverse comment is received during the comment period, the FCA will publish a notice of withdrawal of the rule that will also indicate how further rulemaking will proceed. If no significant adverse comment is received, the FCA will publish its customary notice of the effective date of the rule following the required Congressional waiting period under section 5.17(c)(1) of the Act.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 is revised to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.3A, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E. 4.18, 4.18A, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5, 8.9 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2154a, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5, 2279aa–9); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart H—Loan Purchases and Sales

2. Sections 614.4335 and 614.4336 are revised to read as follows:

§ 614.4335 Borrower stock requirements.

(a) *In general.* Except as provided in paragraph (b) of this section, a borrower shall meet the institution's minimum borrower stock purchase requirements as a condition of obtaining a loan.

(b) *Loans designated for sale into a secondary market.* (1) An institution's bylaws may provide that the institution's minimum borrower stock purchase requirements do not apply if a loan is designated, at the time it is made, for sale into a secondary market.

(2) If a loan designated for sale under paragraph (b)(1) of this section is not sold into a secondary market during the 180-day period that begins on the date of designation, the institution's minimum borrower stock purchase requirements shall apply.

(c) *Retirement of borrower stock.* (1) *In general.* Borrower stock may be retired only if the institution meets the minimum permanent capital requirements imposed by the FCA pursuant to the Act or regulations and, except as provided in paragraph (c)(2) of this section, in accordance with the following:

(i) Borrower stock may be retired if the entire loan is sold without recourse, provided that when the loan is sold without recourse to another Farm Credit System institution, the borrower may elect to hold stock in either the selling or purchasing institution.

(ii) Borrower stock may not be retired when the entire loan is sold with recourse.

(iii) When an interest in a loan is sold without recourse, a proportionate amount of borrower stock may be

retired, but in no event may stock be retired below the institution's minimum stock purchase requirements for the interest retained.

(iv) If an institution repurchases a loan on which the stock has been retired, the borrower shall be required to repurchase stock in the amount of the minimum stock purchase requirement.

(2) *Loans sold into a secondary market.* An institution's bylaws may provide that all outstanding voting stock held by a borrower with respect to a loan shall be retired when the loan is sold into a secondary market.

(d) *Applicability.* In the case of a loan sold into a secondary market under title VIII of the Act, paragraphs (b)(1) and (c)(2) of this section apply regardless of whether the institution retains a subordinated participation interest in a loan or pool of loans or contributes to a cash reserve.

§ 614.4336 Borrower rights in connection with loan sales.

(a) *Loan sales to Farm Credit System institutions.* Loans made by qualified lenders (as defined in section 4.14A(a)(6) of the Act) and interests in such loans that are sold to other qualified lenders are subject to the borrower rights provisions of title IV of the Act.

(b) *Loans designated for sale into a secondary market.* (1) Except as provided in paragraph (b)(2) of this section, the borrower rights provisions of sections 4.14, 4.14A, 4.14B, 4.14C, 4.14D, and 4.36 of the Act do not apply to a loan made on or after February 10, 1996, that is designated for sale into a secondary market at the time it is made.

(2) If a loan designated for sale under paragraph (b)(1) of this section is not sold into a secondary market during the 180-day period that begins on the date of designation, the borrower rights provisions specified as inapplicable pursuant to paragraph (b)(1) of this section shall apply, *provided that* if the loan is subsequently sold into a secondary market, the borrower rights specified in paragraph (b)(1) of this section become inapplicable beginning on the date of the subsequent sale.

(c) *Other loan sales.* (1) Except for loans sold to another Farm Credit institution or designated for sale into a secondary market, a qualified lender must comply with one of the following two requirements before selling a loan or interest in a loan that is subject to the borrower rights provisions of title IV of the Act:

(i) Include provisions in the contract with the borrower, or a written modification thereto, that ensure that the purchaser of the loan will be obligated to accord the borrower the same rights qualified lenders must provide under the Act; or

(ii) Obtain from the borrower a signed written consent to the sale that explicitly states that the borrower relinquishes the statutory borrower rights. The consent to the loan sale and the relinquishment of the borrower rights shall have no effect until the loan is actually sold and shall be ineffective in the event that the lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(2) Before obtaining the borrower's consent to the sale of the loan and the relinquishment of borrower rights pursuant to paragraph (c)(1)(ii) of this section, the lending institution shall disclose in writing to the borrower:

(i) A full and complete description of the statutory rights that the borrower is asked to relinquish;

(ii) Any changes in the loan terms or conditions that will occur if the loan is not sold; and

(iii) The fact that the relinquishment of the statutory borrower rights will not become effective unless the loan is actually sold and shall become ineffective in the event that the lender or any other Farm Credit System institution repurchases the loan or any interest therein.

(3) The making of a loan may not be conditioned on the borrower's consent to its sale and relinquishment of statutory borrower rights.

Subpart K—Disclosure of Loan Information

§ 614.4367 [Amended]

3. Section 614.4367 is amended by removing paragraph (b) and redesignating paragraphs (c) through (e) as paragraphs (b) through (d).

Dated: November 24, 1997.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 97–31569 Filed 12–1–97; 8:45 am]

BILLING CODE 6705–01–P

[i] Pub. L. 104–105 (February 10, 1996).

[ii] Generally, for each loan made by a qualified lender, a borrower is subject to minimum stock purchase requirements of 2 percent of the loan or $1,000, whichever is less. The borrower rights provisions of the Act impose certain disclosure and other obligations on lenders.

[iii] The specific borrower rights under the Act that are affected by the section 4.14A definitional change include reconsideration of actions (sec. 4.14), restructuring distressed loans (sec. 4.14A), effect of restructuring on borrower stock (sec. 4.14B), review of restructuring denials (sec. 4.14C), protection of borrowers who meet all loan obligations (sec. 4.14D), and right of first refusal (sec. 4.36).

As enacted, the language of section 208 of the 1996 Act amending the definition of ''loan'' leaves no doubt that Congress intended to include the section 4.36 borrower's right of first refusal among the borrower rights that become inapplicable when a loan is designated for sale into a secondary market. This is consistent with section 8.9(a) of the Act, which specifically exempts loans pooled under title VIII from section 4.36 borrower rights. However, section 208 of the 1996 Act did not amend the introductory paragraph of section 4.14A(a), which limits the applicability of the section's definitions to those ''used in this part [C of title IV].'' Since section 4.36 is located in part G (''Miscellaneous'') of title IV, it could technically be argued that the amended definition of ''loan'' does not apply to section 4.36. Notwithstanding this apparent drafting inconsistency, the FCA believes Congressional intent is clear and interprets the 1996 Act to exempt loans designated for sale into a secondary market from the section 4.36 borrower's right of first refusal.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93P–0448]

Food Labeling; Serving Sizes; Reference Amount for Salt, Salt Substitutes, Seasoning Salts (e.g., Garlic Salt)

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the nutrition labeling regulations to change the reference amount customarily consumed per eating occasion for the food category ''Salt, salt substitutes, seasoning salts (e.g., garlic salt)'' from a weight-based reference amount of 1 gram (g) to a volume-based reference amount of 1/4 teaspoon (tsp). This action is necessary to provide consistency with the agency's criteria for determining volume-based versus weight-based reference amounts for all product categories.

DATES: Effective January 1, 2000. This regulation applies to all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may begin January 2, 1998. Written comments on the information collection provisions should be submitted by January 2, 1998.

ADDRESSES: Submit written comments on the information collection provisions to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St.

NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5662.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Nutrition Labeling and Education Act of 1990

On November 8, 1990, Congress passed the Nutrition Labeling and Education Act (the 1990 amendments). This statute amended the Federal Food, Drug, and Cosmetic Act (the act) in section 403(q)(1)(A)(i) to require that virtually all foods bear nutrition information that is based on a serving size that reflects the amount of food that is customarily consumed and that is expressed in a common household measure appropriate to the food (21 U.S.C. 343(q)(1)(A)(i), added to the act by section 2(a) of the 1990 amendments). The new law also directed FDA to adopt regulations that establish standards to define serving sizes (section 2(b)(1)(B) of the 1990 amendments).

After extensive notice-and-comment rulemaking, the agency published final rules implementing the 1990 amendments. In part, these rules established ''reference amounts customarily consumed per eating occasion'' (reference amounts) for use by industry as the basis for serving sizes for most foods. With regard to salt products, the agency concluded that 1 g was the appropriate reference amount for ''Salt, salt substitutes, seasoning salts (e.g., garlic salt)'' (58 FR 2229 at 2297, January 6, 1993).

In addition, in discussing a different food category, FDA outlined the circumstances in which a weight-based reference amount would not adequately reflect the amount of food customarily consumed per eating occasion (Comment 20, 58 FR 2229 at 2238). The agency stated that weight-based reference amounts are not appropriate when foods within a product category vary considerably in density, i.e., there is a density difference of 25 percent or more among the products in the category (see § 101.12(e) (21 CFR 101.12(e))), and when the customarily consumed amounts for different products are more uniform when expressed in volume than in weight.

B. Petition to Modify the Reference Amount for Salt Products

In November of 1993, FDA received a petition requesting that it change the reference amount for salt from a weight-based reference amount of ''1 g'' to a density-adjusted reference amount to be listed as ''x g - 1/4 tsp.'' The petition included the results of a consumer study of consumption patterns of regular salt and low-density salt and analytical data comparing the physical properties (including density) of regular salt and low-density salt.

In response to a request from the agency, the petitioner submitted supplemental materials consisting of information regarding the protocol, data tabulation, and results of the consumer study it had submitted, including an independent evaluation of the results and conclusions.

FDA received one comment requesting that the agency reject the petition. The comment argued against granting the petition, questioned the consumer study data, and disagreed with the results and conclusions contained in the petition. The agency received comments from the petitioner that responded to the arguments presented in this comment.

After reviewing the information in the petition, the supplemental submission, and the comments, FDA determined that the petitioner had made a prima-facie case that a volume-based reference amount of 1/4 tsp for salt is more appropriate than the weight-based reference amount of 1 g that FDA adopted in 1993. Therefore, in accordance with 21 CFR 10.30(e)(2)(i), in the **Federal Register** of July 21, 1995 (60 FR 37616), FDA issued a proposed rule (hereinafter referred to as ''the proposed rule on salt products'') to change the reference amount for ''Salt, salt substitutes, seasoning salts (e.g., garlic salt)'' from a weight-based reference amount of ''1 g'' to a volume-based reference amount of ''1/4 tsp.'' The agency requested comments on whether low-density salt products should be required to disclose clearly that they contain more air than conventional or regular salt products, and, if so, on what kind of descriptive terms would convey this information in a manner that is clear and nonmisleading for consumers.

This final rule responds to the comments FDA received in response to the proposed rule on salt products.

II. Review of Comments

FDA received and reviewed four responses to the proposed rule on salt products, each of which contained one or more comments. Two responses were received before and two after the close of the comment period. The two late comments discussed data and reiterated arguments contained in other comments.

A. Consumer Study of Consumption Patterns of Regular Versus Low-Density Salt

1. One comment noted that the original questionnaires from the consumer study submitted by the petitioner were no longer available, so an independent assessment of the data is no longer possible. The comment objected to using results and relying on conclusions that were based on summaries of the questionnaires.

Before acting on the petition, FDA specifically requested and received additional study data and summary tables that were not contained in the original petition (Docket 93P–0448/REF 1) [1]. The agency reviewed the study data and assessed the quality of the study design and the independent verification process. The agency tentatively concluded that the consumer research was a reasonably well-controlled experiment that met the scientific standards for the type of studies that can be used to determine household salt consumption[2] (Ref. 1).

The study was conducted in 1982 by an independent company (Ref. 1). Furthermore, the study results were authenticated by a separate marketing consulting firm and by an independent consultant. Section 101.12(h) does not require submission of raw data questionnaires for serving size petitions. The agency is satisfied with these salt consumption data and results because the data were independently gathered and compiled, and the study results were independently verified. The comment presented no basis for questioning the work done on the study.

The agency concludes that the absence of the original questionnaires is not significant, and that it is appropriate to rely on the results of the consumer study to represent consumption of regular and low-density salts.

2. One comment objected to the short-term (3 weeks) nature of the consumer

[1] The agency filed these materials in Docket 93P–0448, where they are identified as ''REF 1.'' As discussed further in section II.D. of this document, Exhibit E was removed from the original submission.

[2] In this document, the agency is citing relevant material to Serving Sizes; Reference Amount for Salt and Salt Substitutes, Seasoning Salts (e.g., Garlic Salt) that originally appeared in Ref. 2 of the proposed rule on salt products that appeared in the **Federal Register** of July 21, 1995 (60 FR 37616 at 37620). (See Docket No. 93P–0448.) For the convenience of the reader the materials are contained in ''Ref. 1'' of this document.

study, suggesting that it is likely that some consumers newly exposed to a low-density salt product would initially use less (by habit) and, eventually, could adjust the amount used to attain the desired salt flavor. The comment suggested that the adjustment period may not occur quickly and could be sufficient to distort the results of a 3-week study.

In an agency review of the petition, FDA considered concerns about the length of the study (a 6-week study period consisting of two consecutive 3-week periods, with each household receiving low-density salt during one of the two 3-week periods) (Ref. 1). FDA considered the possibility that a 3-week period might not be sufficient to estimate long term change in salt consumption when using a low-density salt product, and that salt consumption might change over a longer time period.

The agency noted in the review that the test product ratings revealed that the participants in the study did not report a sense of deprivation when using the low-density salt that would cause them to increase the volume of salt they consumed (Ref. 1). Consumption of both regular and low-density salts increased substantially over the course of the study (Ref. 1). The increases in consumption of the two types of salt were not significantly different.

The comment did not take issue with any of these findings of the study. The comment merely made general allegations about the length of the study and its ability to make valid findings.

FDA finds no merit to these general allegations given the findings of the study. Both the absence of a sense of deprivation in those using the low-density salt and the fact that the increase in consumption of low-density salt was consistent with the increase in consumption of regular salt suggest that the level of consumption of this product is likely to persist. Therefore, FDA can find nothing in this study to support the view that its results were not representative of long-term use of low-density salt.

3. One comment stated that the petitioner sponsored two studies and combined the data to determine the amount of low-density salt used. The comment asserted that, by combining the data from two studies, the consumption figures for each individual study have been irretrievably blended, and the amounts of low-density salt used in each of the two separate studies are not available. The comment stated that FDA should be concerned about this unconventional handling of data because reporting combined data suggests that direct consumption comparisons did not support the conclusions desired by the study's sponsor.

FDA does not agree that the petitioner submitted data from two studies, or that the data from separate studies were incorrectly combined. The agency notes that in 1982, the petitioner conducted one study of 320 households of salt users, using a multi-level design. The comment misinterpreted the two levels of the research design to be two separate studies. On one level of the design, data from 208 households in the sample were used to compare consumption of low-density salt that was labeled as regular salt to consumption of regular salt labeled as such. On another level, data from 112 of the households in the sample were used to compare consumption of low-density salt that was labeled as reduced-sodium salt to consumption of low-density salt that was labeled as regular salt. Thus, the study provided data describing consumption of three forms of salt: (1) Low-density salt labeled as reduced-sodium salt; (2) low-density salt labeled as regular salt; and (3) regular salt labeled as such.

Based on the study results, FDA has determined that the available data and information are adequate to verify that all data that describe consumption of low-density salt are similar and are considerably lower on a weight basis than those that describe consumption of regular salt. The data show that, for 320 households, the average amounts consumed per household over the 3-week period of the survey were as follows: (1) 170.51 g for low-density salt labeled as reduced-sodium salt; (2) 168.8 g for low-density salt labeled as regular salt; and (3) 285.75 g for regular salt labeled as such. The petitioner stated, and FDA verified, that participants used significantly less (41 percent) low-density salt than regular salt.

Thus, FDA concludes that there was a single study that provided adequate data to determine comparative consumption of low-density salt and regular salt, and that the procedures used in analysis of the data were valid.

B. Weight-Based Versus Volume-Based Reference Amount for Salt, Salt Substitutes, Seasoning Salts (e.g., Garlic Salt)

4. One comment objected to using the findings of the consumer study as the basis for changing from a weight-based to a volume-based reference amount. The comment stated that conclusions drawn from the data submitted in the petition do not demonstrate that salt consumption is more uniform when expressed in terms of volume than in terms of weight. The comment also objected to FDA's policy of establishing volume-based reference amounts whenever a 25-percent density variance is established by the manufacturer of a single product. The comment contended that this policy is an invitation to any food manufacturer to extend a product with 25 percent or more air and thereby to become eligible for special regulatory treatment.

Another comment supported a volume-based reference amount for salt, noting that some seasoning salts that are lighter in density than regular salt must declare the serving size as ''1/2 tsp.'' The comment stated that the proposed change to ''1/4 tsp'' would ''make seasoning salt usage more consistent overall regardless of the density of the salt or salt blend,'' would standardize information for spices and seasonings, and would be consistent with the current reference amount for spices and herbs (which is 1/4 tsp or 0.5 g if not measurable by tsp). The comment did not provide data to support the density differences among various seasoning salts.

The 1990 amendments require that nutrition information be based on a serving size that reflects the amount of food customarily consumed, expressed in a common household measure appropriate to the food. As stated in the final rule on serving sizes (Comment 20, 58 FR 2229 at 2238), FDA used weight-based reference amounts except in those instances in which it was demonstrably inappropriate to do so. The agency outlined the circumstances in which a weight-based reference amount would not adequately reflect the amount of food customarily consumed per eating occasion. FDA provided for volume-based reference amounts in cases in which: (1) The product can easily be measured by volume; (2) the density of foods within the product category varies widely; and (3) the amount customarily consumed is more uniform when expressed as a volume than as a weight. For products meeting these criteria, volume-based reference amounts ensure that serving sizes will more accurately reflect the amounts customarily consumed in accordance with the requirements of the statute.

FDA has applied this approach to all products that meet the three criteria listed previously (e.g., to mixed dishes measurable with a cup (Comment 20, 58 FR 2229 at 2238), to peanut butter (Comment 108, 58 FR 2229 at 2263), and to waffles (Comment 138, 58 FR 2229 at 2263)). This policy provides for serving sizes that accurately reflect consumption, the regulatory standard. It

does not represent special regulatory treatment of aerated food products as one comment asserted.

As stated in the proposed rule on salt products (60 FR 37616 at 37618) and acknowledged in the comments, salt products can be measured by volume. Furthermore, the density difference between regular salt and low-density salt is significant (33 percent) and demonstrates that the densities of products within the category vary widely.

In determining whether people consume similar volumes, rather than similar weights, of regular and low-density salt, FDA first considered the consumer study data submitted. FDA reviewed the mean and standard error for the consumption of regular salt labeled as such, low-density salt labeled as regular salt, and low-density salt labeled as reduced-sodium salt (Ref. 1). The agency noted that, on a per household basis, consumption of the low-density salt product was 41 percent lower by weight than consumption of the regular salt product. Because low-density salt is 33 percent lower in density than regular salt, FDA calculated that consumption of the low-density salt product was 11 percent lower by volume than consumption of the regular salt product (Ref. 2). Thus, because the percent discrepancy is less on a volume basis than on a weight basis (11 percent versus 41 percent), the study data support that salt consumption is more consistent when expressed on a volume rather than on a weight basis.

Based on the standard that FDA established in 1993 on whether to use a weight-based or a volume-based reference amount and on the consumer study data that were not available to the agency in 1993, FDA concludes that a volume-based reference amount is appropriate for salt, salt substitutes, and seasoning salts because, in addition to the fact that salt products can be measured by volume and vary widely in density, such a reference amount more accurately reflects consumption of salt and salt products and provides greater consistency in the labeling of all salts, salt substitutes, seasoning salts, spices, and herbs.

5. One comment stated that, although most recipes and cookbooks list specific volume measurements for salt, other recipes and cooking instructions state that the user should ''salt to taste'' or ''correct the seasoning.'' The comment included several articles and studies supporting FDA's initial position that a weight-based reference amount is appropriate because many consumers salt ''to taste.'' These studies indicated that: (1) Many shoppers (56 percent) modify recipes, and more than half cook without recipes at times; (2) table salt practices vary with some people adding salt before tasting (by habit) and some adding salt after tasting (to taste); (3) when people were restricted from using table salt, some compensated by increasing the salt added during cooking; and (4) when individuals were provided meals containing little or no salt, the table salt usage increased.

The comment also objected to statements made by the petitioner comparing solubility and taste of regular salt and low-density salt. The comment noted that the petitioner submitted no sensory data with the petition. The comment included study data from a taste panel that showed that four out of five respondents reported that biscuits and scrambled eggs made with regular salt tasted saltier than biscuits and scrambled eggs made with the same volume of low-density salt.

The comment concluded that nothing was presented in the petition to alter the logic of FDA's initial determination that people use ingredients such as salt or sugar ''to attain the level of sweetness or saltiness they desire'' (58 FR 2229 at 2260). The comment concluded that the reference amount for salt products should be based on weight to maintain the same level of saltiness.

FDA has reviewed the studies, articles, and cookbook information cited in the comments. It appears that there is considerable variability in how consumers use salt. The information supports that some consumers do salt or cook ''to taste'' (Refs. 3 through 5). People who salt to taste (e.g., tasting soup during preparation) are likely to use similar weights of low-density salt and regular salt. A weight-based reference amount would accurately reflect this type of use.

However, the same information supports that other consumers salt ''by habit'' (e.g., two shakes of a salt shaker) or cook according to recipe directions (e.g., by volume as specified in a recipe) (Refs. 3 through 5). These people would be likely to use similar volumes of low-density salt and regular salt because measurements of salt in recipes are specified by volume, and because the amount of salt delivered by salt shakers (i.e., the number of granules) is strongly influenced by the hole size of the salt shaker (Ref. 5). A volume-based reference amount would accurately reflect these types of uses.

FDA also reviewed the taste panel study data that were submitted in the comment comparing the taste of biscuits and eggs made with regular salt to that of biscuits and eggs made with the same volume of low-density salt. These data were ambiguous. Findings, which were included in the comment, showed that while some participants rated the biscuits and eggs made with regular salt as more salty, many reported no difference in taste, and some rated the products made with low-density salt as having a more desired, ''moderate'' salty taste.

Based on the studies and articles cited previously, when consumers at home use recipes similar to those used for the test panel, it is likely that some people will alter the recipes to produce the level of ''saltiness'' desired, which would support a weight-based reference amount. However, others will be likely to prepare the recipes as directed and thus will consume the same number of biscuits regardless of which salt is used in their preparation, which would support a volume-based reference amount.

FDA considered sensory (e.g., taste) issues in terms of their impact on consumption, the statutory standard. FDA agrees that sensory attributes (e.g., taste) may affect the amounts of regular and low-density salt used. However, the articles and studies submitted with the comments and the study data from the taste panel are ambiguous and can be interpreted to support salt use either by weight or by volume. Thus, FDA concludes that the sensory data are inconclusive in demonstrating whether similar weights or similar volumes of regular and low-density salt are customarily consumed.

C. Descriptive Labeling to Differentiate Salt and Low-Density Salt

In the proposed rule on salt products (60 FR 37616 at 37619), FDA requested comments on whether low-density salt products should be required to clearly disclose that they contain more air than conventional salt products. The agency noted that § 101.12(e), which applies to discrete products like waffles, requires that the aerated version bear a descriptive term indicating that air has been incorporated (e.g., whipped, aerated). FDA stated that some product categories that have volumetric reference amounts contain products with common or usual names that clearly indicate that air has been incorporated into the product (e.g., whipped peanut butter, whipped dessert topping). Some products in other product categories with volumetric reference amounts do not bear such descriptive terms (e.g., pudding, ice cream).

The agency stated that because regular salt and low-density salt have similar appearances, terms such as ''whipped

salt'' or ''aerated salt'' could be confusing to consumers. Therefore, FDA requested comments on what kind of descriptive terms would be clear and nonmisleading for consumers.

6. One comment stated that some kind of differential labeling (e.g., ''aerated salt'' or ''fluffed salt'') should be required to prevent misbranding and to allow consumers to make an informed purchasing decision.

FDA agrees that descriptive labeling is needed on low-density salt to ensure that consumers understand how this product differs from regular crystalline salt and are fully informed about important product characteristics. Section 101.3 (21 CFR 101.3) establishes requirements for the statement of identity of a food. Section 101.3(c) requires that when a food is marketed in various optional forms, the particular form shall be considered to be a necessary part of the statement of identity. Terms such as ''low-density salt'' or ''flaked salt crystals'' would meet these requirements because they describe the characteristic that distinguishes low-density salt from regular crystalline salt. This information must appear as part of the statement of identity on the principal display panel under § 101.3.

As stated in the second paragraph of section II.C of this document, FDA expressed concern in its proposed rule on salt products, that, because low-density salt looks similar to regular salt, some terms (e.g., ''aerated'' or ''whipped'') might be confusing to consumers. However, if manufacturers conduct consumer studies that demonstrate that terms such as ''aerated,'' ''fluffed,'' or ''whipped'' are understood by consumers as distinguishing low-density salt from regular salt, these additional terms or descriptions could also be used. FDA concludes that the statement of identity for a low-density salt product must not be false or misleading and must include a description of the form of the salt. If a product does not bear such a statement of identity, it would be subject to regulatory action under section 403(i)(1) of the act.

D. Marketing Strategy Information

7. One comment stated that some of the relevant data were not included as part of the public record. The comment noted that a volume-based reference amount accommodates a misleading marketing strategy for low-density salt. Consequently, the comment contended that the materials contained in Exhibit E of the supplemental materials[1], which were identified as pertaining to marketing strategies and which were removed from the supplemental materials before filing the materials in the docket, need to be made publicly available to ensure informed comment before any final action is taken.

All relevant data and information were included as part of the public record. The agency does not agree that materials pertaining to marketing strategies (Exhibit E in the supplemental materials) needed to be made publicly available to ensure informed comment. The material contained in Exhibit E does not contain any information relevant to a decision on the determination of a reference amount and serving size for salt products, and the agency did not use any of the material contained in Exhibit E during its deliberations. Marketing strategies fall within the definition of confidential commercial information (e.g., valuable data or information which is used in one's business and is of a type customarily held in strict confidence or regarded as privileged). Thus, these materials are not available for public disclosure under 21 CFR 20.61.

III. The Final Regulation

FDA determined in 1993 that volume-based reference amounts are appropriate when: (1) Products are bulk products that can be measured by volume (final rule for serving sizes, comment 20, 58 FR 2229 at 2238; and comment 108, 58 FR 2229 at 2263); (2) there are significant differences in densities among the products within a product category, such that a range of densities are represented within the product category (see discussions on aerated products (§ 101.12(e)) and peanut butter (final rule for serving sizes, 58 FR 2229 at 2263)); and (3) the amount customarily consumed is more uniform when expressed in terms of volume; that is, there is some indication or likelihood that similar volumes, rather than similar weights, of both low- and high-density products within the same product category are customarily consumed (proposed and final rules for serving sizes, 56 FR 60394 at 60406, November 27, 1991; and 58 FR 2229 at 2238).

Although the sensory data, discussed in section II.B of this document, indicate that there is variability in how salt products are used, the evidence from the consumer study of consumption patterns for regular and low-density salt, outlined and discussed in sections II.A and B of this document, supports that people consume more similar volumes than weights of salt products. Because of this fact and the facts that the products within the category can be measured volumetrically, and the density differences among products within the same product category are significant, FDA concludes that it is appropriate for the reference amount for salt and salt products to be expressed as a volume rather than as a weight. Therefore, the agency is changing the reference amount for salt and salt products in § 101.12(b), Table 2, from ''1 g'' to ''1/4 tsp.''

IV. Effective Date

Compliance with this final regulation, including any required labeling changes, may begin January 2, 1998, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after January 1, 2000, shall fully comply.

V. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule on salt products (60 FR 37616 at 37619). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

VI. Analysis under Executive Order 12866

FDA has examined the economic implications of the final rule as required by Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach which maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this final rule is not a significant rule as defined by Executive Order 12866.

FDA received one comment which objected to the agency's tentative finding that there is no cost to industry. The comment explained that some labels would need to be modified and requested a 1 year phase in period to allow industry to exhaust current label inventories.

FDA agrees that some labels will need to be modified at a small cost to industry—approximately $600 per label on average. Based on information submitted by the comment, there are

167 labels that will need to be relabeled as a result of this rule (Ref. 6). Although FDA recognizes that there may be more items requiring relabeling than those with which the agency is familiar, the number is not likely to be large. If there are approximately 200 labels affected by this rule, then the costs will be $120,000.

In the section IV of this document, FDA stated that this final rule has a compliance date in accordance with the uniform compliance date for food labeling requirements which is not sooner than 1 year following publication of this rule.

VII. Small Entity Analysis

FDA has examined the economic implications of the final rule as required by the Regulatory Flexibility Act (5 U.S.C. 601–612). If a rule has a significant impact on a substantial number of small entities, the Regulatory Flexibility Act requires agencies to analyze options that would minimize the economic impact of that rule on small entities.

FDA is not aware that any of the items that will require relabeling are produced by small entities, defined as fewer than 500 employees. Therefore, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant impact on a substantial number of small entities.

VIII. The Paperwork Reduction Act of 1995

This final rule contains information collection requirements that are subject review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The title, description, and respondent description of the information collection requirements are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA 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.

Title: Serving Sizes; Reference Amount for Salt, Salt Substitutes, Seasoning Salts (e.g., Garlic Salt).

Description: Section 403(q)(1)(A) and (q)(1)(B) of the act requires that the label or labeling of a food bear information that provides the serving size that is appropriate to the food and the number of servings per container. FDA has issued regulations in § 101.9(d)(3) (21 CFR 101.9(d)(3)) that require the nutrition facts panel on the label of a food product disclose information on serving size and on servings per container. FDA has also issued regulations in § 101.9(b) that provide that the serving size shall be determined based upon the ''Reference Amounts Customarily Consumed Per Eating Occasion'' that are prescribed in § 101.12(b).

This final rule revises the value for the reference amount customarily consumed per eating occasion for the food category ''Salt, salt substitutes, seasoning salts (e.g., garlic).'' This value is used by food producers to determine the serving sizes and number of servings to be listed on packages of salt, salt substitutes, and seasoning salts (e.g., garlic). As a result, manufacturers and other producers of certain of these products will be required to change the serving sizes and number of servings per container that they disclose in the nutrition facts panel for their products.

Description of Respondents: Persons and businesses, including small businesses.

TABLE 1.—ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

21 CFR Section	No. of Respondents	Total No. of Responses	Hours per Response	Total Hours	Total Operating Costs
101.12(b)	5	200	1	200	$120,000

There are no capital or maintenance costs associated with this collection of information.

FDA believes that the burden associated with the disclosure on the label of serving size and number of servings that would be required by this final rule will be a one-time burden created by the need for firms to have to change the statement of serving size and number of servings on the labels for their products. Because firms already list the serving size for salt, salt substitutes, and seasoning salts (e.g., garlic) in terms of ''1/4 teaspoons,'' FDA believes that the only firms that will have to revise their labels as a result of the regulation codified in this document are those that market low-density salt products. As noted in Table 1 of this document, FDA estimates that there are less than five firms producing salt, salt substitutes, and seasoning salts (e.g., garlic) that will need to change the labels for their products. FDA estimates that these firms will require an average of 1 hour per product to comply with the requirements of this final rule. Further, as noted in Table 1 of this document, the final rule would result in a one-time operating cost of $120,000.

In compliance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the agency has submitted the information collection requirements of this final rule to OMB for review. Interested persons are requested to send comments regarding information collection by January 2, 1998, to the Office of Information and Regulatory Affairs, OMB (address above), ATTN: Desk Officer for FDA.

IX. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Memorandum from Brenda M. Derby, CFSAN, FDA, to Ellen M. Anderson, CFSAN, FDA, June 20, 1994.

2. Bender, Mary M., and Ellen M. Anderson, memorandum to file, August 28, 1997.

3. Mittelmark, Maurice B., and Barbara Sternberg, ''Assessment of Salt Used at the Table: Comparison of Observed and Reported Behavior,'' *American Journal of Public Health*, 75:1215–1216, 1985.

4. Gilbert, Linda, contributing ed., ''Leisure Cooking Still Popular,'' *Food R & D*, February 1985.

5. Greenfield, H., J. Maples, and R. B. H. Wills, ''Salting of Food—A Function of Hole Size and Location of Shakers,'' *Nature*, 301:331, 1983.

6. Letter from Marlene L. McKone, McCormick & Company, Inc., to Ellen M. Anderson, CFSAN, FDA, September 26, 1997.

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.12 is amended in paragraph (b), in Table 2, under the ''Product category'' column, under the ''Miscellaneous Category'' by revising the entry for ''Salt, salt substitutes, seasoning salts (e.g., garlic salt)'' to read as follows:

§ 101.12 Reference amounts customarily consumed per eating occasion.

* * * * *

(b) * * *

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1, 2, 3, 4]

Product category	Reference amount	Label statement[5]
* * *	* *	* *
Miscellaneous category:		
* * *	* *	* *
Salt, salt substitutes, seasoning salts (e.g., garlic salt).	1/4 tsp	1/4 tsp (____ g); ____ piece(s) (____ g) for discrete pieces (e.g., individually packaged products).
* * *	* *	* *

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the U.S. Department of Agriculture.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e, heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; fresh and frozen pasta) is the amount required to make the reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term ''piece'' is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for ice cream bars). The guidance provided is for the label statement of products in ready-to-serve or almost ready-to-serve form. The guidance does not apply to the products which require further preparation for consumption (e.g., dry mixes, concentrates) unless specifically stated in the product category, reference amount, or label statement column that it is for these forms of the product. For products that require further preparation, manufacturers must determine the label statement following the rules in § 101.9(b) using the reference amount determined according to § 101.12(c).

* * * * *

Dated: November 20, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–31462 Filed 12–1–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 97P–0206]

Food Labeling: Health Claims; Dietary Sugar Alcohols and Dental Caries

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing its decision to amend the regulation that authorizes a health claim on sugar alcohols and dental caries to include the sugar alcohol erythritol among the substances that may be the subject of the claim. Based on its review of evidence submitted with a comment on the proposal, and the evidence described in the proposal, the agency has concluded that there is significant scientific agreement that erythritol does not promote dental caries. Therefore, FDA has decided to amend the sugar alcohol and dental caries health claim to include erythritol. FDA is announcing this action in response to a petition filed by the Cerestar Holding B.V., Mitsubishi Chemical Corp., and Nikken Chemicals Co. (the petitioners).

EFFECTIVE DATE: December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5483.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 9, 1997 (62 FR 36749), the agency proposed to amend the regulation that authorizes a health claim on sugar alcohols and dental caries (§ 101.80 (21 CFR 101.80)) to include the sugar alcohol erythritol among the substances that may be the subject of the claim. FDA issued the proposed rule in response to a petition filed under section 403(r)(3)(B)(i) and (r)(4) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(3)(B)(i) and (r)(4))). Section 403(r)(3)(B)(i) of the act states that the Secretary of Health and Human Services (and, by delegation, FDA) shall issue regulations authorizing health claims only if he or she determines, based on the totality of publicly available scientific evidence (including evidence

from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence (see also § 101.14(c) (21 CFR 101.14(c))). Section 403(r)(4) of the act sets out the procedures that FDA is to follow in health claim rulemakings.

Section 101.80(c)(2)(ii) sets out the circumstances in which a sugar alcohol is eligible to be the subject of a health claim. Section 101.80(c)(2)(ii)(A) states that the food must meet the requirement for a sugar free food set out in 21 CFR 101.60(c)(1)(i). Section 101.80(c)(2)(ii)(B) lists the sugar alcohols that are eligible to bear the claim, xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, hydrogenated starch hydrolysates, hydrogenated glucose syrups, or a combination of these. Section 101.80(c)(2)(ii)(C) states that:

> When fermentable carbohydrates are present in the sugar alcohol-containing food, the food shall not lower plaque pH below 5.7 by bacterial fermentation either during consumption or up to 30 minutes after consumption as measured by the indwelling plaque pH test found in ''Identification of Low Caries Risk Dietary Components,'' * * * which is incorporated by reference * * * .

At the time that it adopted § 101.80, the agency stated that for other sugar alcohols to be included in § 101.80(c)(2)(ii)(B), a petitioner must show how the substance conforms to the requirements of §§ 101.14(b) and 101.80 (61 FR 43433 at 43442, August 23, 1996). FDA stated ''For those substances that are to be consumed at other than decreased dietary levels, the petitioner must demonstrate to FDA's satisfaction that the substance is safe and lawful under the applicable food safety provisions of the act (§ 101.14(b)(3)(ii)).'' Likewise, the petitioner would need to provide evidence that the sugar alcohol will not lower plaque pH below 5.7. Therefore, before a claim can be made for a new sugar alcohol, it must be shown to meet the requirements for § 101.80. When this is demonstrated, FDA will take action to add the substance to the list in this regulation, which has been renumbered as § 101.80(c)(2)(ii)(B) (61 FR 43433 at 43442).

FDA considered the relevant scientific studies and data presented in the petition as part of its review of the scientific literature on erythritol and dental caries. The agency summarized this evidence in the proposed rule (62 FR 36749).

Based on the available evidence, FDA tentatively concluded that the use of erythritol in food is safe and lawful, and that this substance meets the plaque pH and other requirements of § 101.80. Consequently, FDA proposed to amend § 101.80(c)(2)(ii)(B) to include erythritol as one of the sugar alcohols that is eligible to bear the sugar alcohol and dental caries health claim. FDA did not propose to make any other changes to § 101.80.

In response to the proposal, the agency received one comment from a manufacturer. The comment supported the proposed amendment to § 101.80 to include erythritol.

Given the absence of any evidence to the contrary, FDA is confirming the tentative conclusions that it reached in the proposal. Based on these conclusions, FDA is amending § 101.80 to add erythritol to the substances listed in § 101.80(c)(2)(ii)(B) that may be the subject of the claim.

II. Environmental Impact

The agency has previously considered the environmental effects of this rule as announced in the proposed rule (62 FR 36749). The proposed rule incorrectly cited a claim of categorical exclusion under previous 21 CFR 25.24(a)(11). The agency reviewed the information submitted by the petitioner in an environmental assessment prepared under 21 CFR 25.31a(b)(5). Based on this information, the agency determined that there is no significant impact on the human environment and that an environmental impact statement is not required. No new information or comments have been received that would affect the agency's previous determination. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

III. Executive Order 12866 Analysis

FDA has examined the impacts of the final rule under Executive Order 12866. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select the regulatory approach that maximizes net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million or adversely affecting in a material way a sector of the economy, competition, or jobs, or if it raises novel legal or policy issues. FDA finds that this rule is not a significant rule as defined by Executive Order 12866.

The authorization of health claims about the relationship between erythritol and dental caries results in either costs or benefits only to the extent that food manufacturers elect to take advantage of the opportunity to use the claim. This rule will not require that any labels be redesigned, or that any product be reformulated.

This final health claim will allow manufacturers to highlight the benefits of the sugar alcohol erythritol in addition to other sugar alcohols for which FDA has already approved a health claim. The benefit of establishing this health claim is to provide for new information in the market regarding the relationship of erythritol and dental caries and to provide consumers with the assurance that this information is truthful, not misleading, and scientifically valid.

IV. Small Entity Analysis

FDA has examined the impacts of the final rule under the Regulatory Flexibility Act (5 U.S.C. 601–612). 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 economic impact of that rule on small entities.

Small entities will incur costs only if they opt to take advantage of the marketing opportunity presented by this regulation. FDA cannot predict the number of small entities that will choose to use the claim. However, no firm, including small entities, will choose to bear the cost of redesigning labels unless they believe that the claim will result in increased sales of their product. Therefore, this rule will not result in either a decrease in revenues or a significant increase in costs to any small entity. Accordingly, under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

V. Paperwork Reduction Act

This final rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

VI. References

The following reference has 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. Cerestar Holding B. V., Mitsubishi Chemical Corp., and Nikken Chemicals Co., ''Petition to amend the regulation for 21 CFR 101.80 to authorize a noncariogenicity dental health claim for the sugar alcohol erythritol (1,2,3,4-butanetetrol),'' April 4, 1997, [CP1].

List of Subjects in 21 CFR Part 101

Food labeling, Nutrition, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: 15 U.S.C. 1453, 1454, 1455; 21 U.S.C. 321, 331, 342, 343, 348, 371.

2. Section 101.80 is amended by revising paragraph (c)(2)(ii)(B) to read as follows:

§ 101.80 Health claims: dietary sugar alcohols and dental caries.

* * * * *

(c) * * *

(2) * * *

(ii) * * *

(B) The sugar alcohol in the food shall be xylitol, sorbitol, mannitol, maltitol, isomalt, lactitol, hydrogenated starch hydrolysates, hydrogenated glucose syrups, erythritol, or a combination of these.

* * * * *

Dated: November 21, 1997.

William B. Schultz,

Deputy Commissioner for Policy.

[FR Doc. 97–31587 Filed 12–1–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1327

[Docket No. NHTSA–97–3155]

RIN 2127–AG21

Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Point System

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends the agency's National Driver Register (NDR) regulations to implement a recent amendment to the National Driver Register Act of 1982, as amended. The amendment authorizes the Commandant of the Coast Guard to request and receive information from the National Driver Register (NDR) regarding the motor vehicle driving records of any officer, chief warrant officer, or enlisted member of the Coast Guard or Coast Guard Reserve (including a cadet or an applicant for appointment or enlistment of any of the foregoing, and any member of a uniformed service who is assigned to the Coast Guard). This interim final rule establishes the procedures for such individuals to request, and for the Commandant to receive, NDR information.

DATES: This interim final rule becomes effective on December 2, 1997. Comments on this interim final rule are due no later than February 2, 1998.

ADDRESSES: Written comments should refer to the docket number and be submitted (preferably in ten copies) to: Department of Transportation—Dockets, Room PL–401, Nassif Building, 400 Seventh Street, S.W., Washington, DC 20590. (Docket hours are from 10:00 a.m. to 5:00 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. William Holden, Chief, Traffic Records and Driver Register Division, NTS–32. National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590; telephone (202) 366–4800 or Ms. Heidi L. Coleman, Assistant Chief Counsel for General Law, NCC–30, National Highway Traffic Safety Administration, 400 Seventh Street, S.W., Washington, DC 20590; telephone (202) 366–1834.

SUPPLEMENTARY INFORMATION: The National Driver Register (NDR) is a central file of information on individuals whose licenses to operate a motor vehicle have been denied, revoked, suspended, or canceled, for cause, or who have been convicted of certain serious traffic-related violations, such as racing on the highways or driving while impaired by alcohol or other drugs.

As provided in the NDR Act of 1982, as amended, 49 U.S.C. 30301, *et seq.*, State chief driver licensing officials are authorized to request and receive information from the NDR for driver licensing and driver improvement purposes. When an individual applies for a driver's license, for example, these State officials are authorized to request and receive NDR information to determine whether the applicant's driver's license has been withdrawn for cause in any other State. Because the NDR is a nationwide index, chief driver licensing officials need to submit only a single inquiry to obtain this information.

State chief driver licensing officials also are authorized under the Act to request NDR information on behalf of other authorized NDR users for transportation safety purposes. The NDR Act authorizes the following entities to receive NDR information for limited transportation purposes: the National Transportation Safety Board and the Federal Highway Administration for accident investigation purposes; employers and prospective employers of motor vehicle operators; the Federal Aviation Administration (FAA) regarding any individual who holds or has applied for an airman's certificate; air carriers regarding individuals who are seeking employment with the air carrier; the Federal Railroad Administration (FRA) and employers or prospective employers of locomotive operators; and the U.S. Coast Guard regarding any individual who holds or who has applied for a license, certificate of registry, or a merchant mariner's document. The Act also provides that individuals can learn whether information about themselves is on the NDR file and can receive any such information.

On October 19, 1996, Pub. L. 104–324 was enacted into law. Section 207 of that Act contained an amendment to the NDR Act of 1982, as amended (49 U.S.C. 30305), authorizing the Commandant of the Coast Guard to request and receive NDR information regarding any officer, chief warrant officer, or enlisted member of the Coast Guard or Coast Guard Reserve (including a cadet or an applicant for appointment or enlistment of any of the foregoing, and any member of a uniformed service who is assigned to the Coast Guard).

Procedures for Requesting and Receiving NDR Information

The procedures that the Commandant of the Coast Guard would use to receive NDR information on these Coast Guard members would be the same as those used by the U.S. Coast Guard to receive information regarding individuals who hold or who have applied for a license, certificate of registry, or a merchant mariner's document.

The Commandant of the Coast Guard may not initiate a request for NDR information. Rather, the individual member or applicant must do so. To initiate a request, the individual must either complete, sign and submit a request for an NDR file search, or

authorize the Commandant of the Coast Guard to request the NDR file search by completing and signing a written consent. The request or written consent must state that NDR records are being requested; state specifically who is authorized to receive the records; be dated and signed by the individual (the member or applicant); and specifically state that the authorization is valid for only one search of the NDR. It must also specifically state that the NDR identifies ''probable'' matches that require further inquiry for verification, that it is recommended (but not required) that the Commandant of the Coast Guard verify matches with the state of record, and state that individuals have the right to request NDR records regarding themselves to verify the accuracy of any information on the file pertaining to them.

The Commandant of the Coast Guard may receive such information and shall make the information available to the individual. The Commandant will not receive any information that was entered in the Register more than three years before the date of the request, unless the information relates to a revocation or suspension still in effect on the date of the request.

In accordance with Pub. L. 104–324, requests to transmit NDR information to the Commandant are to be submitted through a State chief driver licensing official. Such requests may be submitted through the chief driver licensing official of any state that participates in the NDR's Problem Driver Pointer System (PDPS). Currently, all 50 States participate in the NDR PDPS, and the District of Columbia is in the process of connecting to the PDPS system.

The NDR response would be sent to the chief driver licensing official who will provide it to the Commandant and will indicate whether a match (probable identification) was found and, if so, the response will identify the State in which the full substantive record can be found (the State of record). The agency encourages the Commandant to obtain the substantive data relating to the match from the State of record to determine whether the person described in the record is in fact the subject individual before taking further action.

Interim Final Rule

This document is published as an interim final rule. Accordingly, the changes to part 1327 described above are fully in effect and binding upon the date of the document's publication. No further regulatory action by NHTSA is necessary to make these changes effective.

In an effort to establish the procedures to permit Coast Guard members to submit requests to the NDR and the Commandant of the Coast Guard to receive NDR information as soon as possible, these regulatory changes have been made in an interim final rule, without prior notice and opportunity for comment. In addition, the changes made to the regulation in this interim final rule simply reflect the statutory amendments enacted by Pub. L. 104–324. Further, the procedures that have been established in this interim final rule for requesting that NDR information be provided to the Commandant of the Coast Guard are nearly identical to the procedures already being followed by the States, by airmen, by seamen/merchant mariners, and by others in the field of transportation safety. Those procedures were established by a rulemaking process during which notice and an opportunity to comment were provided.

NHTSA requests comments on these regulatory changes. All comments submitted in response to this document will be considered by the agency. Following the close of the comment period, NHTSA will publish a document responding to the comments and, if appropriate, will further amend the provisions of part 1327.

Written Comments

Interested persons are invited to comment on this interim final rule. It is requested, but not required, that ten copies be submitted.

All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15 page limit. (49 CFR 553.21.) This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

Written comments to the public docket must be received by February 2, 1998. All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments received after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. Following the close of the comment period, NHTSA will publish a document responding to the comments and, if appropriate, NHTSA will amend the provisions of this rule. NHTSA will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Copies of all documents will be placed in Docket NHTSA–97–3155 in Room PL–401, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590.

Regulatory Analyses and Notice

Executive Order 12778 (Civil Justice Reform)

This interim final rule will not have any preemptive or retroactive effect. The enabling legislation does not establish a procedure for judicial review of final rules promulgated under its provisions. There is no requirement that individuals submit a petition for reconsideration or other administrative proceedings before they may file suit in court.

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

The agency has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or Department of Transportation Regulatory Policies and Procedures. The changes in this interim final rule merely reflect amendments contained in Pub. L. 104–324. Accordingly, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the agency has evaluated the effects of this action on small entities. Based on the evaluation, we certify that this action will not have a significant impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Paperwork Reduction Act

There are reporting requirements contained in the regulation that this rule is amending that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). These requirements had been approved through September 30, 2000, under OMB No. 2127–0001.

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 it will not have any significant impact on the quality of the human environment.

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 federalism assessment. Accordingly, the preparation of a Federalism Assessment is not warranted.

List of Subjects in 23 CFR Part 1327

Highway safety, Intergovernmental relations, National Driver Register, Reporting and recordkeeping requirements.

In consideration of the foregoing, chapter III of title 23 of the CFR is amended as follows:

PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM

1. The authority citation for Part 1327 is revised to read as follows:

Authority: Pub.L. 97–364, 96 Stat. 1740, as amended (49 U.S.C. 30301 *et seq.*); delegation of authority at 49 CFR 1.50.

2. Section 1327.3 is amended by redesignating paragraphs (a) through (w) as paragraphs (b) through (x) and by adding a new paragraph (a) to read as follows:

§ 1327.3 Definitions.

(a) *Any officer, chief warrant officer, or enlisted member of the Coast Guard or Coast Guard Reserve* includes a cadet or an applicant for appointment or enlistment of any of the foregoing and any member of a uniformed service who is assigned to the Coast Guard.

* * * * *

§ 1327.5 [Amended]

3. Section 1327.5 is amended by removing the period at the end of paragraph (c)(2) introductory text and adding in its place the words ‘‘, or regarding any officer, chief warrant officer, or enlisted member of the Coast Guard or Coast Guard Reserve.’’.

4. Section 1327.6 is amended by revising paragraph (e)(1) introductory text to read as follows:

§ 1327.6 Conditions and procedures for other authorized users of the NDR.

* * * * *

(e) * * *

(1) To initiate an NDR file check, the individual who holds or who has applied for a license, certificate of registry, or a merchant mariner's document or the individual who is an officer, chief warrant officer, or enlisted member of the Coast Guard or Coast Guard Reserve shall either:

* * * * *

Issued on: November 25, 1997.

Ricardo Martinez,

Administrator, National Highway Traffic Safety Administration.

[FR Doc. 97–31436 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–59–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 202

[Docket No. 97–6]

Registration of Claims to Copyright: Group Registration of Serials

AGENCY: Copyright Office, Library of Congress.

ACTION: Final rule; policy announcement.

SUMMARY: This announcement notifies the public of an amendment that slightly modifies the administrative procedures for qualifying to use the group registration of serials option. Under the amendment, the letter currently addressed to the General Counsel's Office should instead be addressed to ‘‘Group Periodicals Registration.’’

EFFECTIVE DATE: December 2, 1997.

FOR FURTHER INFORMATION CONTACT: Marilyn Kretsinger, Assistant General Counsel, Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, D.C. 20024. Telephone: (202) 707–8380. Telefax: (202) 707–8366.

SUPPLEMENTARY INFORMATION: In 1990, the Copyright Office adopted a new registration procedure which permitted group registration of serial publications under certain conditions. 55 FR 50556 (1990). This procedure is part of the regulations of the Copyright Office at 37 CFR Chap. II, §§ 202.3(b)(5) and 202.20(c)(2)(xvii). The primary requirement for an applicant to become eligible to use the group registration procedure is for the applicant to establish two complimentary subscriptions of the individual serial title for the Library of Congress. In order to encourage compliance, the regulations required that the applicant submit a letter to the General Counsel's Office, stating that the complimentary subscriptions had been entered.

In administering the group registration procedure, the letter submitted has been addressed to the General Counsel's Office. In the future this letter should be addressed to: Library of Congress, ‘‘Group Periodicals Registration,’’ Washington, D.C. 20540–4161. In the future, the Copyright Acquisitions Division, will maintain the file of these letters relating to group registration of serials. Questions or requests for information relating to deposits for group registration of serials should be directed to the Chief of the Copyright Acquisitions Division (202) 707–7125. All other conditions relating to this procedure will continue without modification.

List of Subjects in 37 CFR Part 202

Registration of claims to copyright, Claims to copyright, Copyright registration.

Final Regulations

In consideration of the foregoing, the Copyright Office is amending part 202 of 37 CFR, chapter II in the manner set forth below.

PART 202—REGISTRATION OF CLAIMS TO COPYRIGHT

1. The authority citation for part 202 continues to read as follows:

Authority: 17 U.S.C. 702.

2. The second sentence of § 202.3(b)(5)(ii) is revised to read as follows:

§ 202.3 Registration of copyright.

* * * * *

(b) * * *

(5) * * *

(ii) * * * The letter should be sent to Library of Congress,‘Group Periodicals Registration,’ Washington, D.C. 20540–4161.

* * * * *

Dated: November 26, 1997.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 97–31548 Filed 12–1–97; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA35–1–7305a; FRL–5928–2]

Approval and Promulgation of Air Quality Implementation Plans, Louisiana; Reasonable Available Control Technology for Emissions of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: In this action, the EPA is conditionally approving in part, and fully approving in part, revisions to the Louisiana State Implementation Plan (SIP). The revisions incorporate regulations to control Volatile Organic Compound (VOC) emissions from major stationary sources by means of Reasonable Available Control Technology (RACT). The major stationary source category controlled by the conditionally approved regulation is Synthetic Organic Chemical Manufacturing Industry (SOCMI) batch processes. The major stationary source categories controlled by the fully approved regulations are SOCMI reactors, SOCMI distillation, and industrial cleanup solvents. The intended effect of these rules is to reduce VOC emissions into the ambient air and thereby reduce ground-level ozone concentrations. Both EPA's full and conditional approval of these regulations makes them federally enforceable.

The full approval of the revisions to the SIP to control VOC emissions from the batch processes source category is contingent upon the State of Louisiana submitting a revision of the single unit operation exemptions of the SOCMI batch processing rule. If the State fails to submit a revision to the batch processing rule within one year of the conditional approval of these SIP revisions, the conditional approval will convert to a disapproval.

In the proposed rules section of today's **Federal Register**, the EPA is proposing and seeking public comment on the same conditional and final approvals of the Louisiana SIP that are discussed in this notice. If adverse comments are received on these approvals, the EPA will withdraw the direct final rule and address the comments received in a subsequent final rule, based on the related proposed rule. No additional opportunity for public comment will be provided.

DATES: This action is effective on February 2, 1998 unless adverse or critical comments are received by January 2, 1998. If the effective date is delayed, a timely notice will be published in the **Federal Register**.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section (6PD–L), at the EPA Region 6 Office listed below.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Region 6, Dallas, 1445 Ross Avenue, Texas 75202–2733, telephone: (214) 665–7214.

Air Quality Division, Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810, telephone: (504) 765–7247.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Eaton R. Weiler, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone: (214) 665–2174.

SUPPLEMENTARY INFORMATION:

I. Background

A. Background of VOC RACT Rule Requirements

Section 172 of the Clean Air Act (the Act) as amended in 1990, entitled *Nonattainment Plan Provisions in General*, requires that states adopt RACT rules for major stationary sources of VOCs located in ozone nonattainment areas. The RACT is defined as the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility as defined in 44 FR 53761 (September 17, 1979). In accordance with section 108 of the Act, the EPA publishes Control Technique Guideline (CTG) documents in order to assist the States in developing RACT rules for source categories. The CTGs provide information on available air pollution control techniques and provide recommendations on what the EPA considers the ''presumptive norm'' for RACT.

Sections 182(b)(2) and 182(c) of the Act as amended in 1990 require States to adopt RACT rules for three general groups of major stationary sources of VOCs located in ozone nonattainment areas designated as moderate or above. The first group consists of sources covered by an existing CTG (a CTG issued prior to the enactment of the 1990 Act amendments). The second group consists of sources covered by a CTG issued after the enactment of the 1990 Act amendments. These CTGs are referred to as ''post-enactment'' CTGs. The third group consists of major sources not covered by a CTG. These sources are referred to as ''non-CTG'' sources.

Under section 302(j), the Act defines major source as any source which has the potential to emit 100 tons per year or more of any air contaminant unless otherwise expressly provided. Under section 182(c), a major source is defined as any source which is located in an area designated as a serious ozone non-attainment area and has the potential to emit 50 tons per year or more of VOCs. Therefore, in the Baton Rouge five parish serious ozone nonattainment area, a major source definition is the potential to emit 50 tons per year or more of VOCs.

Under section 183 of the Act as amended in 1990, entitled *Federal Ozone Measures*, the EPA is required to issue CTGs for 13 source categories by November 15, 1993. Two specific source categories are listed under section 183: aerospace coatings and solvents, and shipbuilding operations. The other 11 categories are listed in 57 FR 18077 (April 28, 1992) and are as follows:

1. SOCMI distillation.
2. SOCMI reactors.
3. Wood furniture.
4. Plastic parts business machines.
5. Plastic parts coating (other).
6. Offset lithography.
7. Industrial wastewater.
8. SOCMI batch processing.
10. Volatile Organic Liquid (VOL) storage tanks.
11. Clean-up solvents.

To date, CTGs have been published for four of the thirteen source categories: SOCMI distillation, SOCMI reactors, wood furniture, and shipbuilding. As described in a January 20, 1994 memorandum from John Seitz, Director of the EPA's Office of Air Quality Planning and Standards, the EPA plans to make available Alternative Control Technology (ACT) documents for the CTG source categories for which CTG documents have not yet been published.

These ACT documents provide much of the same information as the CTG documents, however, instead of establishing a presumptive norm for RACT rule, these documents provide options for control.

On April 28, 1992 (57 FR 18077), the EPA interpreted the Act to allow a State to submit a non-CTG rule by November 15, 1992, or to defer submittal of a RACT rule for sources that the State anticipated would be covered by a post-enactment CTG. For post-enactment CTGs, the amended Act requires States to submit RACT rules in accordance with the schedule specified in the corresponding CTG document. If the EPA failed to issue a CTG by November 15, 1993, the responsibility shifted to the State to submit a non-CTG RACT rule for those sources by November 15, 1994.

B. Negative Declarations

In agreement with EPA policy, if there are no major sources of VOC emissions in a CTG source category located in a nonattainment area, the State should submit a formal statement of the nonexistence of such major sources, i.e., a negative declaration. On April 6 and June 20, 1994, the State of Louisiana submitted letters of negative declaration for the following CTG source categories: aerospace coatings and solvents, shipbuilding operations, offset lithography, plastic parts—business machines, plastic parts—other, and wood furniture. The EPA approved these letters on October 30, 1996, in 61 FR 55894. A CTG document was published in April 1996, for wood furniture which lowered the threshold for a source to be considered major in the wood furniture source category to 25 tons per year or more in an ozone nonattainment area. On January 28, 1997, the State of Louisiana submitted a letter of negative declaration for the wood furniture category based on the lower major source threshold.

II. State Submittal

On December 15, 1995, the State of Louisiana submitted to the EPA five sets of rules which require six source categories to apply RACT to VOC emissions from major stationary sources located in the Baton Rouge ozone nonattainment area. In Louisiana, the following five parishes areas are designated as serious: Ascension, East Baton Rouge, Iberville, Livingston, and West Baton Rouge. The applicable source categories are VOL tank storage, SOCMI reactors, SOCMI distillation, SOCMI batch processes, industrial wastewater, and industrial cleanup solvents. The rules also apply to Pointe Coupee Parish and Calcasieu Parish, formerly serious and marginal ozone nonattainment areas, respectively. These rules were published in the *Louisiana Register* on April 20, September 20, and November 20, 1995.

No action is being taken on the industrial wastewater portion of the December 15, 1995, submittal. The EPA has identified provisions which are deficient with respect to EPA guidance. In short, the EPA has concerns with the rule provisions which are followed to determine the characteristics of the wastewater stream, and the testing requirements for biological treatment units.

The EPA has previously approved Louisiana's RACT rule for VOL tank storage, 33 Louisiana Administrative Code (LAC) 2103, on October 22, 1996 (61 FR 57470) as part of the 15% rate of progress plan submitted to the EPA on December 15, 1995.

III. Analysis of State Submittal

A. Industrial Cleaning Solvents

Chapter 21 of 33 LAC has been amended to include Section 2157, (33 LAC 2157) *Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing.* Section 2157 is intended to incorporate regulations which represent RACT for the cleanup solvents CTG-source category.

Facilities affected are those which emit or have the potential to emit 50 tons per year or more of VOCs, and which use solvents in one or more of the following nine solvent-cleaning operations: spray gun cleaning, spray booth cleaning, large manufactured components cleaning, equipment cleaning, floor cleaning, line cleaning, parts cleaning, tank cleaning, and small manufactured components cleaning. Geographically, these rules apply to the five parish Baton Rouge ozone nonattainment area, and Pointe Coupee and Calcasieu Parishes.

To assist State agencies in developing rules to limit emission of VOCs which result from industrial cleaning with organic solvents, in February 1994, the EPA published the ACT document titled *Industrial Cleaning Solvents* (EPA–453/R–94–015). The ACT document does not provide a model regulation or a recommended emission limit representing RACT. The ACT document does provide considerable information on feasible RACT options which States can use to define their own RACT levels.

The ACT document recommends the application of an accounting system which tracks the use, fate, and associated costs (purchase and disposal) of the cleanup solvents. The accounting system should utilize the Unit Operations System (UOS) approach. A UOS is defined as the ensemble of equipment around which a material balance is performed and includes all possible points/sources from which losses to the atmosphere could occur as a result of them being cleaned. Completion of the material balance around a UOS requires measurement of all input and output VOC-based liquid solvent streams. The difference between these streams may be assumed to have evaporated as solvent emissions. The UOS ensembles for the nine solvent-operations listed above are described in Appendix C of the ACT document.

Another control option discussed in the ACT document is to require major sources to conduct intensive, short-term studies of solvent types and uses. The study would review purchase records, distribution sources, cleanup operations, recycling records and waste disposal records. The study would identify potential VOC usage reductions such as cleaning solvent changes and equipment changes.

Utilizing the information gained from the implementation of the UOS accounting system, the ACT document recommends the State require major sources to submit individual solvent reduction plans.

Section 2157 of 33 LAC incorporates, as requirements, the control options outlined in the above listed ACT document. The regulation is approvable as RACT for the cleanup solvents CTG-source category.

Section 2157 of 33 LAC, requires affected facilities to implement the following actions: conduct a three-month intensive study of solvent types and usage, utilize accounting on a unit operation system and, submit plans to the administrative authority to reduce VOC emissions. As an alternative to submitting reduction plans, the owner or operator of affected facilities may report the controls and/or work practices deemed to be Maximum Achievable Control Technology.

These submitted plans become State enforceable upon approval. A violation of 33 LAC 2157 occurs if the affected facility does not meet the state-approved solvent reduction target.

B. Batch Processes

1. EPA Analysis

Chapter 21 of 33 LAC has been amended to include Section 2149, (33 LAC 2149) *Limiting Volatile Organic Compound Emissions from Batch Processing.* Section 2149 is intended to incorporate regulations which represent

RACT for the batch processing CTG-source category.

Facilities affected are those which emit or have the potential to emit 50 tons per year or more of VOCs, and fall into one of the following Standard Industrial Classification code categories: plastic materials and resins (2821), pharmaceuticals (2833 and 2834), gum and wood chemicals (2861), cyclic crudes and intermediates (2865), industrial organic chemicals (2869), and agricultural chemicals (2879). Geographically, these rules apply to the five parish Baton Rouge ozone nonattainment area, and Pointe Coupee and Calcasieu Parishes.

To assist State agencies in developing rules to limit emission of VOCs which result from batch processes, in February 1994, the EPA published the ACT document titled *Control of Volatile Organic Compound Emissions from Batch Processes* (EPA–453/R–93–017). The ACT document provides a model regulation representing RACT, as well as providing considerable information on emissions, controls, control options, and costs that States can use in developing RACT regulations.

In developing a batch processing RACT regulation, the State of Louisiana closely followed the model rule provided in the ACT. The purpose of most of the changes from the model rule is to make the regulations more explicit. All changes are insignificant except the change to single-unit operation exemptions as discussed below.

As a change to the model rule's single unit operation exemptions, the State replaced the 500-pound annual emission exemption with the following annual emission exemptions for specific unit operations: 1800 lbs. for reactors, 1200 lbs. for holding tanks, and 8700 lbs. for centrifuges. No justification for the revised levels of these thresholds was provided. Furthermore, by deleting the general single unit operation exemption and including only three specific unit operation exemptions, all other unit operations not listed would not be exempt for analyses no matter how low the level of annual emissions.

2. State Commitment of Revision

On June 17, 1997, the LDEQ submitted a letter committing to revise, within one year of the date of the publication of this **Federal Register** conditional approval, the single unit operation exemptions of the batch processing rule.

The revision would eliminate the individual process single unit operation exemptions and set the overall single unit operation exemption to 500 lb./yr. or less. The revision would also incorporate language which more explicitly defines the control requirements.

3. EPA Conclusion

With the exception of the single unit operation exemption as discussed above, 33 LAC 2149, incorporates as requirements, the control options outlined in the above listed ACT document. With the letter committing to revise Section 2149(b)(2), *single unit operation exemptions,* the regulation is conditionally approvable as RACT for the batch processing CTG source category.

C. SOCMI Distillation and Reactors

Chapter 21 of 33 LAC, has been amended to include Section 2147, (33 LAC 2147) *Limiting Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry.* Section 2147 is intended to incorporate regulations which represent RACT for both the SOCMI reactors and SOCMI distillation source categories.

Facilities affected are those which emit or have the potential to emit 50 tons per year or more of VOCs, and have the Standard Industrial Major Code 28 classification, *Chemicals And Allied Products.* Geographically, these rules apply to the five parish Baton Rouge ozone nonattainment area, and Pointe Coupee and Calcasieu Parishes.

To assist State agencies in developing rules to limit emission of VOCs which result from batch processes, in August 1993 the EPA published the CTG document entitled *Control of Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations Processes in the Synthetic Organic Chemical Manufacturing Industry.* As well as providing considerable information on emissions, controls, and costs that the States can use in developing RACT regulations, the CTG provides a model regulation representing RACT. In developing a SOCMI distillation and reactor regulation, the State of Louisiana closely followed the model rule provided in the CTG. The purpose of most of the changes from the model rule is to make the regulations more explicit. All changes are unsubstantive except the change made to the flow rate exemption as discussed below.

As a change to the model rule flow-rate exemption, the State raised the minimum control flow rate from 0.0085 to 0.011 standard cubic meters per minute. This change was made to the model rule to be consistent with the new source performance standards for reactor processes, 40 CFR 60.700(c)(4). In this way, the RACT rule will not be more stringent than the performance standards for new sources for reactor processes. The EPA finds this revision acceptable.

Section 2149 of 33 LAC incorporates as requirements, the control options outlined in the above listed CTG document. The regulation is approvable as RACT for the SOCMI reactor and SOCMI distillation source categories.

IV. Final Action

By this action, the EPA is conditionally approving in part and fully approving in part the revisions to the Louisiana SIP submitted on December 15, 1995. The EPA is conditionally approving the revisions to the SIP to control VOC emissions utilizing RACT from the SOCMI batch processing source category. The EPA is fully approving in the revisions to the SIP to control VOC emissions utilizing RACT from the following major source categories: SOCMI distillation, SOCMI reactor, and clean-up solvents. The EPA is also approving the letter of negative declaration for the wood furniture major source category from the LDEQ dated January 21, 1997.

The full approval of the revision to control VOC emissions utilizing RACT from the batch processing source category is contingent upon the State of Louisiana submitting a revision to the single unit operation exemptions rule. If the State fails to submit a revision to the batch processing rule within one year of the conditional approval of these SIP revisions, the conditional approval will convert to a disapproval.

With the approval of these rules, the applicable requirements relating to RACT rules of the 12 of the 13 CTG source categories have been met. The industrial wastewater source category is the only remaining CTG source category for which no action has been taken. This source category will be handled in a separate rulemaking action.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective on February 2, 1998, unless, by January 2, 1998, adverse or critical comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent action that will withdraw

the final action. All public comments received will be addressed in a subsequent final rule based the proposed rule in today's **Federal Register**, which incorporate by reference the discussion in this direct final action. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective February 2, 1998.

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

V. Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

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

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

If the conditional approval is converted to a disapproval under section 110(k), based on the State's failure to meet the commitment, it will not affect any existing State requirements applicable to small entities. Federal disapproval of the State submittal does not affect its State-enforceability. Moreover, EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements nor does it substitute a new Federal requirement.

C. Unfunded Mandates

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

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or Tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or Tribal governments, or to the private sector, result from this action.

D. Submission to Congress and the General Accounting Office

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

This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

E. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 2, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the SIP for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 10, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(74) to read as follows:

§ 52.970 Identification of plan.

* * * * *

(c) * * *

(74) Revisions to the Louisiana Department of Environmental Quality Regulation Title 33, Part III, Chapter 21,

Control of Emission of Organic Compounds, submitted by the Governor on December 15, 1995.

(i) Incorporation by reference.

(A) LAC, Title 33, Part III, Chapter 21, Section 2147, Limiting Volatile Organic Compound Emissions from Reactor Processes and Distillation Operations in the Synthetic Organic Chemical Manufacturing Industry, adopted in the Louisiana Register on April 20, 1995 (LR 21:380).

(B) LAC, Title 33, Part III, Chapter 21, Section 2149, Limiting Volatile Organic Compound Emissions from Batch Processing, adopted in the Louisiana Register on April 20, 1995 (LR 21:387).

(C) LAC, Title 33, Part III, Chapter 21, Section 2151, Limiting Volatile Organic Compound Emissions from Cleanup Solvent Processing, adopted in the Louisiana Register on April 20, 1995 (LR 21:391).

(ii) Additional material.

(A) Letter of negative declaration for wood furniture dated January 21, 1997, from the State of Louisiana Department of Environmental Quality.

3. Section 52.994 is amended by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 52.994 Conditional approvals.

* * * * *

(b) *Reasonable Available Control Technology for the Synthetic Organic Chemical Manufacturing Industry Batch Processing Source Category.* A letter dated June 17, 1997 from the Assistant Secretary of the Louisiana Department of Environmental Quality to the EPA Regional Administrator commits the State to make corrections in LAC 33.III.2149.A.2.b to restore the general single unit operation exemption to 500 pounds per year or less. The State commits to make the above rule change within one year from the **Federal Register** publication of the conditional approval of the batch processing Reasonable Available Control Technology rule.

[FR Doc. 97–31408 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 64, 70, and 71

[FRL–5928–5]

RIN 2060–AD18

Compliance Assurance Monitoring

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; availability of guidance document.

SUMMARY: On October 22, 1997 (62 FR 54900), EPA published a final Compliance Assurance Monitoring Rule (CAM). The final rule preamble described a Guidance Development Process in which the Agency would develop non-prescriptive examples of the types of monitoring that can be used to satisfy part 64 for various types of control devices and emissions units. In order to provide an opportunity for source owners or operators and other interested parties to submit suggestions, review drafts and generally clarify the part 64 requirements, a *Draft* CAM Technical Guidance Document is now available. The Agency emphasizes that the development of example monitoring approaches in this guidance document is intended to assist both regulated industry and permitting authorities to streamline permit review in those instances where a source owner or operator proposes monitoring based on one of the examples. These examples should not be considered as an implied limitation on the owner or operator's ability to propose a different approach that the owner or operator can demonstrate satisfies the part 64 requirements or on the permitting authority's authority to require additional monitoring. A final CAM Technical Guidance Document should be available by the end of March 1998.

DATES: Comments on the Draft CAM Technical Guidance Document should be received no later than January 5, 1998.

ADDRESSES: Comments should be sent to: Dan Bivins, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, MD–19, RTP, NC 27711, or to: Bivins.Dan@epamail.epa.gov

The Draft CAM Technical Guidance Document is available on U.S. Environmental Protection Agency's EMTIC Homepage on the Technology Transfer Network (via the Internet at ''http://ttnwww.rtpnc.epa.gov/html/emticwww/index.htm'', 24 hours a day, 7 days a week , except Monday, 8–12 a.m. EST).

FOR FURTHER INFORMATION CONTACT: Dan Bivins at (919) 541–5244.

Henry C. Thomas,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 97–31576 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180

[OPP–300589; FRL–5758–7]

Pyrimethanil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an import tolerance for residues of the fungicide 4,6-dimethyl-N-phenyl-2-pyrimidinamine expressed as pyrimethanil in or on the raw agricultural commodity (RAC) wine grapes at 5.0 ppm. AgrEvo USA Company submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act of 1996 (Pub. L. 104-170) requesting the tolerance.

DATES: This regulation becomes effective December 2, 1997. Objections and requests for hearings must be received by EPA on or before February 2, 1998.

ADDRESSEES: Written objections, and hearing requests identified by the docket control number, OPP–300589, must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled ''Tolerance Petition Fees'' and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, OPP–300589, must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All copies

of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300589]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–9354, e-mail: waller.mary@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 1, 1997 (62 FR 41379) (FRL–5732–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA) 21 U.S.C. 346a(e), announcing the filing of a pesticide tolerance petition (PP 4E4384) by AgrEvo USA Company, Little Falls Center One, 2711 Centerville Rd., Wilmington, DE 19808. The notice included a summary of the petition prepared by AgrEvo USA Company. There were no comments received in response to the notice of filing. The petition requested that 40 CFR part 180 be amended by establishing a tolerance for residues of the fungicide 4,6-dimethyl-N-phenyl-2-pyrimidinamine expressed as pyrimethanil in or on the raw agricultural commodity wine grapes at 5.0 parts per million (ppm).

I. Risk Assessment and Statutory Findings

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings.

A. Toxicity

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

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is more commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100% or less of the RfD) is generally considered acceptable by EPA to pose a reasonable certainty of no harm. EPA generally uses the RfD to evaluate chronic risks posed by pesticide exposure. For shorter term risks, which could occur for residential uses of a pesticide, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor. The MOE is a measure of how close the exposure comes to the NOEL.

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

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

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

Short-term risk results from exposure to the pesticide for a period of 1-7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enactment of FQPA, this risk assessment has been expanded to include both dietary and non-dietary sources of exposure, and will typically consider exposure from food, water, and residential uses when reliable data are available. In this reassessment, risks from average food and water exposure, and high-end residential exposure, are aggregated. High-end exposures from all three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However,

for cases in which high-end exposure can reasonably be expected from multiple sources (e.g., frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive risks assessment/characterization. Since the toxicological endpoint considered in this assessment reflects exposure over a period of at least 7 days, an additional degree of conservatism is built into the assessment; i.e., the risk assessment nominally covers 1-7 days exposure, and the toxicological endpoint/NOEL is selected to be adequate for at least 7 days of exposure. (Toxicity results at lower levels when the dosing duration is increased.)

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

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

B. Aggregate Exposure

In examining aggregate exposure, FFDCA section 408 requires that EPA take into account available and reliable information concerning exposure from the pesticide residue in the food in question, residues in other foods for which there are tolerances, residues in ground water or surface water that is consumed as drinking water, and other non-occupational exposures through pesticide use in gardens, lawns, or buildings (residential and other indoor uses). Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. The Theoretical Maximum Residue Contribution (TMRC) is an estimate of the level of residues consumed daily if each food item contained pesticide residues equal to the tolerance. In evaluating food exposures, EPA takes into account varying consumption patterns of major identifiable subgroups of consumers, including infants and children. The TMRC is a ''worst case'' estimate since it is based on the assumptions that food contains pesticide residues at the tolerance level and that 100% of the crop is treated by pesticide. If the TMRC exceeds the RfD or poses a lifetime cancer risk that is greater than approximately one in a million, EPA attempts to derive a more accurate exposure estimate for the pesticide by evaluating additional types of information (anticipated residue data and/or percent of crop treated data) which show, generally, that pesticide residues in most foods when they are eaten are well below established tolerances.

Percent crop treated estimates are derived from Federal and private market survey data. Typically, a range of estimates are supplied and the upper end of this range is assumed for the exposure assessment. By using this upper end estimate of percent crop treated, the Agency is reasonably certain that exposure is not understated for any significant subpopulation group. Further, regional consumption information is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups, to pesticide residues. Review of this regional data allows EPA to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency.

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of pyrimethanil and to make the determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for pyrimethanil on wine grapes at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. A battery of acute toxicity studies resulted in an acute oral LD_{50} = 4,149 milligrams/kilograms (mg/kg) (males) and 5,971 mg/kg (females); an acute dermal LD_{50} >5,000 mg/kg for both sexes; an acute inhalation LC_{50} >1.98 mg/L; slight eye irritation; no dermal irritation; and a finding that pyrimethanil is not a sensitizer.

2. A subchronic oral toxicity study in rats fed pyrimethanil at dose levels of 0, 80, 800, or 8,000 ppm for 13 weeks. Those doses were equivalent to daily intake of 0, 5.4, 54.5, 529.1 milligrams/kilograms/day (mg/kg/day) for males and 0, 6.8, 66.7, 625.9 mg/kg/day for females. A supplementary control and a high dose (8,000 ppm) group were similarly treated for 13 weeks then maintained off-dose for 28 days to investigate the reversibility of any findings. Treatment of pyrimethanil did not affect mortality, clinical signs, water intake, ophthalmology, hematology, blood chemistry, or macroscopic pathology.

Under the conditions of this study, the No Observed Effect Level (NOEL) was estimated to be 80 ppm (equivalent to a daily intake of 5.4 mg/kg/day for males and 6.8 mg/kg/day for females). The Lowest Observed Effect Level (LOEL) was estimated to be 800 ppm (54.5 mg/kg/day for males and 66.7 mg/kg/day for females). The LOEL is based on decreased body weight gains in females, changed coloration of urine specimens, and increased incidence of hypertrophy of centrilobular hepatocytes in males.

3. A subchronic oral toxicity in mice fed technical pyrimethanil at dose levels of 0, 80, 900, or 10,000 ppm for 13 weeks. Those doses were equivalent to 0, 12, 139, or 1,864 mg/kg/day for males and 0, 18, 203, or 2,545 mg/kg/day for females, respectively. There were no treatment-related effects in mortality, clinical signs, water intake, or hematological parameters.

The NOEL was estimated to be 900 ppm, equivalent to daily intake of 139 and 203 mg/kg/day for males and females, respectively. The LOEL was estimated to be 10,000 ppm, equivalent to daily intake of 1,864 and 2,545 mg/kg/day for males and females, respectively. The LOEL is based on decreased body weight gains, clinical chemistry data, necropsy, and histopathological findings.

4. A subchronic oral toxicity study in dogs dosed with technical pyrimethanil by gavage at dose levels of 0, 6, 80, or 1,000/800 mg/kg/day for 13 weeks. The highest dose was reduced from 1,000 mg/kg/day to 800 mg/kg on day 7 due to persistent vomiting seen in all dogs receiving 1,000 mg/kg. Concentrations of dosing suspension (0.5% (w/v) methyl cellulose in distilled water) were within ranges of 82.5% to 121.7% of nominal. There were no treatment related effects on mortality, organ weights, necropsy findings, histopathological, ophthalmoscopical, or hematological parameters.

Under the conditions of this study, the NOEL was estimated to be 6 mg/kg. The LOEL was estimated to be 80 mg/kg. The LOEL is based on the increased incidence of vomiting and diarrhea, salivation, cream coloration of feces, hypoactivity, and decreased water consumption.

5. A chronic oral toxicity study in dogs dosed with pyrimethanil by gavage at doses of 0, 2, 30, or 400/250 mg/kg/day for 12 months. Administration of the test material at 400 mg/kg/day caused a high incidence of vomiting/emesis during week 1 of the study. For this reason, the dose regimen was decreased to 250 mg/kg/day on day 8 of the study. At this dose (250 mg/kg) vomiting was decreased to about 1% in all animals.

Based on the results of this study, the NOEL is 30 mg/kg/day and the LOEL is 250 mg/kg/day, based on the decrease in body weight, food consumption, feed efficiency, and water consumption, reduced clotting times, and increases in white blood cells, (mainly neutrophils).

6. A carcinogenicity feeding study in mice fed technical pyrimethanil at dose levels of 0, 16 ppm (males 2.0, females 2.5 mg/kg/day), 160 ppm (males 20.0, females 24.9 mg/kg/day), or 1,600 ppm (males 210.9, females 253.8 mg/kg/day) for 80 weeks resulted in a dose-related increase in the percentage (24%, 38%, 40%, and 67% in control, low-, mid-, and high-dose males, respectively) of deaths occurring prior to week 56 in males but there was no dose-related adverse effect on survival in either sex and adequate numbers of mice (both sexes) were available at study termination.

Treated males displayed a higher incidence of urinary bladder distension at necropsy, and urogenital tract lesions were increased at the high-dose level compared to the control values. Since all urogenital tract tissues of the low- and mid-dose males were not examined, a dose-response cannot be determined. The NOEL for systemic effects can be set at 1,600 ppm (males 210.9, females 253.8 mg/kg/day), the highest dose tested (HDT). There was no increase in the incidence of any tumor type in either sex.

7. A combined chronic toxicity/carcinogenicity study in rats fed pyrimethanil at dose levels of 0, 32, 400, or 5,000 ppm for 52 weeks (interim kill) or 104 weeks (main study). Those doses were equivalent to daily intake of 0, 1.3, 17, or 221 mg/kg/day for males and 0, 1.8, 22, or 291 mg/kg/day for females.

At the interim kill (52 weeks), relative liver/body weight ratios of animals given 5,000 ppm were siginificantly higher than controls. Necropsy revealed dark thyroids in 5,000 ppm treated animals only. Microscopic pathology showed minimal to moderate hypertrophy of centrilobular hepatocytes in animals given 5,000 ppm. In the thyroid gland, at 5,000 ppm, there were higher incidences of minimal to slight colloid depletion and hypertrophy of the follicular epithelium in males and females. A single focus of follicular hyperplasia was seen in males only. There were minimal to moderate intra-epithelial depositions of brown pigment (lipofuscin).

At the terminal kill (104 weeks), at 5,000 ppm, an increase of absolute liver weight was observed in males only while increases of relative liver/body weight ratios were seen in both sexes. Non-neoplastic findings included minimal to slight hypertrophy of centrilobular hepatocyes. There were higher incidences of eosinophilic foci in the liver of males and females compared with controls. Minimal to moderate focal cystic degeneration of the liver was also observed in males and females. In the thyroid gland, colloid depletion and hypertrophy of the follicular epithelium was seen in males and females compared to controls. Depositions of intra-cytoplasmic brown pigment (lipofuscin) within the thyroid follicular epithelium were seen only in animals given 5,000 ppm (38/50 males and 47/50 females).

The only tissue showing a higher incidence of tumors than controls was the thyroid gland with benign follicular cell adenomas in both sexes. A pair-wise comparison for the incidence in high dose (5,000 ppm) treated males was not statistically higher than the control. The incidence in both sexes was higher than the historical control range. A positive trend of the incidence for both sexes was noted. In addition, thyroid follicular cell adenocarcinomas were seen in animals treated at 32 ppm (males) and 5,000 ppm (1 male only); however, the incidence was within the historical control range.

At 400 ppm, a statistically significant increase of serum GGT level in males only was observed at week 102. Increased absolute liver weight (the relative liver/body weight ratio was comparable to control) in males was reported in the terminal necropsy findings. However, these parameters are considered to be of no toxicological significance because no corresponding significant histopathological finding was seen.

No treatment-related significant effects were seen in animals given 32 ppm.

Under the condition of this study, the NOEL was estimated to be 400 ppm. (equivalent to 17 mg/kg/day for males and 22 mg/kg/day for females). The LOEL was estimated to be 5,000 ppm (equivalent to 221 mg/kg/day for males and 291 mg/kg/day for females). The LOEL was based on decreased body weight gains, increased serum cholesterol and GGT levels, increased relative liver/body weight ratios, necropsy, and histopathological findings.

8. An oral development toxicity study in rats gavaged with pyrimethanil suspensions (1% (w/v) aqueous methyl cellulose at doses of 0, 7, 85, or 1,000 mg/kg/day from gestation days 6 through 15. Maternal toxicity (hunched body posture, emaciation, and hair loss) were noted in high-dose animals. Treatment-related, statistically significant decreases in body weights and body weight gains were observed in high-dose animals. Except for statistically significant decreased in mean litter weight and mean fetal weight of high-dose animals, all other caesarian section data were comparable to control values. The maternal NOEL was 85 mg/kg/day and the LOEL was 1,000 mg/kg/day (limit dose), based on decreases in mean body weight, mean body weight gain, mean litter weight, and mean fetal weight. The developmental NOEL was 1,000 mg/kg/day (limit dose). The developmental LOEL was not established.

9. A developmental toxicity (teratology) study in rabbits gavaged with pyrimethanil at doses of 0, 7, 45, or 300 mg/kg/day on gestation day 7 through 19. At 7 mg/kd/day, no treatment-related maternal or developmental effects were observed. The maternal NOEL is 7 mg/kg/day and the maternal LOEL is 45 mg/kg/day based on the slight increase in the number of females with reduced production and size of fecal pellets. The developmental NOEL is 45 mg/kg/day and the LOEL is 300 mg/kg/day based on decreased fetal weight, increased incidence of fetal runts, increase in retarded ossification of fetal bones, increase in fetuses with 13 thoracic vertebrae, and 13 pairs of ribs.

10. A reproduction toxicity study in rats fed pyrimethanil at dose levels of 0, 32, 400, or 5,000 ppm (males: 0, 1.9, 23.1, or 294 mg/kg/day; females: 0, 2.2, 27.4, 343 mg/kg/day) during premating, gestation, and lactation periods. No treatment-related differences were noted in the necropsy findings of parental animals and their offspring. Treatment-related decreases in mean body weights were limited to high-dose parental animals and their offspring.

The NOEL for reproductive toxicity is 5,000 ppm (294 mg/kg/day, males; 343

mg/kg/day, females), the highest dose tested. The NOEL for developmental/systemic toxicity is 400 ppm (23.1 mg/kg/day, males; 343 mg/kg/day, females); the LOEL was established at 5,000 ppm (294 mg/kg/day, females), based on decreased pup body weights on lactation day 21.

11. Studies on gene mutation and other genotoxic effects: A bacterial mutation assay with *s. typhimurium*; a bacterial mutation assay with *E. Coli*; a mouse micronucleus assay; an *in vitro* metaphase chromosomal aberration assay (human lymphocytes); an *in vivo* unscheduled DNA synthesis assay (rats) showed no evidence of mutagenic activity.

12. A metabolism study showed that the majority (≈90%) of the administered dose of ^{14}C-pyrimethanil following 14 days of repeated oral exposure to unlabeled pyrimethanil (5/sex) at a dose level of 10 mg/kg was eliminated within 24 hours, and the major route of elimination was via the urine (≈72%). Approximately 17-18% of the dose was eliminated via feces. Radiolabeled pyrimethanil was detected only in the liver, kidney, and blood at study termination (24 hours post dose). The highest residue was displayed in the liver in both sexes. There was no significant sex difference. The overall recovery of radiolabeled pyrimethanil was ≈91%.

13. A metabolism study showed that the majority of a radiolabeled dose of pyrimethanil (≈97% low dose; 65% high dose) administered following single oral exposures of rats to dose levels of 11.89 or 800 mg/kg of pyrimethanil was eliminated within 24 hours, and the major route of elimination was via the urine (low dose 74%-76%; high dose 65%-67%). Approximately 21%-23% of the low dose and ≈15%-18% of the high dose was eliminated via the feces. The highest residues were displayed in the liver, kidney, thyroid, and blood at the high dose. The overall recovery of radiolabeled pyrimethanil following single-dose exposure was >94% at the high dose and >101% at the low dose. No sex differences were observed. Since tissue levels were measured at only one time point, no statement regarding bioaccumulation can be made.

14. A metabolism study in rats administered ^{14}C-pyrimethanil orally once a day over a period of 28 days (10 mg/kg), with periodic sacrifices at days 1, 3, 5, 8, 11, 17, 23, 28, and 32 for residue analysis of organs/tissues showed detectable levels of radiolabeled pyrimethanil in adrenals, blood, kidney, liver, spleen, and thyroid. Blood and liver displayed detectable levels of radiolabeled pyrimethanil after a single dose (24-hour sample). Four days after the last dose, detectable levels of radiolabeled pyrimethanil were found in the liver, kidney, and thyroids. It appeared that the levels in the blood, kidney, and thyroid continued to increase with increased exposure time, while the level in the adrenal appeared to reach a plateau, and levels in the liver appeared to decline.

B. Toxicological Endpoints

1. *Acute toxicity*. To assess acute dietary exposure, the Agency used a NOEL of 45 mg/kg/day and a LOEL of 300 mg/kg/day from a developmental toxicity study in rabbits for evaluating acute risk to females 13+, the subpopulation of concern.

2. *Chronic toxicity*. A RfD of 0.2 mg/kg was established based on a long-term rat toxicity study with a NOEL of 400 ppm and an uncertainty factor of 100.

3. *Carcinogenicity*. Pyrimethanil was classified as a Group C chemical - possible human carcinogen. The Agency's Carcinogenicity Peer Review Committee (CPRC) chose a non-linear approach (MOE) based on a NOEL of 17 mg/kg/day for increased incidences of thyroid tumors in rats. The MOE methodology was selected because of thyroid tumors associated with administration of pyrimethanil in the rat which may be due to a disruption in the thyroid-pituitary status.

4. *Toxicity endpoints for non-dietary exposure*. A toxicity endpoint for non-dietary exposure is not required as the Agency is only considering the import tolerance on wine grapes.

C. Exposure and Risks

1. *From food and feed uses*. This is the first tolerance for residues of pyrimethanil in or on a raw agricultural commodity. Risk assessments were conducted by EPA to assess dietary exposures and risks from pyrimethanil as follows:

i. *Acute dietary exposure and risk*. An acute dietary endpoint for females 13+ and the general public were assessed because of potential oral consumptions. For the subpopulation of concern, females 13+, the estimated acute Margin of Exposure (MOE) of 405 demonstrates no acute dietary concern.

ii. *Chronic exposure and risk*. The RfD used for the chronic dietary analysis was 0.20 mg/kg/day. A tolerance of 5.0 ppm in or on wine grapes was used. Using the tolerance level residue (5.0 ppm) and assuming that 100% of the crop is treated, the risk assessment resulted in use of less than 1% of the RfD for the general population and all 22 subgroups, including infants under 1 year and children under 13 years of age. No feed items are associated with wine grapes and therefore, secondary residues are not expected. In the best judgement of the Agency, the pyrimethanil chronic dietary risk does not exceed the level of concern.

2. *From drinking water*. Since this is an import tolerance and there are no U.S. registrations for this chemical, there are not risks associated with drinking water.

3. *From non-occupational non-dietary exposure*. As stated, this is an import tolerance and there are no U.S. registrations, therefore no non-occupational non-dietary exposure and risk are expected.

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

Although at present the Agency does not know how to apply the information in its files concerning common mechanism issues to most risk assessments, there are pesticides as to which the common mechanism issues

can be resolved. These pesticides include pesticides that are toxicologically dissimilar to existing chemical substances (in which case the Agency can conclude that it is unlikely that a pesticide shares a common mechanism of activity with other substances) and pesticides that produce a common toxic metabolite (in which case common mechanism of activity will be assumed).

EPA does not have, at this time, available data to determine whether pyrimethanil has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyrimethanil does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has assumed that pyrimethanil does not have a common mechanism of toxicity with other substances.

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

1. *Chronic risk.* Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to pyrimethanil from food will utilize less than 1% of the RfD for the U.S. population and the 22 subgroups, including infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyrimethanil residues.

2. *Acute risk.* Acute dietary margins of exposure greater than 100 tend to cause no dietary concern. The estimated MOE value of 450 does not exceed the Agency's level of concern and therefore, EPA has a reasonable certainty that no harm will result from acute dietary exposure.

E. Aggregate Cancer Risk for the U.S. Population

This chemical has been classified as a Group C - chemical (possible human carcinogen) and a non-linear methodology (MOE) was applied for the estimation of human cancer risk. Cancer MOEs are estimated by dividing the carcinogenic NOEL of 17 mg/kg/day from the rat chronic feeding study by the chronic exposure (TMRC). The cancer MOE was estimated for the U.S. population as 40,380. The estimated MOE does not exceed the Agency's level of concern and therefore, EPA has a reasonable certainty that no harm will result from exposures to residues of pyrimethanil.

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

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of pyrimethanil, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. The developmental and reproductive toxicity data base for pyrimethanil is considered to be complete. The data base includes an acceptable 2-generation reproduction study in rats and acceptable pre-natal developmental toxicity studies in rats and rabbits. The data did not suggest any additional sensitivity to the embryo or neonate following *in utero* or early post-natal exposure to pyrimethanil. The maternal NOEL was 85 mg/kg/day and the developmental NOEL was 1,000 mg/kg/day (highest dose tested) in the rat developmental toxicity study. In the developmental toxicity study in rabbits, the maternal NOEL was 7 mg/kg/day and the developmental NOEL was 45 mg/kg/day. Results from the 2-generation reproduction toxicity study in rats indicated a reproductive toxicity NOEL of 294 mg/kg/day for males and 343 mg/kg/day for females (highest dose tested). The developmental toxicity NOEL was established at 23.l mg/kg/day for males and 27.4 mg/kg/day for females. The developmental and reproductive NOEL are at least 1,000 fold higher than the RfD (0.2 mg/kg/day), and should be protective for infants and children. No additional safety factors are warranted.

2. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to pyrimethanil from food will utilize less than 1% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyrimethanil residues.

III. Other Considerations

A. Metabolism in Plants and Animals.

The metabolism in plants is adequately understood for the purposes of this use of pyrimethanil on wine grapes. The residue of regulatory concern is the parent compound only, pyrimethanil. Since it has been determined that secondary residues in livestock commodities are not likely to result from this use, metabolism of pyrimethanil in animals is not relevant to this requested use on wine grapes.

B. Analytical Enforcement Methodology

The method accepted by EPA for enforcement of pyrimethanil in wine grapes is AgrEvo USA's Method (R2/2) Analytical Method for the Determination of Residues of Pyrimethanil in Wine by HPLC (MRID # 433450-10). This method is available from the Docket under docket control number [OPP–300589] at the address stated above.

C. Magnitude of Residues.

Fifty-seven field trials consisting of different applications and concentrations of pyrimethanil were performed in Italy, Germany, South Africa, France, Spain, and Greece. HPLC/UV was the analytical method used for residue determination. Grape and wine samples were stored at -20 °C and 4 °C, respectively, until analysis. Maximum storage period was 9 months and 12 months for wine and grape samples, respectively. The storage period, as indicated by the storage stability data, is considered adequate for storage samples. Residues of pyrimethanil for grapes ranged from 0.74 to 4.14 ppm. The maximum value of 4.14 ppm was obtained after a maximum total application rate of 4 kg ai/Ha and a PHI of 26 days. Additionally, one study showed a maximum residue for grapes of 6.2 ppm (PHI = 0 days, Total application rate = 2.4 kg ai/Ha) and another maximum residue of 9.5 ppm (PHI = 26 days, Total application rate = 3.0 kg ai/Ha). However, most of the residue in wine grapes were less than 4.14 ppm. For

grape must, residues ranged from 0.41 to 1.3 ppm. For wine, residues ranged from <0.05 to 1.8 ppm.

A processing study was conducted in Fresno, California in which one application of pyrimethanil (40 SC) was made at a nominal rate of 1 kg ai/Ha at each of the following growth stages: flowering, grape closure, color change, and 21 days pre-harvest. Applications were made by airblast ground rig sprayer and all plots were harvested at normal harvest time.

Residues of pyrimethanil in whole grapes concentrated in all processed commodities produced from those grapes except juice. Raisins and juice are considered to be the only processed commodities. Raisin waste, wet and dry grape pomace are not considered processed commodities for the purposes of this petition in/on wine grapes. However, since this petition is for wine grapes and not for table grapes, a tolerance in/on raisins is not needed at this time. For future tolerance petitions in grapes grown for fresh consumption, a tolerance will be required for raisins.

D. Codex Considerations

There are no Mexican, Canadian, or Codex listings for residues of pyrimethanil; therefore, there are no harmonization issues.

IV. Conclusion

Therefore, the tolerance is established for pyrimethanil in or on wine grapes at 5.0 ppm.

V. Objections and Hearing Requests.

The new FFDCA section 408(g) provides essentially the same process for persons to ''Object'' to a tolerance regulation issued by EPA under the new section 408(e) and (1)(6) as was provided in the old section 408 and in section 409. However, the period of filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use its current procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by February 2, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Docket

EPA has established a record for this rulemaking under docket control number OPP–300589 (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 1132 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at: opp-docket@epamail.epa.gov.

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

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

VII. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et. seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section (408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility At (RFA) (5 U.S.C.601 *et. seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided

to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Parts 180

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

Dated: November 21, 1997.

Linda A. Travers,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

b. Section § 180.518 is added to read as follows:

§ 180.518 Pyrimethanil; tolerances for residues.

(a) *General*. [Reserved]

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

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

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

(e) *Import*. Import tolerances are established for residues of the fungicide 4,6-dimethyl-N-phenyl-2-pyrimidinamine expressed as pyrimethanil in or on the following raw agricultural commodity:

Commodity	Parts per million
Wine grapes	5.0 ppm

[FR Doc. 97–31552 Filed 12-1-97; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 417

[HCFA–1911–IFC]

RIN 0938–AI35

Medicare+Choice Program; Collection of User Fees From Medicare+Choice Plans and Risk-Sharing Contractors

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule with a request for comments establishes the methodology that will be employed to assess fees applicable to Medicare risk-sharing contractors for fiscal year (FY) 1998. Under section 4002 of the Balanced Budget Act of 1997, these contractors must contribute their pro rata share of costs relating to beneficiary enrollment, dissemination of information, and certain counseling and assistance programs. The Medicare+Choice regulation to be published in June of 1998 will implement this requirement for Medicare+Choice plans.

DATES: *Effective Date:* These regulations are effective on January 1, 1998.

Comment Date: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 2, 1998.

ADDRESSES: Mail an original and 3 copies of written comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1911–IFC, P.O. Box 7517, Baltimore, MD 21207–5187.

If you prefer, you may deliver an original and 3 copies of your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, D.C. 20201, or

Room C5–09–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Comments may also be submitted electronically to the following e-mail address: HCFA–1911–IFC@hcfa.gov. E-mail comments must include the full name and address of the sender, and must be submitted to the referenced address in order to be considered. All comments must be incorporated in the e-mail message because we may not be able to access attachments. Electronically submitted comments will be available for public inspection at the Independence Avenue address, below.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1911–IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C., on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Randy Ricktor, (410) 786–4632, Marty Abeln, (410) 786–1032.

SUPPLEMENTARY INFORMATION:

I. Background

Section 4001 of the Balanced Budget Act of 1997 (BBA) (Public Law 105–33), added a new section 1857(e)(2) to the Social Security Act (the Act), that establishes a fee requirement that Medicare+Choice plans must contribute their pro rata share, as determined by the Secretary, of costs relating to enrollment and dissemination of information and certain counseling and assistance programs. Section 4002(b) of the BBA makes this requirement applicable to those managed care plans with risk sharing contracts under section 1876 of the Act. Any amounts collected are authorized to be appropriated only for the purpose of carrying out section 1851 of the Act (relating to enrollment and dissemination of information) and section 4360 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 103–66, OBRA 1990), relating to the health insurance counseling and assistance program.

For any Federal fiscal year (FY), the fees authorized under section 1857(e)(2)(B) of the Act are contingent upon enactment in an appropriations act of a provision specifying the aggregate amount of fees the Secretary is directed to collect in that fiscal year. The BBA fees collected during any FY are to be credited as offsetting collections. Under section 1857(e)(2)(D), the fees authorized under section 1857(e)(2)(B) are not to be established at any amount greater than the lesser of the estimated costs to be incurred by the Secretary in the FY in carrying out the activities described in sections 1851 of the Act and 4360 of the OBRA 1990; or $200 million in Federal fiscal year 1998; $150 million in fiscal year 1999; and $100 million in fiscal year 2000 and

each subsequent fiscal year (or such amounts as may be specified in appropriations bills). The appropriations bill for FY 1998, permits the Secretary to collect no more than $95 million in FY 1998. We estimate that the costs to be incurred in carrying out the activities described in sections 1851 and 4360 will exceed the full limit of $95 million for FY 1998. Therefore, we will collect the full $95 million amount provided for in the FY 1998 appropriation bill.

II. Discussion of Possible Approaches to Collecting Medicare+Choice Fees

Risk Contracting Plans

The BBA authorizes the collection of fees from both Medicare+Choice plans and existing managed care plans with risk sharing contracts under section 1876 of the Act. Under section 4002 of the BBA Medicare risk contracting plans may continue to contract with HCFA through December 31, 1998. Effective, January 1, 1999, all risk contracting plans are required to contract with HCFA only as Medicare+Choice plans. We do not expect final regulations for the Medicare+Choice program to be effective before June 1998. Until the Medicare+Choice program regulations are published the only organizations subject to the BBA fees will be Medicare risk contracting plans. Regulations implementing the BBA fees for Medicare+Choice plans will be included as part of the larger Medicare+Choice regulation to be published in June of 1998. In the June regulation we will describe how we will continue to assess the BBA fees from Medicare risk contracting plans during FY 1998 and how Medicare+Choice plans will be included in the FY 1998 assessment of $95 million. The June 1998 regulation will also describe the BBA assessment methodology for future fiscal years. It should be noted that any new Medicare risk contracts and Medicare+Choice plans (during the FY 1998 assessment period) will be subject to the FY 1998 BBA fee assessment. Since we anticipate that Medicare risk contracting plans will necessarily be responsible for a substantial portion of the FY 1998 BBA fees the following background is provided regarding the size and scope of the Medicare risk contracting program.

As of October 1, 1997, there were 279 active Medicare risk plans with each having an average enrollment of 28,000 Medicare beneficiaries. There is great range in the size of Medicare risk plans, with the smallest risk plans having less than 500 enrolled beneficiaries, up to the largest risk plan having almost 300,000 enrolled beneficiaries. Enrollment in risk contracting plans is not evenly distributed, in fact, almost 50 percent of beneficiaries enrolled in Medicare risk contracting plans are concentrated in only 10 percent of the risk plans. A Medicare risk contracting plan is paid a capitation payment (that varies depending on the geographic location of the plan) for each enrolled beneficiary in its plan, thus the range of total Medicare payments received by risk plans also varies greatly. The typical risk contracting plan is paid about $12 million each month. Medicare's monthly payments to all risk contracting plans exceed $2 billion a month, with payments to some of the largest risk contracting plans averaging over $100 million a month.

Approaches to Assessing Fees

A number of approaches were considered in selecting a methodology for assessing the BBA fees which would be consistent with the goals of the Medicare+Choice program and also equitable in terms of financial impact on current Medicare risk contracting plans as well as new Medicare+choice plans. In order to ensure that the selected fee assessment methodology meets the Medicare+Choice goals and is equitably applied to all eligible plans, we identified the specific criteria described below.

The following criteria were used in selecting the BBA fee assessment methodology:

- The fee assessment should serve to support the goal of promoting enrollment growth in Medicare+Choice plans. In particular, the fee assessment should not present a barrier to the entry of new or small plans (e.g., low enrollment plans in rural areas) into the Medicare+Choice program.
- The fees should be equitably applied to all eligible plans on a basis which is balanced by their Medicare revenue from the Federal government.
- The methodology for assessing the fees should be as simple as possible, and implemented in a manner that minimizes the financial impact on plans and the administrative costs to HCFA.

We considered four general approaches which might be used in assessing the BBA fees:

- The first and most direct approach considered was to divide the total annual BBA fee cost equally among all the eligible plans. While this approach would be simple to implement and administer it was rejected because it clearly imposes a disproportionate financial burden on small plans, as they would be paying the same amount of BBA fees as the largest plans. In addition, an equal fee assessment could serve as a prohibitive financial barrier restricting entry of new low enrollment plans into the Medicare+Choice program.
- As a second general approach, we evaluated assessing the BBA fees based on the number of beneficiaries enrolled in a particular plan. Specifically, under this approach a fixed per capita rate would be assessed on a per member month basis. Thus, a fixed dollar amount would be deducted from the capitation payment of each beneficiary enrolled in the plan. For example, at a total enrollment level of 5 million beneficiaries, the assessment of a $95 million BBA fee (over a nine month collection period) would result in a deduction of approximately $2.09 from the monthly capitation payment for each beneficiary enrolled in an eligible plan. Collecting fees under this approach would mean that each plan's assessment is directly related to the number of beneficiaries enrolled in the plan. Thus, this method equitably links the BBA fee assessment with the size of the plan as determined by beneficiary enrollment. However, this method does not adjust for the geographic variation in the monthly capitation payment paid to plans, which range from approximately $367 per member month in the lowest payment areas (typically rural) up to a maximum of $782 per member month in the highest capitation payment areas (typically urban).
- A third approach considered was to assess the BBA fee as a fixed percentage of the total monthly payment to each plan. This approach is financially equitable since any plan's assessment is based specifically on the total capitation dollars an eligible plan receives from the Federal government. Thus, the more dollars a plan is paid the greater the BBA fee assessment. Generally, this approach would impose a slightly higher cost on eligible plans located in the higher capitation payment areas. Alternatively, this approach would not disproportionately effect those plans in the lowest payment areas which tend to be smaller plans in rural areas.
- A fourth approach considered was establishing a flat base fee assessment (a percentage of the overall fee) that each eligible plan would pay, coupled with a variable assessment that would be determined by the size of the plan. We evaluated such an approach because of concern that assessing fees based solely on size (determined either by beneficiary enrollment or dollars paid to the plan), would mean that smaller and new plans with limited enrollment might not be contributing their fair share toward the annual BBA fee assessment. However, upon evaluating

various fixed dollar amounts as a base fee assessment we recognized that any fixed amount would have to be very small in order to not present an excessive financial burden for small plans or create an entry barrier for new low enrollment plans. For example, at the $95 million national fee level, if all plans were assessed an annual fee of $15,000 combined with a variable cost, we estimated that for small plans (500 or fewer members) the $15,000 annual fee amount (combined with the variable assessment) would result in these plans being assessed from 1 to 5 percent of the total capitation payments small plans receive from the Medicare program. This result is in contrast to the other assessment approaches discussed above under which all plans would be assessed less than 1 percent of the payments they receive from the Medicare Program.

Conclusion

Based on the selection criteria, we have chosen the third methodology (described above) which calls for the BBA fees to be assessed as a fixed percentage of the total monthly calculated Medicare payments eligible plans receive from Medicare. Assessing fees on this basis in FY 1998 will require the deduction of only a very small percentage of any plan's total annual Medicare payments (less than one-half of one percent). Accordingly, we believe this approach best meets the goals of supporting the Medicare+Choice program as well as being equitable to current Medicare risk contracting plans and future Medicare+Choice plans.

III. Provisions of the Interim Final Rule

In summary the provisions of this interim final rule are as follows:

- Section 1857(e)(2) of the Act provides for the collection of fees from each eligible organization with a risk-sharing contract its share of the fees for administering section 1851 of the Act relating to enrollment and dissemination of information and section 4360 of the OBRA 1990 relating to the health insurance counseling and assistance program in accordance with the specified requirements. (§ 417.472(h))
- The aggregate amount of fees for a fiscal year are the lesser of the estimated costs to be incurred by HCFA in that fiscal year to carry out the activities described in section 1851 of the Act and section 4360 of the OBRA 1990, or, if less, the amount set forth in the DHHS appropriation for the fiscal year. (§ 417.472(h)(1)).
- We establish a fee percentage rate and collect the fees over nine consecutive months beginning with January of the fiscal year or until the $95 million assessment limit has been reached. The aggregate amount of fees we are authorized to collect in FY 1998 is $95 million. We will begin collecting the BBA fees for fiscal year 1998 from eligible plans starting January 1, 1998. The three months from October thru December will be used by HCFA to make any necessary adjustments regarding the fees collected from plans in the previous assessment period.

The percentage BBA fee assessment for FY 1998 is .428 percent. This percentage rate is based on the total estimated Medicare payment amount to all eligible plans on January 1, 1998. The percentage amount is calculated by multiplying the projected total January payment amount by nine (months in the assessment period) and then dividing this figure into the total FY 1997 BBA fee assessment of $95 million. We estimate that we will pay all risk contracting plans $2,464,524,000 in January of 1998. We then multiplied $2,464,524,000 times nine (the projected assessment period) which equals $22,180,716,000. A $95 million total BBA fee represents .428 percent of the $22,180,716,000 figure. Accordingly, during the nine month assessment period we will deduct .428 percent of each eligible plan's total calculated monthly payment as its portion of the BBA fee. Adjustments for retroactive enrollments and disenrollments to our enrollment system subsequent to November are not considered or factored into the calculation for the fee determination. (§ 417.472(h)(2))

- An eligible organization with a risk contract's pro rata share of the annual fee is determined based upon the organization's monthly calculated Medicare payment amount during the preceding nine consecutive months beginning with January. We will calculate each monthly pro rata share for an eligible plan by multiplying the established BBA fee percentage by the total monthly calculated Medicare payment amount to plans as recorded in our payment system on the first day of the month. We recognize that retroactive changes to enrollment and disenrollment dates are normal business transactions and occur on a routine basis. However, we have determined that the overall dollar impact on plans of these enrollment and disenrollment changes do not represent a material amount to warrant an adjustment to the organization's pro rata share of the BBA fee assessment. (§ 417.472(h)(3))
- We will collect the fees by offset against the organization's monthly Medicare payment. Beginning with the January payment, we will withhold the organization's share of fees and deduct the amount from the total payment made to the organization for that month. (§ 417.472(h)(4))
- We will stop collecting the BBA fee from plans when the $95 million has been assessed. We will not collect more than the $95 million FY 1998 assessment from eligible plans.
- Should delays occur in determining the aggregate amount of fees for a fiscal year we may adjust the assessment time period and fee percentage amount if: (1) it becomes evident that the full aggregate amount of fees cannot be collected within the allotted assessment time period; or (2) for any other reason the assessment cannot be started in January. In addition, if the annual fee limit is reached in any month prior to the end of the assessment period, we will cease collecting fees. (§ 417.472(h)(5))

Medicare demonstrations with a section 1876 risk sharing contract will also be subject to the annual fee assessment.

IV. Regulatory Impact Statement

A. Background

We have examined the impact of this interim final rule as required by Executive Order 12866 and the Regulatory Flexibility Act (RFA) (Public Law 96–354). 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 effects; distributive impacts; and equity). The Regulatory Flexibility Act (RFA) requires agencies to analyze options for regulatory relief for small businesses, unless we certify that the regulation would not have a significant economic impact on a substantial number of small entities. Most Medicare risk contracting plans are not considered to be small entities within the meaning of the RFA.

Section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside a Metropolitan Statistical Area and has fewer than 50

beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and we certify, that this final rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

The Balanced Budget Act of 1997 directs HCFA to collect the BBA fees from Medicare risk contracting plans, and from Medicare+Choice plans, in order to finance an annual informational campaign for Medicare beneficiaries. These collections begin in fiscal year 1998, and are limited, in the aggregate, to amounts stipulated in the BBA and determined by the Congress in appropriations legislation. This interim final rule discusses the regulatory alternatives that HCFA considered in establishing user fee charges to these organizations.

Although we view the anticipated results of this interim final regulation as beneficial to the Medicare program as well as to Medicare beneficiaries, we recognize that some of the provisions could be controversial and may be responded to unfavorably by some affected entities. We also recognize that not all of the potential effects of these provisions can be anticipated, and that it may be impossible to quantify meaningfully some of the potential effects, particularly the economic impact of the informational campaign on individual Medicare+Choice plans. It is clear that all existing Medicare risk contracting plans and future Medicare+Choice plans will be affected by these provisions to varying degrees. In selecting our regulatory options, we have attempted to identify a methodology that is consistent with the legislative intent of the BBA while being equitable to current Medicare risk contracting plans and new Medicare+Choice plans. For the aforementioned reasons, we have prepared the following voluntary analysis. This analysis, in combination with the rest of the preamble, is consistent with the standards of analysis set forth by the RFA.

B. Anticipated Effects

1. Effects on the Medicare Trust Funds

The user fees outlined in this regulation to be collected by HCFA are established as a result of enactment of the BBA. We have determined that the estimated costs to be incurred in carrying out the activities described in section 1851 of the Act and section 4360 of the OBRA 1990 will exceed the limit contained in the FY 1998 appropriations bill. Therefore, the maximum amount to be collected by HCFA will be the amount authorized in the appropriation bill.

Under any regulatory approach to collect these user fees, we would collect the same aggregate amount of BBA fees. This is because we collect the lesser of the amount of estimated costs or the amount specified in appropriations legislation.

2. Effects on Risk-sharing Plans

Assessing BBA fees based on the payment plans receive from the Medicare program distributes the impact of these fees in direct proportion to the amount of money the plan is receiving from the Federal government. It should also be noted that Medicare risk contracting plans and Medicare+Choice plans will benefit from the Secretary's enrollment and information activities, which will be financed through the BBA fee assessment. Accordingly, we believe that assessing the BBA fees as a fixed percentage of total Medicare payments to plans is the most equitable approach.

3. Effects on Medicare Beneficiaries

Medicare beneficiaries are certain to benefit from the informational campaign financed by these user fee collections. They are not, however, directly affected by the regulatory approach to establishing BBA fee charges to risk contracting plans and are therefore not directly impacted by the provisions of this interim final rule.

C. Alternatives Considered

We considered several alternatives in assessing BBA fees on Medicare risk contracting plans and discussed them elsewhere in this preamble.

The first alternative was to simply equally divide the total annual user fee cost among all the eligible plans. With approximately 280 plans currently subject to the fees, this approach would mean for example, that in FY 1998, with a total assessment of $95 million, each of the eligible plans would be assessed more than $339,000. The regulatory impact of this alternative, which we rejected, results in a disproportionate financial burden on smaller plans.

As a second general approach, we evaluated assessing the BBA fees based on the number of beneficiaries enrolled in a particular plan. Specifically, under this approach a fixed per capita rate would be assessed on a per member month basis. Thus, a fixed dollar amount would be deducted from the capitation payment of each beneficiary enrolled in the plan. For example, given a constant enrollment level of 5 million beneficiaries, the assessment of a $95 million dollar BBA fee would result in a deduction of approximately $2.09 from the monthly capitation payment for each beneficiary enrolled in a risk contracting plan over a nine month assessment time frame. Collecting fees under this approach means that each plan's assessment is directly related to the number of beneficiaries enrolled in the plan. Thus, this approach can be considered equitable since it directly links the BBA fee assessment with the size of the plan. However, the method does not adjust for the wide geographic variation in the monthly capitation payment paid to plans, which ranges from approximately $367 per member month in the lowest payment areas up to a maximum of $782 per member month in the highest capitation payment area.

A third alternative which we considered and accepted was to assess the BBA fee through a fixed percentage deduction from the plan's aggregate monthly capitation payments.

A fourth alternative reviewed in assessing user fees is a combination of a flat annual fee with a variable component. That is, there would be a base fee assessment that each eligible plan would pay, plus an additional assessment based on a variable element such as plan enrollment or total plan payment. We rejected the regulatory approach of a base assessment with additional variable assessments as we have determined that a flat fee of more than a nominal amount (e.g., $15,000 in FY 1998) will result in a disproportionate impact on smaller plans.

As noted above we decided to impose fees based on a percentage of the total dollar amount of capitation payments a plan is receiving from the Medicare program. Collecting the BBA fees under this approach means that each plan's assessment will be directly related to the total dollars the plan is receiving from the Federal government. Thus, eligible plans which are receiving the largest payments (based on number of enrollees and monthly payment levels) from the Federal government will pay the largest share of the fees. Conversely, smaller plans will have an assessment directly related to their smaller size. We also found this approach met the criteria we had established for the selection of the BBA Fee assessment methodology. Specifically, we determined that an assessment based on percentage of plan payment is: consistent with the intent of the Medicare+Choice program in that it does not pose barriers to the participation of new plans and those with small enrollment levels; the approach is equitable for current Medicare risk contracting plans (large

and small) and finally; the approach is simple for eligible plans and for HCFA to administer.

D. Conclusion

Since the number of plans over which the BBA fee collections will be spread is likely to continue to rise with increased participation in the Medicare+Choice program in future years, we believe the regulatory impact of any reasonable selected option for imposition of fees on Medicare risk contracting plans and ultimately Medicare+Choice plans will not be significant. In accordance with our stated objective of choosing the assessment methodology which best supports the goals of the Medicare+Choice program and is equitable to current risk contracting plans we have selected the option to impose fees based on total plan payment assessed on a monthly basis. Assessing fees based on the total Medicare dollars paid to plans over a nine month time frame will represent only a small percentage of any plan's total payment from the government. In subsequent fiscal years, BBA fees as a percentage of Medicare payments will likely represent an even smaller percentage of the Medicare payments as the number of eligible plans increase and the existing plans experience enrollment growth. In addition, it should also be noted that the information campaign (financed by the BBA fees) will be designed to reach all Medicare beneficiaries and it is likely that, to the extent that this encourages growth in the Medicare+Choice program, larger more experienced plans will be well positioned to take advantage of an expanding market. The economic impact of this regulatory option measured in terms of the BBA fees as a percentage of overall plan revenues from the Federal government is very small. The consequence of a fee assessment based on a percentage of total payment is a distribution of the BBA fee burden proportional to the size of the plan. We have concluded this is the most equitable approach for all eligible plans in assessing the BBA fees.

In accordance with the provisions of Executive Order 12866, this final regulation was reviewed by the Office of Management and Budget.

V. Waiver of Notice of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite prior public comment on proposed rules. The notice of proposed rulemaking can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and it incorporates a statement of the finding and its reasons in the rule issued. We find good cause to waive the notice-and-comment procedure with respect to this rule because it is impracticable to employ such a procedure in this instance, because it is unnecessary, and because the delay in promulgating this rule would be contrary to the public interest. Even if we did not find good cause for a waiver of prior notice and comment, section 1856(b)(1) of the Act expressly authorizes the Secretary to publish final rules without prior notice and comment implementing provisions in the new Part C of Title XVIII including the fees provided for in section 1857(e)(2) of the BBA.

Issuing a proposed rule with a comment period before issuing a final rule would be impracticable because it would allow for less time for HCFA to collect the full $95 million amount allowed by Congress in the appropriations bill for FY 1998. An abbreviated assessment period would increase the financial impact on those plans subject to the BBA fees in FY 1998.

For these reasons, we find good cause to waive publishing a proposed rule and to issue this final rule with comment period. We invite written comments on this final rule and will consider comments we receive by the date and time specified in the **DATES** section of this preamble. Although we cannot respond to comments individually, if we change this rule as a result of our consideration of timely comments, we will respond to such comments in the preamble of the amended rule.

VI. Response to Comments

Because of the large number of items of correspondence we normally receive on **Federal Register** documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

List of Subjects in 42 CFR Part 417

Administrative practice and procedure, Grant programs-health, Health care, Health facilities, Health insurance, Health maintenance organizations (HMO), Loan programs-health, Medicare, Reporting and record keeping requirements.

42 CFR Part 417 is amended as set forth below:

PART 417—HEALTH MAINTENANCE ORGANIZATIONS, COMPETITIVE MEDICAL PLANS, AND HEALTH CARE PREPAYMENT PLANS

1. The authority citation for Part 417 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh), secs. 1301, 1306, and 1310 of the Public Health Service Act (42 U.S.C. 300e, 300e–5, and 300e–9); and 31 U.S.C. 9701.

2. In § 417.470, paragraph (a) is revised to read as follows:

§ 417.470 Basis and Scope.

(a) *Basis.* This subpart implements those portions of section 1857(e)(2) of the Act pertaining to cost sharing in enrollment-related costs and section 1876(c), (g), (h), and (i) of the Act that pertain to the contract between HCFA and an HMO or CMP for participation in the Medicare program.

* * * * *

3. Section 417.472 is amended by adding a new paragraph (h) to read as follows:

§ 417.472 Basic contract requirements.

* * * * *

(h) *Collection of fees from risk contracting plans.* HCFA is authorized to charge and directed to collect from each eligible organization with a risk-sharing contract its share of fees for administering section 1851 of the Act relating to enrollment and dissemination of information and section 4360 of the Omnibus Budget Reconciliation Act of 1990 relating to the health insurance counseling and assistance program in accordance with the requirements of paragraphs (h)(1) through (5) of this section.

(1) The aggregate amount of fees for a fiscal year are the lesser of the estimated costs to be incurred by HCFA in that fiscal year to carry out the activities described in section 1851 of the Act and section 4360 of the Omnibus Budget Reconciliation Act of 1990, or, if less, the amount set forth in the DHHS appropriation for the fiscal year.

(2) HCFA establishes a fee percentage rate and collects the fees over nine consecutive months beginning with January of the fiscal year. The percentage rate is determined by multiplying the total of the estimated January 1998 payments to all eligible plans by nine (months in the assessment period) and dividing this figure into the total fee assessment as determined in paragraph (h)(1) of this section. Adjustments for retroactive enrollments and disenrollments to HCFA's enrollment system subsequent to November are not considered or

factored into the calculation for the fee determination.

(3) An eligible organization with a risk contract's pro rata share of the annual fee is determined based upon the organization's monthly calculated Medicare payment amount during the preceding nine consecutive months beginning with January. HCFA calculates each monthly pro rata share for an organization by multiplying the established BBA fee percentage by the total monthly calculated Medicare payment amount to plans as recorded in HCFA's payment system on the first day of the month.

(4) HCFA offsets the fees against the organization's monthly Medicare payment. Beginning with the January payment, HCFA withholds the organization's share of fees and deducts the amount from the total payment made by HCFA to the organization for that month. HCFA will stop collecting the FY 1998 BBA fee from eligible plans when $95 million has been assessed.

(5) Should delays occur in determining the amount of fees specified in paragraph (h)(1) of this section or the fee percentage rate specified in paragraph (h)(2) HCFA may adjust the assessment time period and fee percentage amount.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 26, 1997.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Approved: November 26, 1997.

Donna E. Shalala,

Secretary.

[FR Doc. 97–31710 Filed 12–1–97; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–195; RM–8867]

Radio Broadcasting Services; Geneseo, IL and DeWitt, IA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Connoisseur Communications of Quad Cities, L.P., substitutes Channel 285C3 for Channel 285A at Geneseo, Illinois, reallots Channel 285C3 from Geneseo to DeWitt, Iowa, and modifies Station WGEN–FM's license accordingly. *See* 61 FR 51075, September 30, 1996. Channel 285C3 can be reallotted to DeWitt in compliance with the Commission's minimum distance separation requirements with a site restriction of 14.0 kilometers (8.7 miles) southeast to avoid short-spacings to the licensed sites of Station WXRX(FM), Channel 285A, Belvidere, Illinois, and Station WXCL(FM), Channel 285A, Pekin, Illinois, at petitioner's requested site. The coordinates for Channel 285C3 at DeWitt are North Latitude 41–42–50 and West Longitude 90–27–20. With this action, the proceeding is terminated.

EFFECTIVE DATE: January 5, 1998.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–195, adopted November 12, 1997, and released November 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC.

The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by removing Channel 285A at Geneseo.

3. Section 73.202(b), the Table of FM Allotments under Iowa, is amended by adding DeWitt, Channel 285C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–31512 Filed 12–1–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–243; RM–8925]

Radio Broadcasting Services; Chugwater, WY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Mountain Tower Broadcasting, allots Channel 258A at Chugwater, Wyoming, as the community's first local aural transmission service. *See* 61 FR 65509, December 13, 1996. Channel 258A can be allotted to Chugwater in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 258A at Chugwater are North Latitude 41–45–36 and West Longitude 104–49–30. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 5, 1998. A filing window for Channel 258A at Chugwater, Wyoming, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–243, adopted November 5, 1997, and released November 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Wyoming, is amended by adding Chugwater, Channel 258A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–31511 Filed 12–1–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 219 and 225

[FRA Docket No. RAR–5, Notice No. 1]

RIN 2130-AB21

Annual Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule increases from $6,500 to $6,600 the monetary threshold for reporting railroad accidents/incidents involving railroad property damage that occur on or after January 1, 1998. This action is needed to ensure and maintain comparability between different years of data by having the threshold keep pace with increases or decreases in equipment and labor costs so that each year accidents involving the same minimum amount of railroad property damage are included in the reportable accident counts. The reporting threshold was last changed in 1996.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Robert L. Finkelstein, Staff Director, Office of Safety Analysis, RRS–22, Mail Stop 25, Office of Safety, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3386); or Nancy L. Goldman, Trial Attorney, Office of Chief Counsel, RCC–12, Mail Stop 10, FRA, 400 Seventh Street, S.W., Washington, D.C. 20590 (telephone 202–632–3167).

SUPPLEMENTARY INFORMATION:

Background

Rail equipment accidents/incidents are collisions, derailments, explosions, fires, acts of God, and other events (including grade crossing accidents) involving the operation of standing or moving on-track equipment that results in damages higher than the current reporting threshold to railroad on-track equipment, signals, track, track structures, or roadbed, including labor costs and the costs for acquiring new equipment and material. 49 CFR 225.19 (b), (c). Each rail equipment accident/incident must be reported to FRA using the Rail Equipment Accident/Incident Report (Form FRA F 6180.54). *Id.*

As revised in 1996, paragraphs (c) and (e) of § 225.19 of title 49, Code of Federal Regulations, provide that the dollar figure that constitutes the reporting threshold for rail equipment accidents/incidents will be adjusted every year in accordance with the procedures outlined in appendix B to part 225, to reflect cost increases or decreases. 61 FR 30942, 30969 (June 18, 1996); 61 FR 60632, 60634 (Nov. 29, 1996); 61 FR 67477, 67490 (Dec. 23, 1996).

New Reporting Threshold

One year has passed since the accident/incident reporting threshold was last revised. 61 FR 60632 (Nov. 29, 1996). Consequently, FRA has recalculated the threshold, as required by § 225.19(c), based on increased costs for labor and decreased costs for material. FRA has determined that the current reporting threshold of $6,500, which applies to rail equipment accidents/incidents that occur during calendar year 1997, should be increased to $6,600, effective January 1, 1998, and §§ 225.5 and 225.19 are being amended accordingly. Appendix B has also been amended to reflect the most recent cost figures and the calculations made to determine the new threshold for calendar year 1998. Finally, the alcohol and drug regulations (49 CFR part 219) are amended throughout to reflect that the reporting threshold for calendar year 1998 is $6,600.

Notice and Comment Procedures

In this rule, FRA merely adjusts the reporting threshold based on the formula adopted, after notice and comment, in the final rule published June 18, 1996, 61 FR 30959, 30969, and discussed in detail in the final rule published November 29, 1996, 61 FR 30632. FRA further finds that both the current cost data inserted into this pre-existing formula and the original cost data that they replace were obtained from reliable Federal government sources. FRA further finds that this rule imposes no additional burden on any person, but rather provides a benefit by permitting the valid comparison of accident data over time. Accordingly, FRA concludes that notice and comment procedures are impracticable, unnecessary, and contrary to the public interest. As a consequence, FRA is proceeding directly to this final rule.

Regulatory Impact

Executive Order 12866 and DOT Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing regulatory policies and procedures and is considered to be a nonsignificant regulatory action under DOT policies and procedures (44 FR 11034; February 26, 1979). This final rule also has been reviewed under Executive Order 12866 and is also considered ''nonsignificant'' under that Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule will have no new significant direct or indirect economic impact on small units of government, business, or other organizations. To the extent that this rule has any impact on small units, the impact will be positive because the rule is decreasing, rather increasing, their reporting burden.

Paperwork Reduction Act

There are no new information collection requirements associated with this final rule. Therefore, no estimate of a public reporting burden is required.

Environmental Impact

This final rule will not have any identifiable environmental impact.

Federalism Implications

This final rule will not have a substantial effect 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. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

The Final Rule

In consideration of the foregoing, FRA amends parts 219 and 225, Title 49, Code of Federal Regulations as follows:

PART 219—[AMENDED]

1. The authority citation for part 219 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20111, 20112, 20113, 20140, 21301, 21304; and 49 CFR 1.49(m).

2. By amending § 219.5 by revising the first sentence in the definition of *Impact accident* and by revising the definitions of *Reporting Threshold* and *Train accident* to read as follows:

§ 219.5 Definitions.

* * * * *

Impact accident means a train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar year 1998) consisting of a head-on collision, a rear-end collision, a side collision (including a collision at a railroad crossing at grade), a switching collision, or impact with a deliberately-placed obstruction such as a bumping post. * * *

* * * * *

Reporting threshold means the amount specified in § 225.19(e) of this chapter, as adjusted from time to time in accordance with appendix B to part 225 of this chapter. The reporting threshold for calendar years 1991 through 1996 is $6,300. The reporting threshold for calendar year 1997 is $6,500. The reporting threshold for calendar year 1998 is $6,600.

* * * * *

Train accident means a passenger, freight, or work train accident described in § 225.19(c) of this chapter (a ''rail equipment accident'' involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar year 1998), including an accident involving a switching movement.

* * * * *

3. By amending § 219.201 by revising the introductory text of paragraphs (a)(1) and (a)(2), and by revising paragraph (a)(4) to read as follows:

§ 219.201 Events for which testing is required.

(a) * * *

(1) *Major train accident.* Any train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar year 1998) that involves one or more of the following:

* * * * *

(2) *Impact accident.* An impact accident (*i.e.*, a rail equipment accident defined as an ''impact accident'' in § 219.5 of this part that involves damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar year 1998) resulting in—

* * * * *

(4) *Passenger train accident.* Reportable injury to any person in a train accident (*i.e.*, a rail equipment accident involving damage in excess of the current reporting threshold, $6,300 for calendar years 1991 through 1996, $6,500 for calendar year 1997, and $6,600 for calendar year 1998) involving a passenger train.

* * * * *

PART 225—[AMENDED]

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

Authority: 49 U.S.C. 20103, 20107, 20901, 20902, 21302, 21311; 49 U.S.C. 103; 49 CFR 1.49(c), (g), and (m).

2. By amending § 225.19(c) by removing the phrase ''and $6,500 for calendar year 1997)'' and by adding in its place '', $6,500 for calendar year 1997, and $6,600 for calendar year 1998)''.

3. By revising § 225.19(e) to read as follows:

§ 225.19 Primary groups of accidents/incidents.

* * * * *

(e) The reporting threshold is $6,300 for calendar years 1991 through 1996. The reporting threshold is $6,500 for calendar year 1997; this threshold dollar amount will remain in effect until December 31, 1997. For calendar year 1998 the reporting threshold is $6,600. The procedure for determining the reporting threshold for calendar year 1998 appears as appendix B to part 225.

4. Part 225 is amended by revising appendix B to read as follows:

Appendix—B to Part 225—Procedure for Determining Reporting Threshold

1. Data from the U.S. Department of Labor, Bureau of Labor Statistics (BLS), LABSTAT Series Reports are used in the calculation. The equation used to adjust the reporting threshold uses the average hourly earnings reported for Class I railroads and Amtrak and an overall railroad equipment cost index determined by the BLS. The two factors are weighted equally.

2. For the wage component, LABSTAT Series Report, Standard Industrial Classification (SIC) code 4011 for Class I Railroad Average Hourly Earnings is used.

3. For the equipment component, LABSTAT Series Report, Producer Price Index (PPI) Series WPU 144 for Railroad Equipment is used.

4. In the month of October, final data covering the 12-month period ending with the month of June are obtained from BLS. The 12 monthly figures are totaled and divided by 12 to produce monthly averages to be used in computing the projected annual (12-month) average for the next calendar year.

5. The wage data are reported in terms of dollars earned per hour, while the equipment cost data are indexed to a base year of 1982.

6. The procedure for adjusting the reporting threshold is shown in the formula below. The wage component appears as a fractional change relative to the prior year, while the equipment component is a difference of two percentages which must be divided by 100 to present it in a consistent fractional form. After performing the calculation, the result is rounded to the nearest $100.

7. The current weightings represent the general assumption that damage repair costs, at levels at or near the threshold, are split approximately evenly between labor and materials.

8. Formula:

$$\text{New Threshold} = \text{Prior Threshold} \times \left\{ 1 + 0.5\frac{(\text{Wn} - \text{Wp})}{\text{Wp}} + 0.5\frac{(\text{En} - \text{Ep})}{100} \right\}$$

Where:

Prior Threshold = $6,500 (for rail equipment accidents/incidents that occur during calendar year 1997)

Wn = New average hourly wage rate ($) = 17.990833

Wp = Prior average hourly wage rate ($) = 17.55500

En = New equipment average PPI value = 135.91666

Ep = Prior equipment average PPI value = 136.76667

9. The result of these calculations is $6,553. Since the result is rounded to the nearest $100, the new reporting threshold for rail equipment accidents/incidents that occur during calendar year 1998 is $6,600.

Jolene M. Molitoris,

Federal Railroad Administrator.

[FR Doc. 97–31455 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 961204340–7087–02; I.D. 112597A]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Trip Limit Reduction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the hook-and-line fishery for king mackerel in the Florida west coast sub-zone to 500 lb (227 kg) of king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

DATES: Effective 12:01 a.m., local time, November 28, 1997, through June 30, 1998, unless changed by further notification in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–570–5305.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act by regulations at 50 CFR part 622.

Based on the Councils' recommended total allowable catch and the allocation ratios in the FMP, NMFS implemented a commercial quota for the Gulf migratory group of king mackerel in the Florida west coast sub-zone of 865,000 pounds (392,357 kg). That quota was further divided into two equal quotas of 432,500 lb (196,179 kg) for vessels in each of two groups by gear types—vessels using run-around gillnets and vessels using hook-and-line gear.

In accordance with 50 CFR 622.44(a)(2)(ii)(B), from the date that 75 percent of the subzone's hook-and-line gear quota has been harvested until a closure of the west coast subzone's hook-and-line fishery has been effected or the fishing year ends, king mackerel in or from the EEZ may be possessed on board or landed from a permitted vessel in amounts not exceeding 500 lb (227 kg) per day.

NMFS has determined that 75 percent of the hook-and-line quota for Gulf group king mackerel from the Florida west coast subzone has been reached. Accordingly, a 500–lb (227–kg) trip limit applies to vessels in the commercial hook-and-line fishery for king mackerel in or from the EEZ in the Florida west coast subzone effective 12:01 a.m., local time, November 28, 1997.

The Florida west coast subzone extends from 87°31'06'' W. long. (due south of the Alabama/Florida boundary) to: (1) 25°20.4' N. lat. (due east of the Dade/Monroe County, FL, boundary) through March 31, 1998; and (2) 25°48' N. lat. (due west of the Monroe/Collier County, FL, boundary) from April 1, 1998, through October 31, 1998.

Classification

This action is taken under 50 CFR 622.44(a)(2)(iii) and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 26, 1997.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–31582 Filed 11–26–97; 3:13 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 231
Tuesday, December 2, 1997

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

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

Commodity Credit Corporation

7 CFR Part 1446

RIN 0560–AF16

1998-Crop Peanut National Poundage Quota, 1998-Crop Additional Peanuts National Average Support Level and Minimum Commodity Credit Corporation (CCC) Export Edible Sales Price for the 1998 and Subsequent Crops of Additional Peanuts

AGENCY: Farm Service Agency and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Adjustment Act of 1938, (the 1938 Act) as amended, requires that the national peanut poundage quota for the 1998 crop be announced by December 15, 1997. The Agricultural Act of 1949, (the 1949 Act), as amended, requires that the additional support level be announced not later than February 15, 1998. The minimum CCC export edible sales price for additional peanuts is usually announced at the same time as the price support level. This proposed rule suggests a national poundage quota figure in the range between 1,133,000 short tons (st) and 1,175,000 st, proposes that the national average additional price support level for the 1998 crop peanuts be set between $132 per st and $175 per st, and that the minimum CCC sales price for 1998 and subsequent crops of additional peanuts for export edible use be set between $350 to $400 per st or by formula.

DATES: Comments must be received by December 9, 1997, in order to be assured of consideration.

ADDRESSES: Comments must be submitted to the Director, Tobacco and Peanuts Division, Farm Service Agency (FSA), United States Department of Agriculture, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, except holidays, in Room 5750-South Building, 1400 Independence Avenue, S.W., Washington, DC 20250–0514.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, Tobacco and Peanuts Division, FSA, USDA, STOP 0514, 1400 Independence Avenue, S.W., Washington, DC 20250–0514, telephone 202–720–9255. Copies of the cost-benefit assessment prepared for the rule can be obtained from Mr. Robison.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been determined to be significant and was reviewed by OMB under Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases —10.051.

Executive Order 12998

This rule has been reviewed in accordance with Executive Order 12998. The provisions of this proposed rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since neither FSA nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

These proposed amendments do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Discussion

This proposed rule would amend 7 CFR part 729 to set forth the 1998-crop peanut national poundage quota, and 7 CFR part 1446 to set forth the 1998-crop national average support level for additional peanuts and the minimum CCC sales price for 1998 crop additional peanuts sold for export edible use.

A. National Poundage Quota

Section 358–1(a)(1) of the 1938 Act, as amended by the Federal Agricultural Improvement and Reform Act of 1996 (1996 Act), requires that the Secretary set a basic national quota for peanuts for each of the 1996 through 2002 marketing years (MY) at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible use (excluding seed) and related uses. As to seed, section 358–1(b)(2)(B) of the 1938 Act provides that a temporary allocation of quota pounds for the MY only in which the crop is planted shall be made to producers for each of the 1996 through 2002 MYs and that the temporary seed quota allocation shall be equal to the pounds of seed peanuts planted on the farm as may be adjusted and determined under regulations prescribed by the Secretary. The MY for 1998-crop peanuts will be from August 1, 1998 through July 31, 1999. Producers will vote in a referendum on December 1-4, 1997 to determine whether they approve marketing quotas for MY 1998 to MY 2002.

The national poundage quota for MY 1997 was set at 1,133,000 st. This rule proposes that the national poundage quota for MY 1998 be set between 1,133,000 st and 1,175,000 st based on the following data:

	Short tons	
	97.8% production	94.3% production
Domestic Edible Use:		
Domestic food ...	933,000	933,000
On farm and local sales	9,000	9,000
Related Uses:		
Crushing residual	123,000	123,000
Shrinkage and other losses ...	37,500	37,500
Transfer to quota	5,000	5,000
Subtotal	1,107,500	1,107,500
Allowance for underproduction	25,500	67,500
Totals	1,133,000	1,175,000

The estimate of 1998 domestic food use was developed in two steps. First, total domestic edible utilization of 1,088,000 st was estimated by the USDA Interagency Commodity Estimates Committee (ICEC). Second, this estimate was reduced by 155,000 st to exclude peanut imports, peanut butter imports, and peanut butter exports. Although estimates of domestic edible utilization typically include product exports, peanut butter exports are generally either made from, or may otherwise be credited under section 358(e)(1) of the 1938 Act as being made from additional peanuts. MY 1997 farm use and local sales were estimated at 1 percent of ICEC's MY 1998 production estimate. This percentage reflects the average difference between USDA production data and Federal-State Inspection Service inspections data. About one-half of farm use and local sales is allocated to food use and the remainder to seed, which is excluded from quota determinations under amendments to the 1938 Act made by the 1996 Act.

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given lot of farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota must be sufficient to provide for the shelling of both edible and crushing grades. The crushing residual identified above reflects the assumption that crushing grade peanuts will be about 12 percent, on a farmer stock basis, of the total of MY 1998 domestic edible use production.

The allowance for shrinkage and other losses is an estimate of reduced kernel weight available for milling as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic edible use. This factor is the minimum shrinkage generally allowed for calculating obligations of handlers under section 359a(d)(2)(B)(iv) of the 1938 Act and is believed to be a fair estimate of such shrinkage for purposes of this determination, taking into account all factors.

Segregation 2 and 3 loan transfers to quota loan represent transfers of Segregation 2 and 3 peanuts from additional price support loan pools to quota loan pools. Such transfers occur when quota peanut producers have insufficient Segregation 1 peanuts to fill their quotas, yet have Segregation 2 and 3 peanuts in additional loan pools which would have been eligible to be pledged as collateral for price support loans at a discounted quota loan rate.

In addition, an allowance has been made for underproduction. Under past legislation, only 92 percent of the quota had been marketed. Prior to the 1996 crop, at the national level, any unmarketed pounds up to 10 percent of the national marketing quota could be added to the farms basic quota for that crop year. Under the 1996 Act any quota pounds not marketed cannot be carried forward and would be a loss of potential income for producers, therefore, it is expected that somewhat more than 92 percent of the quota will be marketed in MY 1998. In MY 1996 about 97.3 percent was marketed and in MY 1997 about 97.5 percent of quota is expected to be marketed. It is anticipated that about 94 to 98 percent of the MY 1998 quota will be marketed.

The lowest proposed 1998 quota level, as set forth above, reflects expected growth in domestic consumption of peanut products through government purchases, new uses and a small increase in demand resulting from lower peanut support prices in recent years. This level essentially reflects the assumption that about 97.8 percent of the quota will be marketed and adds increased demand for edible peanuts. The higher range proposal takes into account the possibility that marketings of quota could fall as low as the 94.3 percent level. This range appears to be a fair estimate of possible market conditions.

Disappearance of peanuts into primary products has been relatively flat over the last year. Overall demand, including imports, is projected to increase about 1.5 percent. However, government support purchases in MY 1996 have increased about 45 percent from 22,750 st farmer stock (fs) in MY 1995 to 32,200 st (fs) in MY 1996.

A significantly larger quota option than those presented would lower the price received by growers from first buyers and could reduce costs to consumers for peanut products slightly. However, it is assumed that a substantial increase in quota would be needed to lower the average grower price to a level near the average national support price. A quota in the neighborhood of 1,500,000 tons would likely result in sufficient quantities of peanuts delivered at the right time and place such that the average price would be only slightly higher than $610 per ton.

This option only becomes viable if one assumes greater responsiveness in demand to additional supplies. One must assume a significant growth in demand because of a lower price to justify this option.

The cost of overestimating demand would be high. Assuming the demand for greater supplies of peanuts is slight, this level of quota could result in a surplus and a loss on loan placements for more than 300,000 tons of peanuts. These peanut losses would be around $400 a ton. Losses of up to $120 million would occur and result in producer assessments of over $100 per ton the following year. This level of assessment would lower the effective price received by producers for quota peanuts in MY 1999 to $500 per ton or less.

Buybacks worked well in MY 1996. Buyback is a term used to describe a marketing transaction in which a producer places additional peanuts under price support loan at the additional loan rate and a handler simultaneously purchases the same peanuts at the quota support level from the marketing associations for domestic edible use. To bolster stocks in MY 1996, the peanut industry bought back over 100,000 tons of additional peanuts. In MY 1997, it is anticipated that the peanut industry will again use the buyback provisions to purchase about 100,000 tons in order to continue building stocks. Depending on stock levels at the beginning of MY 1998, the peanut industry may again use buybacks to build stocks.

B. Additional Peanut Support Level

Section 155(b)(2) of the 1996 Act provides that price support shall be made available for additional peanuts at such level as the Secretary determines will ensure no losses to CCC from the sale or disposal of such peanuts, taking into consideration the demand for peanut oil and peanut meal, expected prices of other vegetable oils and protein meals, and the demand for peanuts in foreign markets.

The MY 1997 price support level for additional peanuts was announced at $132 per st on February 14, 1997. The national average price support rate for quota peanuts, for each of the 1996 through 2002 crops, was set at $610 per st by the 1996 Act and is codified at 7 CFR section 1446.103. Regulations pertaining to price support loan levels for additional peanuts are found in 7 CFR section 1446.310.

The range for the MY 1998 price support level for additional peanuts is recommended to be within the range of $132 per st and $175 per st. Additional loan peanuts are sold out of inventory in order to recoup the price support loan principal, interest and related costs. In the proposed price range, if the edible peanut market deteriorated to a point that the entire loan inventory was sold as oil stock, anticipated revenues should be adequate to ensure no losses to CCC from the sale or disposal of

additional peanuts. The statutory factors have been analyzed as set out below:

1. The domestic use of peanut oil during MY 1998 is forecast to be 105,000 st, up 2,500 st from MY 1997 projected domestic use. MY 1998 peanut oil beginning stocks are expected to be 35,000 st, down about 19 percent from MY 1997. The MY 1998 average peanut oil price is expected to be $0.395 per pound, down $0.018 per pound from MY 1997.

2. The domestic use of peanut meal during MY 1998 is forecast to be 150,000 st, unchanged from MY 1997 projected domestic use. MY 1998 peanut meal beginning stocks are expected to be 4,000 st, unchanged from MY 1997. The MY 1998 average peanut meal price is expected to be $152.50 per st, down $12.50 per st from MY 1997.

3. The domestic disappearance of soybean oil during MY 1998 is forecast to be 7,262,500 st, up 1.6 percent from projected MY 1997 domestic disappearance. MY 1998 soybean oil beginning stocks are expected to be 890,000 st, up 11.3 percent from MY 1997. The MY 1998 average soybean oil price is expected to be $0.230 per pound, down $0.003 per pound from MY 1997.

4. The domestic disappearance of cottonseed oil during MY 1998 is forecast to be 515,000 st, unchanged from projected MY 1997 domestic disappearance. MY 1998 cottonseed oil beginning stocks are expected to be 42,500 st, up 1.2 percent from MY 1997. The MY 1998 average cottonseed oil price is expected to be $0.250 per pound, down $0.01 per pound from MY 1997.

5. The domestic disappearance of soybean meal during MY 1998 is forecast to be 29,000,000 st, up 3.6 percent from projected MY 1997 domestic disappearance. MY 1998 soybean meal beginning stocks are expected to be 250,000 st, up 25 percent from MY 1997. The MY 1998 average soybean meal price is expected to be $187.50 per st, down $20.00 per st from MY 1997.

6. The domestic disappearance of cottonseed meal during MY 1998 is forecast to be 1,635,000 st, down 0.3 percent from projected MY 1997 domestic disappearance. MY 1998 cottonseed meal beginning stocks are expected to be 52,000 st, down 16.1 percent from MY 1997. The MY 1998 average cottonseed meal price is expected to be $140.00 per st, down $15.00 per st from MY 1997.

7. The world use of peanuts for MY 1997 is expected to be 13.05 million metric tons, down 10.4 percent from MY 1996. World peanut production for MY 1997 is forecast to be 24.58 million metric tons, down 7.8 percent from MY 1996. Ending stocks for MY 1997 are forecast at 0.51 million metric tons, up 4.5 percent from 1996.

MY 1997 begins with record oil stocks and large imports of oil during MY 1996. Yet, peanut oil prices are projected to be 41.3 cents per pound. Based on the supply use situation at the beginning of MY 1997 and projections for MY 1998, there are conflicting signals in the supply price relationship in the peanut oil market that suggest caution in setting the additional peanut support level. Also, based on the 1996/97 and 1997/98 marketing seasons, producers are expected to place about 10,000 st of quota peanuts and 140,000 st of additional peanuts under price support loan.

C. Minimum CCC Sales Price for Additional Peanuts Sold for Export Edible Use

A minimum price at which 1998 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets is a discretionary action that, by practice, is expected to be announced on or before February 15, 1998, the same time that the additional peanut support level for the 1998 crop is announced. The announcement of that price provides producers and handlers with information to facilitate the negotiation of private contracts for the sale of additional peanuts for export.

An overly high price may create an unrealistic expectation of high pool dividends and discourage private sales. If too low, the minimum price could have an unnecessary, adverse effect on prices paid to producers for additional peanuts.

This proposed rule follows the publication of an advance notice of proposed rule making of August 18, 1997 published in the **Federal Register** (62 FR 43955) soliciting comments relative to the method for determining the minimum export edible sales price for additional peanuts and relative to what that price should be. Ten comments were received relative to the method for determining the minimum export edible sales price for additional peanuts and relative to what the price should be. Seven of the comments were from organizations representing producers. The seven producer organizations commenting favored maintaining the $400 per st minimum price. Three comments were from organizations representing shellers. The three sheller organizations commenting favored reducing the minimum export edible sales price or establishing it by formula.

Grower groups which favored setting the minimum export edible sales price at $400 per st in 1998, argued (1) a fixed price for the CCC export edible sales price has worked well for 12 consecutive years, (2) a lower CCC export edible sales price would result in lower grower revenues, (3) the decision of when and at what price to contract is complex and a formula could create even more uncertainty and (4) a lack of a publicly available data series creates problems and concerns for using a formula.

Sheller groups, which favored either a formula or a reduced minimum sales price argued that new pricing would: (1) Increase U.S. competitiveness in world edible peanut markets and (2) increase U.S. flexibility in marketing peanuts. One such proposal would base the minimum export sales price at 10 percent above the current oil value of peanuts and adjust the price monthly. Another sheller group recommended setting the minimum export edible sales price at between $350 and $375 per st in 1998 and that the price be reset annually to account for volatility in export edible peanut markets.

It is proposed that the minimum price at which 1998 crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets be established within the range of $350 to $400 per st or be set by formula. The objective of the level set or method used is to encourage exports while providing price stability for additional peanuts sold under contract. It should assure handlers that CCC will not undercut their export-contracting efforts with offerings of additional peanuts for export edible sale below the contract price of the contract additional peanuts.

List of Subjects

7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and recordkeeping requirements.

7 CFR Part 1446

Loan programs—Agriculture, Peanuts, Price support programs, Reporting and recordkeeping requirements, Warehouses.

Accordingly, it is proposed that 7 CFR parts 729 and 1446 be amended as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375, and 7271.

2. Section 729.216 is amended by revising paragraph (c) to read as follows:

§ 729.216 National poundage quota.

* * * * *

(c) Quota determination for individual marketing years (excluding seed):

(1) The national poundage quota (excluding seed) for quota peanuts for marketing year 1996 is 1,100,000 short tons.

(2) The national poundage quota (excluding seed) for quota peanuts for marketing year 1997 is 1,133,000 short tons.

(3) The national poundage quota (excluding seed) for quota peanuts for marketing year 1998 will be set between 1,133,000 and 1,175,000 short tons.

PART 1446—PEANUTS

3. The authority citation for 7 CFR part 1446 continues to read as follows:

Authority: 7 U.S.C. 7271, 15 U.S.C. 714b and 714c.

4. Section 1446.310 is amended by adding a new paragraph (c) to read as follows:

§ 1446.310 Additional peanut support levels.

* * * * *

(c) The national support rate for additional peanuts for the 1998 crop will be at a level which shall be between $132 per short ton and $175 per short ton.

5. Section 1446.311 is amended by adding new paragraph (c) to read as follows:

§ 1446.311 Minimum CCC sales price for certain peanuts.

* * * * *

(c) The minimum CCC sales price for additional peanuts to be sold from the price support loan inventory for export edible use from the 1998 and subsequent crops will be between $350 and $400 per short ton or set by formula as announced by the Director of the Tobacco and Peanuts Division, FSA.

Signed at Washington, DC, on November 26, 1997.

Keith Kelly,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 97–31573 Filed 11–26–97; 3:08 pm]

BILLING CODE 3410–05–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Part 422

[Regulations No. 22]

RIN 0960–AE36

Permit the Department of State (DOS) and the Immigration and Naturalization Service (INS) to Collect Information Needed to Assign Social Security Numbers (SSNs) to Aliens

AGENCY: Social Security Administration (SSA).

ACTION: Proposed rule.

SUMMARY: We are proposing to provide a description of how DOS and INS will provide the SSA with information, collected as part of the immigration process, to enable SSA to assign SSNs and issue SSN cards to lawfully admitted aliens. We also propose: to amend the rule on the presumption of authority of a nonimmigrant alien to accept employment to include circumstances where a Form I–94, ''Arrival-Departure Record,'' has not been issued by INS; to remove outdated rules on school and alien legalization enumeration; to remove outdated rules on the application for a nonwork SSN; and to specifically acknowledge the requirement to complete a Form SS–5, ''Application For A Social Security Card,'' to obtain a duplicate SSN card.

DATES: To be sure that your comments are considered, we must receive them no later than February 2, 1998.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, P.O. Box 1585, Baltimore, MD 21235, sent by telefax to (410) 966–2830, sent by E-mail to ''regulations@ssa.gov'', or delivered to the Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235–0001, between 8:00 A.M. and 4:30 P.M. on regular business days. Comments may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Legal Assistant, Office of Process and Innovation Management, Social Security Administration, L2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–3298 for information about these rules.

SUPPLEMENTARY INFORMATION:

Background

Currently, SSA assigns an SSN to an alien when the individual submits to an SSA field office a completed Form SS–5 and documentary evidence of age, identity, and lawful admission for permanent residence or other authority of law permitting work in the United States (U.S.). Any applicant age 18 and older applying for an original SSN must appear for an in-person interview at any SSA field office.

The second phase of the National Performance Review (NPR), the Federal Reinventing Government effort, was announced by the President and Vice President on December 19, 1994. It was designed to focus attention on what each agency does, examining its mission and looking at its programs and functions to see if there are ways to provide better service to the public and, at the same time, do business in a more cost-effective manner, i.e., ''make government work better and cost less.'' Each agency was asked to assemble a team to review its own programs and functions.

SSA's team worked closely with a team of representatives from the NPR and the Office of Management and Budget (OMB) to develop proposals for consideration. One of these proposals was for INS to assist SSA in enumerating aliens. On April 11, 1995, the President formally approved SSA's reinvention proposals and officially announced them the next day. When we began developing this proposal with INS, we found that we needed to include DOS to take into consideration those aliens who enter the U.S. via foreign service posts.

Proposed Changes

These proposed rules describe the process by which elements of DOS and INS would collect and then forward enumeration information to SSA. Based on agreements among the three agencies (SSA, DOS, and INS), DOS and INS will collect this information, and INS will electronically transmit the information to SSA. DOS and INS will modify their forms to collect this information, and INS will retain the forms, which will be made available to SSA when necessary.

Assigning SSNs to aliens when they enter the U.S., based on information collected by DOS and INS as part of the immigration process, would improve the integrity of the SSN process. There is widespread counterfeiting of INS documents, and SSA employees must be familiar with a variety of INS documents and determine if those presented are valid. By having INS transmit enumeration information directly to SSA, the potential for SSA employees to inadvertently accept inappropriate and/or counterfeit documents will be reduced.

This initiative also supports SSA's goal of providing world class service to customers by making the means of dealing with SSA as easy and convenient as possible by providing options for service delivery. Aliens who currently must first contact INS and subsequently contact SSA would be able to accomplish both transactions in a single contact.

Further, the proposed changes would provide for increased overall Federal government efficiency. The new process would reduce the overall cost to the government of administering the enumeration process for aliens because it would eliminate duplicate work done by DOS, INS and SSA.

Because the involvement of the DOS and INS would improve the integrity of the SSN process for aliens, SSA is eliminating the mandatory in-person interview for aliens age 18 and older for whom INS forwards enumeration information to SSA. SSA will continue to interview aliens who apply for SSNs at SSA offices. This supports a 1995 recommendation from the Office of the Inspector General concerning transferring to INS and DOS the FO interview workload for noncitizens applying for an original SSN.

As part of the INS alien legalization program required under the Immigration Reform and Control Act of 1986, INS accepted applications and evidence for SSNs from legalization applicants and forwarded the applications to SSA for assignment of SSNs. Once the legalization program ended on September 30, 1991, INS notified SSA that it was discontinuing the agreement and has since referred all aliens to SSA field offices to apply for SSN cards. These proposed rules eliminate references in the regulations to procedures which are no longer in effect.

The Tax Reform Act of 1986 required taxpayers to show the Taxpayer Identification Number (TIN) for any dependent age 5 and older listed on tax returns due on or after January 1, 1988. In general, SSNs serve as TINs. In an effort to lessen the burden on SSA field offices, SSA offices initiated school enumeration projects. Subsequent legislation required TINs for all dependents claimed on tax returns, regardless of age, so that most children have been assigned SSNs long before reaching school age and school enumeration projects are no longer practical. These proposed rules eliminate the reference to SSA entering into agreements with school authorities.

Currently, an alien lawfully in the United States without employment authorization, who wants to obtain an SSN, must provide evidence documenting a valid nonwork reason for needing an SSN, e.g., to receive a Federally-funded benefit or enlist in the uniformed services. Another reason, currently shown in our rules, is the Internal Revenue Service (IRS) requirement relating to the use of SSNs for tax purposes.

However, on July 1, 1996, IRS began assigning Individual Taxpayer Identification Numbers (ITINS) to aliens who are otherwise not eligible for SSNs but who need TINs for tax purposes. Therefore, needing an SSN for IRS reporting tax purposes is no longer a valid nonwork reason for SSA to assign an SSN, and we propose to eliminate such references.

We also propose to amend our regulations on presumption of authority of a nonimmigrant alien to accept employment. As currently written, the regulations do not address the authority of a nonimmigrant alien to accept employment if INS has not issued the alien a Form I–94, which is generally issued by INS to a nonimmigrant alien upon arrival in the United States. Under certain circumstances, INS may grant employment authorization to an alien who has not been issued a Form I–94, e.g., an alien whose lawful alien status is pending, so that the individual may work during the period the application for lawful alien status is pending. The proposed rules clarify that a nonimmigrant alien who has not been issued a Form I–94, which reflects a classification permitting work, must present a current employment authorization document (EAD) or other document authorized by INS which permits the alien to work. Such authority must be established before an SSN card which is valid for work purposes can be issued.

Additionally, we propose to specifically acknowledge the requirement to complete a Form SS–5 to obtain a duplicate SSN card. Although the completion of this form has been a longstanding requirement, our current rules do not specifically refer to it, as they do so in the sections in this subpart relating to applying for an original SSN (see § 422.103) or a corrected SSN card (see § 422.110).

Explanation of Revisions

We propose changes to §§ 422.103, 422.107 and 422.110 to implement the initiative for DOS and INS to collect information to assign SSNs to aliens and a change to paragraph § 422.103(e) to provide a specific rule on the requirement to complete a Form SS–5 in the case of applying for a duplicate SSN card.

We propose changes to §§ 422.104(b) and 422.107(a) to eliminate the references to IRS tax purposes as a valid nonwork reason for SSA to assign an SSN and to § 422.105 to address the authority of a nonimmigrant alien to accept employment if INS has not issued the alien a Form I–94.

Additionally, we propose to eliminate references in § 422.106 to procedures concerning legalization applicants and SSA agreements with school authorities which are no longer in effect and to amend § 422.107 to eliminate the interview requirement for aliens for whom INS forwards enumeration data to SSA.

Electronic Version

The electronic file of this document is available on the Federal Bulletin Board (FBB) at 9:00 A.M. on the date of publication in the **Federal Register**. To download the file, modem dial (202) 512–1387. The FBB instructions will explain how to download the file and the fee. This file is in WordPerfect and will remain on the FBB during the comment period.

Regulatory Procedures

Executive Order 12866

We have consulted with the OMB and determined that these proposed rules meet the criteria for a significant regulatory action under Executive Order 12866. Therefore, we have prepared an assessment of the potential costs and benefits of this regulatory action.

Currently, SSA employees review evidence and process applications for all aliens who are issued SSN cards. INS estimates 1.8 million work-authorized aliens enter the United States yearly. SSA processes about 2 million enumeration actions for aliens annually. In fiscal year 1996, SSA issued 1 million original SSN cards to work-authorized aliens and 774,000 replacement cards to work-authorized aliens. In addition, SSA issued 325,000 original and 40,000 replacement SSN cards to aliens without work authorization. We estimate that the current process costs SSA about 385 workyears in the field for this workload.

Having DOS and INS collect enumeration information for aliens and having INS electronically transmit that information to SSA will provide overall government savings. Aliens who currently first contact DOS (at the foreign service post), INS (at the port-of-entry), and subsequently contact SSA (at an SSA field office) for an SSN card now will be able to apply for an SSN card via their contacts with DOS and/or INS. This proposed process will also

improve the integrity of the enumeration process and reduce the potential for assigning an SSN based on a fraudulent INS document.

DOS and INS already collect, as part of the immigration process, some of the information that SSA needs to assign an SSN. This proposed process will eliminate duplicate collection of information by SSA of the data elements already collected by DOS and/or INS for immigration purposes and provide for better overall government efficiency. DOS and INS will collect the information needed to assign an SSN on a immigration form, adding questions to collect the information that SSA needs to assign an SSN, but which is not collected for immigration purposes. These agencies will archive the immigration form which documents the alien's request for an SSN and retrieve it upon SSA's request.

INS will be reimbursed for the time spent collecting data not needed for immigration purposes. With the proposed changes, INS has previously estimated that its costs will be about $6 million per year, and SSA would agree to reimburse INS for its costs. DOS has indicated that it will not ask for reimbursement.

SSA's annual cost for original and replacement SSN cards for those aliens for whom DOS and INS will collect SSN information would be about $12 million or 232 workyears. This leaves a net savings to SSA of about $6 million per year if the INS estimate is accurate. The estimated savings are based on the difference between the current SSA interviewing and information collection costs and the expected INS costs for those aliens who would be subject to the processes described by the agreements among SSA, DOS, and INS.

Initially, INS and DOS will be able to collect information for SSA to enumerate about 60 percent of all lawfully admitted aliens who need SSNs. INS estimates that it will be at least several years before it will be able to collect that information for the other 40 percent.

We considered outstationing SSA employees at INS offices. In some regions, SSA field offices, working with local INS offices, have implemented this arrangement as an interim measure until INS is able to electronically provide enumeration data centrally to SSA. Outstationing is not a viable alternative to the proposed procedures since it does not result in savings to SSA and since it cannot reach aliens at all ports-of-entry.

Regulatory Flexibility Act

We certify that these proposed rules will not have a significant economic impact on a substantial number of small entities since these rules affect only individuals and Federal agencies. Therefore, a regulatory flexibility analysis as provided in the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

SSA is imposing no additional reporting or record keeping requirements subject to OMB clearance in these proposed rules.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security—Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.006 Supplemental Security Income)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Organization and functions (Government agencies), Social security.

John J. Callahan,

Acting Commissioner of Social Security.

For the reasons set out in the preamble, subpart B of 20 CFR 422 is proposed to be amended as follows:

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

1. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b–1, and 1320b–13).

2. Section 422.103 is amended by adding paragraphs (b)(3) and (c)(3) and revising paragraph (e) to read as follows:

§ 422.103 Social security numbers.

* * * * *

(b) * * *

(3) *Immigration form.* SSA may enter into an agreement with the Department of State (DOS) and the Immigration and Naturalization Service (INS) to assist SSA by collecting enumeration data as part of the immigration process. Where an agreement is in effect, an alien need not complete a Form SS–5 with SSA and may request, through DOS or INS, as part of the immigration process, that SSA assign a social security number and issue a social security number card to him/her. Requests for SSNs to be assigned via this process will be made on forms provided by DOS and INS.

(c) * * *

(3) *Request on immigration document.* Where an alien has requested a social security number as part of the immigration process described in paragraph (b)(3) of this section, INS will electronically transmit to SSA's central office in Baltimore, MD, the data elements collected for immigration purposes, by both INS and DOS, that SSA needs to enumerate the alien along with other data elements as agreed upon by SSA and DOS or INS. The data elements received by SSA will be used to establish the age, identity, and lawful alien status or authority to work of the alien. Using this data, SSA will assign a social security number to the alien and send the social security number card to him/her at the address the alien provides to DOS or INS.

* * * * *

(e) *Replacement of social security number card.* In the case of a lost or damaged social security number card, a duplicate card bearing the same name and number may be issued. In the case of a need to change the name on the card, a corrected card bearing the same number and the new name may be issued. In both cases, a Form SS–5 must be completed. A Form SS–5 can be obtained from any Social Security office or from one of the sources noted in paragraph (b) of this section. For evidence requirements, see § 422.107.

3. Section 422.104 is amended by revising paragraph (a)(3) and paragraph (b) to read as follows:

§ 422.104 To whom social security numbers are assigned.

(a) * * *

(3) An alien who is legally in the United States but not under authority of law permitting him or her to engage in employment, but only for a valid nonwork purpose. (See § 422.107.)

(b) *Persons without evidence of alien status.* A social security number may be assigned for a nonwork purpose to an alien who cannot provide the evidence of alien status as required by § 422.107(e), if the evidence described in that paragraph does not exist and if the alien resides either in or outside the United States and a social security number is required by law as a condition of the alien's receiving a federally-funded benefit to which the alien has established entitlement.

* * * * *

4. Section 422.105 is revised to read as follows:

§ 422.105 Presumption of authority of nonimmigrant alien to accept employment.

A nonimmigrant alien shall be presumed to have permission to engage in employment if the alien presents a

Form I–94 issued by the Immigration and Naturalization Service (INS) that reflects a classification permitting work. (See 8 CFR 274a.12 for Form I–94 classifications.) A nonimmigrant alien who has not been issued a Form I–94, or whose Form I–94 does not reflect a classification permitting work, must submit a current document authorized by the INS that verifies authorization to work has been granted, e.g., an employment authorization document, to enable SSA to issue an SSN card that is valid for work purposes.

5. Section 422.106 is amended by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and by revising paragraph (a) to read as follows:

§ 422.106 Filing applications with other government agencies.

(a) *Agreements.* In carrying out its responsibilities to assign social security numbers, SSA enters into agreements with the United States Attorney General, other Federal officials, and State and local welfare agencies. An example of these agreements is discussed in paragraph (b) of this section.

* * * * *

6. Section 422.107 is amended by revising paragraph (a) and the seventh sentence of paragraph (e) to read as follows:

§ 422.107 Evidence requirements.

(a) *General.* An applicant for an original social security number card must submit documentary evidence which the Commissioner of Social Security regards as convincing evidence of age, U.S. citizenship or alien status, and true identity. An applicant for a duplicate or corrected social security number card must submit convincing documentary evidence of identity and may also be required to submit convincing documentary evidence of age and U.S. citizenship or alien status. An applicant for an original, duplicate, or corrected social security number card is also required to submit evidence to assist us in determining the existence and identity of any previously assigned number(s). A social security number will not be assigned, or an original, duplicate, or corrected card issued, unless all the evidence requirements are met. An in-person interview is required of an applicant who is age 18 or older applying for an original social security number except for an alien who requests a social security number as part of the immigration process as described in § 422.103(b)(3). An in-person interview may also be required of other applicants. All documents submitted as evidence must be originals or certified copies of the original documents and are subject to verification with the custodians of the original records.

* * * * *

(e) *Evidence of alien status.* * * * If the applicant requests the number for a nonwork purpose and provides evidence documenting that the number is needed for a valid nonwork purpose, the number may be assigned and the card issued will be annotated with a nonwork legend. * * *

* * * * *

7. Section 422.110 is revised to read as follows:

§ 422.110 Individual's request for change in record.

(a) *Form SS–5.* An individual who wishes to change the name or other personal identifying information previously submitted in connection with an application for a social security number card may complete and sign a Form SS–5 except as provided in paragraph (b) of this section. The person must prove his/her identity and may be required to provide other evidence. (See § 422.107 for evidence requirements.) A Form SS–5 may be obtained from any local social security office or from one of the sources noted in § 422.103(b). The completed request for change in records may be submitted to any SSA office, or, if the individual is outside the U.S., to the Department of Veterans Affairs Regional Office, Manila, Philippines, or to any U.S. foreign service post or U.S. military post. If the request is for a change in name, a new social security number card with the new name and bearing the same number previously assigned will be issued to the person making the request.

(b) *Assisting in enumeration.* SSA may enter into an agreement with officials of the Department of State and the Immigration and Naturalization Service to assist SSA by collecting as part of the immigration process information to change the name or other personal identifying information previously submitted in connection with an application or request for a social security number card. If the request is for a change in name, a new social security card with the new name and bearing the same number previously assigned will be issued.

[FR Doc. 97–31459 Filed 12–1–97; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[OH–242–FOR]

Ohio Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: OSM is reopening the public comment period on a proposed amendment to the Ohio permanent regulatory program (hereinafter referred to as the ''Ohio program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment consists of changes to the provisions of the Ohio rules pertaining to attorney fees. The amendment is intended to revise the Ohio program to be consistent with the corresponding Federal regulations.

DATES: Written comments must be received by 4:00 p.m., [e.s.t.] December 17, 1997.

ADDRESSES: Written comments and requests to speak at the hearing should be mailed or hand delivered to George Rieger, Field Branch Chief, at the address listed below.

Copies of the Ohio program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Appalachian Regional Coordinating Center.

George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Office of Surface Mining Reclamation and Enforcement, 3 Parkway Center, Pittsburgh, PA 15520, Telephone: (412) 937–2153

Ohio Division of Mines and Reclamation, 1855 Fountain Square, Columbus, OH 43224, Telephone: (614) 265–1076

FOR FURTHER INFORMATION CONTACT: George Rieger, Field Branch Chief, Appalachian Regional Coordinating Center, Telephone: (412) 937–2153.

SUPPLEMENTARY INFORMATION:

I. Background on the Ohio Program

On August 16, 1982, the Secretary of the Interior conditionally approved the

Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1982, **Federal Register** (47 FR 34688). Subsequent actions concerning conditions of approval and program amendments can be found at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Description of the Proposed Amendment

By letter dated June 24, 1997 (Administrative Record No. OH–2173–00), Ohio submitted a proposed amendment to its program pursuant to SMCRA and in response to a required amendment at 30 CFR 935.16. Ohio submitted letters of clarification on August 19, 1997 (Administrative Record No. OH–2173–07), and October 14, 1977 (Administrative Record No. OH–2173–08). The proposed amendment was announced in the July 7, 1997, **Federal Register** (62 FR 36248). The revision to Ohio Revised Code 1513.13(E)(2) was inadvertently omitted from the notice. Ohio proposes to require that if a final order relating to Chapter 1513 is issued under section 1513.13 and becomes the subject of judicial review, at the request of any party, a sum equal to the aggregate amount of all costs and expenses, including attorney fees, as determined by the court to have been necessary and reasonably incurred by the party for or in connection with their participation in the judicial proceedings may be awarded to either party, in accordance with (E)(1) of section 1513.13 as the court, on the basis of judicial review, considers proper.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. Specifically, OSM is seeking comments on the revision to the State's regulations that was submitted on June 24, 1997 (Administrative Record No. OH–2173–00), with the addition noted above. Comments should address whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under ''DATES'' or at locations other than the Appalachian Regional Coordinating Center will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determination

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 935

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 19, 1997.

John A. Holbrook, II,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–31578 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 926

[SPATS No. MT–018–FOR]

Montana Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of additional explanatory information pertaining to a previously proposed amendment to the Montana regulatory program (hereinafter, the ''Montana program'') under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The additional explanatory information for Montana's proposed rules pertain to permit requirements and a notice of intent to prospect. The amendment is intended to revise the Montana program to provide additional safeguards, clarify ambiguities, and improve operational efficiency.

DATES: Written comments must be received by 4:00 p.m., m.s.t. December 17, 1997.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the Montana program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East ''B'' Street, Room 2128, Casper, WY, 82601–1918, Telephone: (307) 261–5776.

Steve Welch, Chief, Industrial and Energy Minerals Bureau, Montana Department of Environmental Quality, P.O. Box 200901, Helena, MT, 59620–0091, Telephone: (406) 444–4964.

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the Montana Program

On April 1, 1980, the Secretary of the Interior conditionally approved the Montana program. General background information on the Montana program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Montana program can be found in the April 1, 1980, **Federal Register** (45 FR 21560). Subsequent actions concerning Montana's program and program amendments can be found at 30 CFR 926.15, 926.16, and 926.30.

II. Proposed Amendment

By letter dated March 5, 1996, Montana submitted a proposed amendment to its program pursuant to SMCRA (30 U.S.C. 1201 *et seq.*) (Administrative Record No. MT–15–01). Montana submitted the proposed amendment at its own initiative. The provisions of the Administrative Rules of Montana that Montana proposed to revise were: 26.4.410, permit renewal; 26.4.1001, permit requirement; and 26.4.1001A, notice of intent to prospect.

OSM announced receipt of the proposed amendment in the April 10, 1996, **Federal Register** (61 FR 15910), provided an opportunity for a public hearing or meeting on its substantive adequacy, and invited public comment on its adequacy (Administrative Record No. MT–15–04). Because no one requested a public hearing or meeting, none was held. The public comment period ended on May 10, 1996.

During its review of the amendment, OSM identified concerns relating to the requirements for prospecting permits and notices of intent to prospect at 26.4.1001(1)(a) and 26.4.1001A(1) and (1)(b)(ii). OSM notified Montana of the concerns by letter dated December 6, 1996 (Administrative Record No. MT–15–09). Montana responded in a letter dated November 6, 1997, by submitting additional explanatory information (Administrative Record No. MT–15–12).

Specifically, Montana has submitted a proposed statute revision contained in another rulemaking (SPATS No. MT–017–FOR; Administrative Record No. MT–14–11) to address OSM's concerns with permit requirements and a notice of intent to prospect. Instead of revising the proposed rules, Montana explains that proposed changes to the statute at Montana Code Annotated (MCA) 82–4–226(8) to require a permit for prospecting when more than 250 tons of coal would be removed, would resolve OSM's identified deficiency.

III. Public Comment Procedures

OSM is reopening the comment period on the proposed Montana program amendment to provide the public an opportunity to reconsider the adequacy of the proposed amendment in light of the additional materials submitted. In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Montana program.

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

IV. Procedural Determinations

1. Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

6. Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 20, 1997.

Richard J. Seibel,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 97–31579 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA35–1–7305b; FRL–5928–3]

Approval and Promulgation of Air Quality Implementation Plans, Louisiana; Reasonable Available Control Technology for Emissions of Volatile Organic Compounds

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, the EPA proposes to conditionally approve in part, and fully approving in part, revisions to the Louisiana State Implementation Plan (SIP). The revisions incorporate regulations to control Volatile Organic Compound emissions from major stationary sources by means of Reasonable Available Control Technology. The major stationary source category controlled by the conditionally approved regulation is batch processes. The major stationary source categories controlled by the fully approved regulations are Synthetic Organic Chemical Manufacturing Industry (SOCMI) reactors, SOCMI distillation, and industrial cleanup solvents. The intended effect of these rules is to reduce VOC emissions into the ambient air and thereby reduce ground-level ozone concentrations.

In the Rules and Regulations Section of this **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received during the 30-day comment period set forth below will be addressed in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by January 2, 1998.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas Diggs, Chief, Air Planning Section, at the EPA Region 6 Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Anyone wanting to examine these documents should make an appointment with the appropriate office at least two working days in advance.

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Air Quality Division, Louisiana Department of Environmental Quality, 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810.

FOR FURTHER INFORMATION CONTACT: Eaton R. Weiler, of the EPA Region 6 Air Planning Section at the above address, telephone (214) 665–2174.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 10, 1997.

Lynda F. Carroll,

Acting Regional Administrator.

[FR Doc. 97–31409 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[AK 19–1707; FRL–5923–8]

Clean Air Act Reclassification; Anchorage, Alaska, Carbon Monoxide Nonattainment Area

AGENCY: Environmetnal Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes to find that the Municipality of Anchorage, Alaska, carbon monoxide (CO) nonattainment area has not attained the CO national ambient air quality standards (NAAQS) under the Clean Air Act (CAA). The CO nonattainment occurred after Anchorage received a one year extension from the mandated attainment date of December 31, 1995 for moderate nonattainment areas to December 31, 1996. This proposed finding is based on EPA's review of monitored air quality data for compliance with the CO NAAQS. Final action on this proposed finding would result in the Anchorage CO nonattainment area being reclassified by operation of law as a serious nonattainment area. The result of such a reclassification would be that the State must submit a new State implementation plan (SIP) providing for attainment of the CO NAAQS by no later than December 31, 2000, the CAA attainment deadline for serious CO areas.

DATES: Written comments on this proposal must be received by January 2, 1998.

ADDRESSES: Written comment should be addressed to Ms. Montel Livingston, Environmental Protection Agency, Office of Air Quality (OAQ 107), Docket AK 17–1705, 1200 6th Avenue, Seattle, WA 98101. Information supporting this action is available for inspection during normal business hours at the following locations: EPA, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101, and the Alaska Department of Environmental Conservation (ADEC), 410 Willoughby, Suite 105, Juneau, Alaska 99801–1795.

FOR FURTHER INFORMATION CONTACT: John Pavitt, Alaska Air Coordinator, EPA Alaska Operations Office, 907/271–3688.

SUPPLEMENTARY INFORMATION:

I. Background

A. CAA Requirements and EPA Actions Concerning Designation and Classification

The CAA Amendments of 1990 were enacted on November 15, 1990. Under Section 107(d)(1)(C) of the CAA, each CO area designated nonattainment prior to enactment of the 1990 Amendments, such as the Anchorage area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of the CAA, each CO area designated nonattainment under section 107(d) was also classified by operation of law as either ''moderate'' or ''serious'' depending on the severity of the area's air quality problem. CO nonattainment

areas with a design value between 9.1–16.4 parts per million (ppm), such as the Anchorage area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56694 (November 6, 1991). States containing CO moderate nonattainment areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit State implementation plans (SIPs) designed to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995.[1]

B. Attainment Date Extensions

If the State did not have the two consecutive clean years of data necessary to show attainment of the NAAQS, section 186(a)(4) of the CAA provides that EPA may approve a one year attainment date extension if the State has: (1) complied with the requirements and commitments pertaining to the applicable implementation plan for the area, and (2) the area has measured no more than one exceedance of CO NAAQS at any monitoring site in the nonattainment area in the year preceding 1996, the extension year.

The Anchorage nonattainment area had two exceedances in 1994. However, because the Anchorage nonattainment area had only one exceedance in 1995, Anchorage qualified for a one year attainment date extension to 1996. Two consecutive years of clean data are required in order to attain the CO NAAQS. EPA granted the extension and the action was published in the **Federal Register** on June 28, 1996 (61 FR 33676).

C. Reclassification to a Serious Nonattainment Area

1. EPA has the responsibility, pursuant to sections 179(c) and 186(b)(2) of the CAA, of determining whether the Anchorage area has attained the CO NAAQS. Under section 186(b)(2)(A), if EPA finds that the area has not attained the CO NAAQS, it is reclassified as serious by operation of law. Pursuant to section 186(b)(2)(B) of the Act, EPA must publish a notice in the **Federal Register** identifying areas which it determines failed to attain the standard and therefore must be reclassified as serious by operation of law. EPA makes attainment determinations for CO nonattainment areas based upon whether an area has two years (or eight consecutive quarters) of clean air quality data.[2] Section 179(c)(1) of the CAA states that the attainment determination must be based upon an area's ''air quality as of the attainment date.'' Consequently, EPA will determine whether an area's air quality has met the CO NAAQS by December 31, 1995, based upon the most recent two years of air quality data entered into the Aerometric Information Retrieval System (AIRS) data base.

EPA determines a CO nonattainment area's air quality status in accordance with 40 CFR 50.8 and EPA policy.[3] EPA has promulgated two NAAQS for CO: an 8-hour average concentration and a 1-hour average concentration. Because there were no violations of the 1-hour standard recorded in the Anchorage area in 1994, 1995, and 1996, this notice addresses only the air quality status of the Anchorage area with respect to the 8-hour standard. The 8-hour CO NAAQS requires that not more than one non-overlapping 8-hour average per year per monitoring site can exceed 9.0 ppm (values below 9.5 are rounded down to 9.0 and they are not considered exceedances). The second exceedance of the 8-hour CO NAAQS at a given monitoring site within the same year constitutes a violation of the CO NAAQS. Anchorage had two exceedances of the CO NAAQS in 1994, one exceedance win 1995 (one exceedance does not constitute a CO violation because a violation of the CO NAAQS means two exceedances of the 8-hour CO NAAQS at a given monitoring site within the same year), and three CO exceedances in 1996 (its non-attainment extension year).

2. SIP Requirements for Serious CO Areas: CO nonattainment areas reclassified as serious under section 186(b)(2) of the CAA are required to submit, within 18 months of the area's reclassification, SIP revisions demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000. The serious CO area planning requirements are set forth in section 187(b) of the CAA. EPA has issued two general guidance documents related to the planning requirements for CO SIPs. The first is the ''General Preamble for the Implementation of Title I of the CAA Amendments of 1990'' that sets forth EPA's preliminary views on how the Agency intends to act on SIPs submitted under Title I of the CAA. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). The second general guidance document for CO SIPs issued by EPA is the ''Technical Support Document to Aid the States with the Development of Carbon Monoxide State Implementation Plans,'' July 1992. If the Anchorage area is reclassified to serious, the State would have to submit a SIP revision to EPA within 18 months of reclassification that, in addition to the attainment demonstration, includes: (1) a forecast of vehicle miles travelled (VMT) for each year before the attainment year and provisions for annual updates of these forecasts; (2) adopted contingency measures; and (3) adopted transportation control measures and strategies to offset any growth in CO emissions from growth in VMT or number of vehicle trips. See CAA sections 187(a)(7), 187(a)(2)(A), 187(a)(3), 187(b)(2), and 187(b)(1). Upon reclassification, contingency measures in the moderate area plan for the Anchorage area must be implemented.

II. This Action

By today's action, EPA is proposing to find that the Anchorage CO nonattainment area failed to demonstrate attainment of the CO NAAQS by December 31, 1996, the CO attainment extension date. This proposed finding is based upon air quality data showing exceedances of the CO NAAQS during 1996.

Ambient Air Monitoring Data: The following table lists the monitoring sites in the Anchorage CO nonattainment area where the 8-hour CO NAAQS was exceeded during 1996, based on data validated by the Alaska Department of Environmental Conservation and entered into the AIRS data base.

[1] The moderate area SIP requirements are set forth in section 187(a) of the CAA Amendments of 1990 and differ depending on whether the area's design value is below or above 12.7 ppm. The Anchorage area has a design value above 12.7 ppm. 40 CFR 81.302.

[2] See generally memorandum from Sally L. Shaver, Director, Air Quality Strategies and Standards Division, EPA, to Regional Air Office Directors, entitled ''Criteria for Granting Attainment Date Extensions, Making Attainment Determinations, and Determinations of Failure to Attain the NAAQS for Moderate CO Nonattainment Areas,'' October 23, 1995 (Shaver memorandum).

[3] See memorandum from William G. Laxton, Director, Technical Support Division, entitled ''Ozone and Carbon Monoxide Design Value Calculations,'' June 18, 1990. See also Shaver memorandum.

ANCHORAGE CARBON MONOXIDE EXCEEDANCES OF THE 8-HOUR STANDARD—1996

Monitoring site	8-hour CO reading (PPM)	Date	Max 8-hour reading	Second-max 8-hour reading	Number exceedances 8-hour standard
Spenard & Benson	10.1	1/22/96			
	9.5	12/27/96			
	9.6	12/31/96			
		Year—1996	11.0	9.6	3
Seward Hwy & Benson	10.0	1/22/96			
	9.5	12/27/96			
	9.5	12/31/96			
		Year—1996	10.8	10.5	3

Because the 1996 exceedances are valid for use in determining the attainment status of the Anchorage area, EPA is proposing to find, based on the 1996 CO violations discussed above, that the area did not attain the CO NAAQS by its extension year deadline of December 31, 1996. If EPA finalizes this finding, by operation of law Anchorage will be reclassified a serious CO nonattainment area.

III. Executive Order (EO) 12866

Under E.O. 12866, 58 FR 51735 (October 4, 1993), EPA is required to determine whether regulatory actions are significant and therefore should be subject to OMB review, economic analysis, and the requirements of the Executive Order. The Executive Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may meet at least one of the four criteria identified in section 3(f), including, under paragraph (1), that the rule may ''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.'' The Agency has determined that the finding of failure to attain proposed today would result in none of the effects identified in section 3(f). Under section 186(b)(2) of the CAA, findings of failure to attain and reclassification of nonattainment areas are based upon air quality considerations and must occur by operation of law in light of certain air quality conditions. They do not, in and of themselves, impose any new requirements on any sectors of the economy. In addition, because the statutory requirements are clearly defined with respect to the differently classified areas, and because those requirements are automatically triggered by classifications that, in turn, are triggered by air quality values, findings of failure to attain and reclassification cannot be said to impose a materially adverse impact on State, local or tribal government or communities.

IV. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. As discussed in section III of this notice, findings of failure to attain and reclassification of nonattainment areas under section 186(b)(2) of the CAA do not in and of themselves create any new requirements. Therefore, I certify that today's proposed action does not have a significant impact on small entities.

V. Unfunded Mandates

Under sections 202, 203, and 205 of the Unfunded Mandates Reform Act of 1995 (Unfunded Mandates Act), signed into law on March 22, 1995, EPA must assess whether various actions undertaken in association with proposed or final regulations include a Federal mandate that may result in estimated costs of $100 million or more to the private sector, or to State, local or tribal governments in the aggregate. EPA believes, as discussed above, that the proposed finding of failure to attain and reclassification of the Anchorage nonattainment area are factual determinations based upon air quality considerations and must occur by operation of law and, hence, do not impose any Federal intergovernmental mandate, as defined in section 101 of the Unfunded Mandates Act.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 12, 1997.

Chuck Clarke,

Regional Administrator.

[FR Doc. 97–30242 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1001

Negotiated Rulemaking Committee on the Shared Risk Exception; Meetings

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Meeting of Negotiated Rulemaking Committee.

SUMMARY: In accordance with the Federal Advisory Committee Act, this document announced the dates and location for the sixth and seventh set of meetings by the Negotiated Rulemaking Committee on the Shared Risk Exception. The purpose of this committee is to negotiate the development of an interim final rule addressing the shared risk exception to the Federal health care programs' anti-kickback provisions, as statutorily-mandated by section 216 of the Health Insurance Portability and Accountability Act of 1996.

DATES: The next series of meetings will be held from 9:00 a.m. to 5:00 p.m. on December 16, 17 and 18, 1997. The seventh series of meetings will be held on January 20, 21 and 22, 1998 from 9:00 a.m. to 5:00 p.m.

ADDRESSES: Both the December and January meetings will be held at the Holiday Inn Capitol, 550 C Street, S.W., Washington, D.C. 20024.

FOR FURTHER INFORMATION CONTACT: Inquires regarding these meetings should be addressed to Joel Schaer, OIG Regulations Officer, Office of Counsel to the Inspector General, Room 5518, Cohen Building, 330 Independence Avenue, S.W., Washington, D.C. 20201; or call (202) 619–0089.

SUPPLEMENTARY INFORMATION: The Negotiated Rulemaking Committee on the Shared Risk Exception has been established to provide advice and make recommendations to the Secretary of Health and Human Services with respect to the text or content of an interim final rule that will establish standards relating to the exception to the anti-kickback statute for risk-sharing arrangements, set forth in section 1128B(b)(3)(F) of the Social Security Act. The exception was enacted by section 216 of Pub. L. 104–191, the Health Insurance Portability and Accountability Act (HIPAA) of 1996. Section 216 of HIPAA provides that the Secretary will promulgate regulations that establish standards for the exception using an expedited negotiated rulemaking process.

During the scheduled December and January meetings, the committee will continue to discuss issues relating to the development of the interim final rule and to generate and discuss options for resolving those issues.

The meetings will be open to the public without advanced registration. A summary of all proceedings of these meetings and relevant matters and other material will also be available for public inspection at the address listed above from the hours of 8:30 a.m. to 5:00 p.m., or can be accessed through the OIG web site located at http://www.dhhs.gov/progorg/oig.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. App. 2).

Dated: November 21, 1997.

June Gibbs Brown,

Inspector General.

[FR Doc. 97–31473 Filed 12–1–97; 8:45 am]

BILLING CODE 4150–04–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–233, RM–9162]

Radio Broadcasting Services; East Brewton, AL and Navarre, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of 550–AM, permittee of Station WZEW(FM), Channel 239A, East Brewton, Alabama, requesting the substitution of Channel 239C3 for Channel 239A at East Brewton, the reallotment of Channel 239C3 to Navarre, Florida, and modification of its authorization accordingly, pursuant to the provisions of Section 1.420(i) of the Commission's Rules. Petitioner is requested to provide additional information to establish Navarre's status as a community for allotment purposes. Coordinates used for requested Channel 239C3 at Navarre, Florida, are 30–26–52 and 86–51–55.

The petitioner's modification proposal complies with the provisions of Section 1.420(i) of the Commission's Rules, and therefore, we will not accept competing expressions of interest in the use of Channel 239C3 at Navarre, Florida, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before January 12, 1998, and reply comments on or before January 27, 1998.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: William J. Pennington, Jr., Esq., Post Office Box 403, Westfield, MA 01086.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 97–233, adopted November 12, 1997, and released November 21, 1997. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–31513 Filed 12–1–97; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 971112269–7269–01; I.D. 102997A]

RIN 0648-AK13

Fisheries of the Exclusive Economic Zone off Alaska; Revised Management Authority for Pelagic Shelf Rockfish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations to implement Amendment 46 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) which has been submitted by the North Pacific Fishery Management Council (Council) for Secretarial review. Amendment 46 would remove black and blue rockfish from the complex of species managed under the FMP. The State of Alaska (State) would regulate fishing for these species by vessels registered under Alaska law. This action is necessary to allow the State to implement more responsive, regionally-based, management of these species than is currently possible under the FMP. The intended effect of this action is to repeal duplicative Federal regulations, provide for more responsive State management and prevent localized overfishing of black and blue rockfish stocks.

DATES: Comments on the proposed rule must be received by January 16, 1998.

ADDRESSES: Comments should be submitted to Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802, Attn: Lori Gravel, or delivered to

the Federal Building, 709 West 9th Street, Juneau, AK. Copies of the proposed Amendment 46 and the Environmental Assessment/Regulatory Impact Review (EA/RIR) and related economic analysis prepared for the proposed action are available from the North Pacific Fishery Management Council, 605 West 4th Ave., Suite 306, Anchorage, AK 99501–2252; telephone: 907–271–2809.

FOR FURTHER INFORMATION CONTACT: Alan Kinsolving 907–586–7228.

SUPPLEMENTARY INFORMATION:

Management Background and Need for Action

The domestic groundfish fisheries in the exclusive economic zone of the Gulf of Alaska (GOA) are managed by NMFS under the FMP. The FMP was prepared by the Council under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing the groundfish fisheries of the GOA appear at 50 CFR parts 600 and 679.

The Council has submitted Amendment 46 for Secretarial review and a Notice of Availability (NOA) of the FMP amendment was published on November 5, 1997 (62 FR 59844), with comments on the FMP amendment invited through January 5, 1998. All written comments received by January 5, 1998, whether specifically directed to the FMP amendment, the proposed rule, or both, will be considered in the approval/disapproval decision on the FMP amendment.

Black rockfish (*Sebastes melanops*) and blue rockfish (*S. mystinus*) currently are managed as part of the pelagic shelf rockfish assemblage (PSR) under the FMP. The Council is concerned that recent expansion of a fishery for these species in the central GOA may result in unsustainable black and blue rockfish catches.

Two problems with Federal management of black and blue rockfish have been identified by the Council. First, the total allowable catch (TAC) for all PSR species is based on a triennial trawl survey. Survey catches are dominated (93 percent to over 99 percent) by the underexploited dusky rockfish. This leads to the development of acceptable harvest levels for the PSR assemblage that are sustainable for stronger PSR stocks such as dusky rockfish, but that may be inappropriate for weaker black and blue rockfish stocks. Second, the trawl survey only samples fish on or near a smooth bottom. However, most black and blue rockfish occur in rocky nearshore reef habitats that are not sampled by this survey. Small-area harvest guidelines, developed using more selective sampling methodologies, are necessary to prevent localized depletion of these territorial, slow-growing, long-lived species. The current management system cannot accommodate this.

Currently, both species are taken chiefly in State waters (78 percent in 1996). Under current management, the State's closure of the rockfish fishery in State waters is often followed by a reported shift in effort to PSR species in adjacent Federal waters. Transferring management of these species to the State should result in more effective conservation measures in both nearshore and offshore waters while eliminating duplicative Federal management.

At its June 1997 meeting, the Council adopted Amendment 46 to the FMP. If this amendment were approved, the State could regulate State-registered vessels fishing for black and blue rockfish. The black and blue rockfish fishery is not large, and all vessels participating in it are registered under the laws of the State. Typically, the vessels are small, and operators would be unable to land their catch outside the State. Insurance and safety concerns also make it unlikely that vessels in the fishery would not be registered with the State. Thus, it is unlikely that any vessel harvesting black or blue rockfish in Federal waters would not be subject to State regulations.

Black and blue rockfish are also taken as bycatch in other federally managed fisheries, especially the halibut Individual Fishing Quota and Pacific cod jig fisheries. By removing black and blue rockfish from the FMP, the State could impose on State registered vessels fishing in the Federal fisheries only such additional State measures, like bycatch retention limits for blue and black rockfish, as are consistent with the applicable Federal fishing regulations for the fishery in which the vessel is operating. The Council's intent is not to give the State authority to indirectly regulate other federally managed fisheries through State implementation of gear restrictions, area closures, or other bycatch control measures.

To manage directed fishing closures for FMP groundfish effectively, NMFS must know whether these species are taken in a directed groundfish fishery or as bycatch in a nongroundfish fishery. Because other groundfish are often taken at the same time as black and blue rockfish, NMFS would continue to require reporting of retained black and blue rockfish when they are landed at the same time as other FMP groundfish.

Classification

At this time, NMFS has not determined that Amendment 46 is consistent with the national standards, other provisions of the Magnuson-Stevens Act, and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period.

NMFS prepared an EA/RIR that describes the impact this proposed rule, if adopted, would have on small entities. A copy of the RIR is available from the Council (see **ADDRESSES**). Based on the economic analysis in the RIR, the Assistant General Counsel for Legislation and Regulation of the Department of Commerce made the following certification to the Chief Counsel for Advocacy of the Small Business Administration that the proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities:

The Small Business Administration has defined all fish-harvesting or hatchery businesses that are independently owned and operated, not dominant in their field of operation, with annual receipts not in excess of $3 million as small businesses. In addition, seafood processors with 500 employees or fewer, wholesale industry members with 100 employees or fewer, not-for-profit-enterprises, and government jurisdictions with a population of 50,000 or less are considered small entities. NMFS has determined that a ''substantial number'' of small entities would generally be 20 percent of the total universe of small entities affected by the regulation. A regulation would have a ''significant negative impact'' on these small entities if it reduced annual gross revenues by more than 5 percent, increased total costs of production by more than 5 percent or resulted in compliance costs for small entities by at least 10 percent compared with compliance costs as a percent of sales for large entities.

NMFS assumes that most catcher vessels participating in the Alaska groundfish fisheries are ''small entities'' for purposes of the Regulatory Flexibility Act. During 1996, in the GOA, 1,416 catcher vessels participated in the GOA groundfish fishery. Of those, 302 vessels, or 21 percent, landed black rockfish and would presumably be affected by the proposed action

During 1996, vessels participating in the fishery landed 973,443 lb (441.6 mt) of black rockfish. Most of these landings were by vessels participating in the directed jig-gear fishery. Based on an average price paid of $0.35/lb ($771.61 mt) for Western and Central GOA landings, and $0.40/lb ($881.84/mt) for Eastern GOA landings, the 1996 value of these landings is estimated to be about $344,000.

Removing black and blue rockfish from the PSR TAC should encourage the development of a small vessel fishery targeting under exploited-black and blue rockfish stocks in the Western and Eastern GOA. At the same

time, the State will be able to more effectively manage potentially overexploited stocks in the Central GOA and increase their long-term yield. Finally, elimination of duplicative Federal regulations may ease the regulatory burden on small-vessel fishermen and reduce compliance costs. Transferring management of black and blue rockfish to the State may result in short-term restrictions on jig fishermen, but because both species are predominately taken in State waters, most fishermen must already comply with State regulations. Thus, it is not anticipated that the action would meet or exceed any of the criteria for a significant economic impact.

This proposed rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: November 20, 1997.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 679 is proposed to be amended as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, a definition of ''rockfish'' is added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

Rockfish means:

(1) For the Gulf of Alaska: Any species of *Sebastes* or *Sebastelobus* except *Sebastes melanops*, the black rockfish, and *Sebastes mystinus*, the blue rockfish.

(2) For the Bering Sea and Aleutian Islands Management Area: Any species of *Sebastes* or *Sebastelobus*.

* * * * *

3. In § 679.21, paragraph (e)(3)(iv)(D) is revised to read as follows:

§ 679.21 Prohibited species bycatch management.

* * * * *

(e)* * *

(3)* * *

(iv)* * *

(D) *Rockfish fishery*. Fishing with trawl gear during any weekly reporting period that results in a retained aggregate amount of rockfish species that is greater than the retained amount of any other fishery category defined under this paragraph (e)(3)(iv).

* * * * *

4. In § 679.23, paragraph (d)(1) is revised to read as follows:

§ 679.23 Seasons.

* * * * *

(d)* * *

(1) *Directed fishing for trawl rockfish*. Directed fishing for rockfish with trawl gear is authorized from 1200 hours, A.l.t., on the first day of the third quarterly reporting period of a fishing year through 2400 hours, A.l.t., December 31, subject to other provisions of this part.

* * * * *

5. In § 679.50, paragraph (c)(2)(iv) is revised to read as follows:

§ 679.50 Groundfish Observer Program applicable through December 31, 1997.

* * * * *

(c)* * *

(2)* * *

(iv) *Rockfish fishery*. In a retained aggregate catch of rockfish that is greater than the retained catch of any other groundfish species or species group that is specified as a separate groundfish fishery under this paragraph (c)(2).

* * * * *

6. In Table 3 to part 679, the reference to footnote 1 and footnote 1 are removed, and footnotes 2 and 3 are redesignated footnotes 1 and 2 respectively.

7. In Table 10 to part 679, footnote 2 is revised to read as follows:

Table 10 to part 679—Current Gulf of Alaska Retainable Percentages

* * * * *

[2] Aggregated Rockfish means any rockfish except in the Southeast Outside District where demersal shelf rockfish (DSR) is a separate category.

* * * * *

[FR Doc. 97–31583 Filed 12–1–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 62, No. 231
Tuesday, December 2, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

November 25, 1997.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (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 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 should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Department Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Marketing Service

Title: Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West, M.O. 985.
OMB Control Number: 0581–0065.
Summary of Collection: Information is collected to nominate committee members, to determine compliance, to levy assessments and to prepare reports.
Need and Use of the Information: The information is used to regulate Marketing Order 985.
Description of Respondents: Business or other for-profit; Farms; Federal Government; State, Local or Tribal Government.
Number of Respondents: 264.
Frequency of Responses: Recordkeeping; Reporting: On occasion; Annually; Biennially.
Total Burden Hours: 195.

National Agricultural Statistics Service

Title: Cotton Ginnings.
OMB Control Number: 0535–0220.
Summary of Collection: Information collected includes bales of cotton ginned and to be ginned, lint cotton and cottonseed produced and cottonseed sold to oil mills.
Need and Use of the Information: The information is used to help prepare monthly and annual cotton production estimates and production cost estimates.
Description of Respondents: Business or other for-profit.
Number of Respondents: 11,610.
Frequency of Responses: Reporting: Semi-annually; Annually; September–January.
Total Burden Hours: 1,168.

Animal and Plant Health Inspection Service

Title: Request for Credit Account Approval for Reimbursable Services.
OMB Control Number: 0579–0055.
Summary of Collection: Information is collected from applicants for reimbursable inspection services.
Need and Use of the Information: The information is needed to support requests for credit accounts for reimbursable overtime and import/export services and to provide information to prepare billings for such services performed.
Description of Respondents: Business or other for-profit; Individuals or households; Not-for-profit institutions; Federal Government.
Number of Respondents: 480.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 120.

Rural Housing Service

Title: 7 CFR 1951–C, ''Offset of Federal Payments to USDA Borrowers''.
OMB Control Number: 0575–0119.
Summary of Collection: Borrowers may respond to administrative, salary, or IRS offset by a written request for records, a written offer to repay, or a written request for an approval.
Need and Use of the Information: The information will be used to promulgate the policies and procedures of the Federal Collection Act of 1996.
Description of Respondents: Individuals or households; Business or other for-profit; Farms.
Number of Respondents: 9,325.
Frequency of Responses: Reporting: On occasion.
Total Burden Hours: 5,488.

Donald Hulcher,
Departmental Clearance Officer.

[FR Doc. 97–31563 Filed 12–1–97; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[DA–97–15]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for Report Forms Under the Federal Milk Marketing Order Program.

DATES: Comments on this notice must be received by February 2, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact William F. Newell, Order Operations Branch, Dairy Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box

96456, Room 2753–S, Washington, D.C., 20090–6456; Telephone (202) 720–3869 or Fax (202) 720–4844.

SUPPLEMENTARY INFORMATION:

Title: Report Forms Under Federal Milk Orders (From Milk Handlers and Milk Marketing Cooperatives)

OMB Number: 0581–0032.

Expiration Date of Approval: May 31, 1998.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Federal Milk Marketing Order regulations authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), require milk handlers to report in detail the receipt and utilization of milk and milk products handled at each of their plants that are regulated by a Federal Order. The data are needed to administer the classified pricing system and related requirements of each Federal Order.

Formal rulemaking amendments to the orders must be approved in referenda conducted by the Secretary.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .87 hours per response.

Respondents: Milk Handlers and Milk Marketing Cooperatives.

Estimated Number of Respondents: 772.

Estimated Number of Responses per Respondent: 35.

Estimated Total Annual Burden on Respondents: 23,858 hours.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Office of the Deputy Administrator, USDA/AMS/Dairy Programs, Room 2968–S, P.O. Box 96456, Washington D.C. 20090–6456. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: November 25, 1997.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 97–31570 Filed 12–1–97; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Title I, P. L. 480 Agreements With the Private Trade

AGENCY: Commodity Credit Corporation.

ACTION: Notice.

SUMMARY: Commodity Credit Corporation (''CCC'') invites proposals for ''agricultural market development plans'' to be considered by CCC in connection with approval of agreements under Title I of the Agricultural Trade Development and Assistance Act of 1954, (''Pub. L. 480''). Agricultural market development plans must be submitted by developing countries or private entities in conjunction with agricultural trade organizations.

DATES: Comments on this notice must be received by February 2, 1997.

FOR FURTHER INFORMATION CONTACT: Director, Program Development Division, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4506, South Building, Washington, D.C. 20250; telephone: (202) 720–4221; Facsimile: (202) 690–0251.

SUPPLEMENTARY INFORMATION: Under Title I of Pub. L. 480, CCC finances, on concessional credit terms, the sale and exportation of agricultural commodities to developing countries. As a result of amendments made by the Federal Agriculture Improvement and Reform Act of 1996, Pub. L. 104–127, CCC may now also enter into Title I, Pub. L. 480 agreements with private entities. When selecting agreements to be entered into under Title I, Pub. L. 480, whether with a developing country or private entity (hereafter ''participant''), CCC must give priority to agreements providing for the export to developing countries that:

(1) Have the demonstrated potential to become commercial markets for competitively priced United States agricultural commodities;

(2) Are undertaking measures for economic development purposes to improve food security and agricultural development, alleviate poverty, and promote broad-based equitable and sustainable development; and

(3) Demonstrate the greatest need for food.

Section 102(c)(2) of Pub. L. 480 provides that CCC shall consider a developing country for which an agricultural market development plan has been approved as having the demonstrated potential to become a commercial market. The purpose of this Notice is to invite interested parties to submit agricultural market development plans to CCC for its consideration in selecting Title I, Pub. L. 480 agreements. In order to be considered, an agricultural market development plan must be submitted by a developing country or private entity in conjunction with an ''agricultural trade organization.'' An agricultural trade organization is a non-profit organization that promotes the sale and export of U.S. agricultural commodities. The terms ''agricultural commodities'' and ''developing country'' are defined in section 402 of Pub. L. 480. The agricultural market development plan must describe a project or program for the development and expansion of a commercial market for a United States agricultural commodity in a developing country, and the economic development of the country. Local currency realized from the sale of commodities received by a participant may be used to fund the agricultural market development plan.

Interested parties desiring to submit an agricultural market development plan to CCC should submit an agricultural market development plan, or a concept paper to the Director, Program Development Division, Foreign Agricultural Service at the following address: Director, Program Development Division, Foreign Agricultural Service, U.S. Department of Agriculture, Room 4506, South Building, Washington, D.C. 20250.

The agricultural market development plans or concept papers should outline the following points that will ultimately be incorporated into a final agricultural market development plan:

- A description of the project or program for the development and expansion of a commercial market for a U.S. agricultural commodity on a generic basis in a developing country, and the economic development of the country;
- An indication of funding sources to implement the project or program, *e.g.*, private industry or host government funds, in addition to local currency sales proceeds;
- Whether CCC funds would be necessary for reimbursement of administrative costs incurred by agricultural trade organizations in implementing and administering agricultural market development plans (CCC will not provide funds for

administrative costs incurred in connection with the development of an agricultural market development plan at any stage of its development.);

- A results-oriented means of measuring the success of the project or program; and
- A plan for graduating the project or program away from the use of any federal funds.

In addition to the above items, an agricultural market development plan or concept paper should also include information regarding:

- Credit terms that may be desired by a participant in connection with the underlying Title I, Pub. L. 480 agreement;
- The agricultural commodity to be purchased;
- The administrative capabilities of the agricultural trade organization to implement an agricultural market development plan;
- If the participant is a private entity, a description of security to be provided CCC to support repayment to CCC of the financing extended;
- A description of any other organizations that will be used in completing the project or program and how such organizations will be used;
- A planned budget summary of funds or commodities used in lieu of funds, in support of the project or program.

Interested parties have considerable latitude to exercise creativity in constructing proposals. In evaluating project proposals, CCC will consider the following factors:

- The organizational ability of the participant to complete the project or program;
- The size, in both budget and scope, of the proposed project or program, and the level of U.S. and private resources available;
- Anticipated cost to CCC in terms of initial financing and repayment terms;
- The likelihood of the market becoming a commercial market for U.S. agricultural commodities.

CCC will notify interested parties as to whether it determines that the submission describes a desirable agricultural market development plan and, if so, work with the organization to develop a final plan. After CCC approval of a final agricultural market development plan, CCC will develop and implement a Title I, Pub. L. 480 agreement with the participant designated in the plan. The Title I, Pub. L. 480 agreement will incorporate a requirement to use local currency proceeds to implement the plan.

Signed at Washington D.C. on November 24, 1997.

Lon Hatamiya,

Administrator, Foreign Agricultural Service and Vice President, Commodity Credit Corporation.

[FR Doc. 97–31480 Filed 12–1–97; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Grain Inspection, Packers and Stockyards Administration.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 35), Grain Inspection, Packers and Stockyards Administration (GIPSA) is announcing an opportunity for the public to comment on its intention to request an extension for a currently approved information collection. The information collection is used to determine whether a State's central filing system for notifying farm product buyers of liens on farm products can be certified by the Secretary.

DATES: Comments on this notice must be received by February 2, 1998 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Gerald Grinnell, Industry Analysis Staff, GIPSA, USDA, STOP 3647, 1400 Independence Avenue SW., Washington, DC 20250–3647 or FAX 202 690–1266, telephone: 202 720–7455.

SUPPLEMENTARY INFORMATION: Under Section 1324 of the Food Security Act of 1985 (Act) (7 U.S.C. 1631), States implementing central filing systems for notification of liens on farm products must have such systems certified by the Secretary of Agriculture as being in compliance with the Act. GIPSA has been delegated responsibility for certifying such systems. The information collection being submitted for extension is used by GIPSA to determine whether a State's central filing system can be certified. Nineteen States currently have certified central filing systems.

Title: ''Clear Title'' Regulations to implement section 1324 of the Food Security Act of 1985.

OMB Number: 0580–0016.

Expiration Date of Approval: March 31, 1998.

Type of Request: Intent to extend a currently approved information collection.

Abstract: The information is needed to carry out the Secretary's responsibility for determining whether a State's central filing system for notification of buyers of farm products of any mortgages or liens on the products meets certification requirements under section 1324 of the Food Security Act of 1985.

Estimate of Burden: Public reporting and recordkeeping burden for this collection of information is estimated to average 12 hours per response.

Respondents: States seeking certification of central filing systems to notify buyers of farm products of any mortgages or liens on the products.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimated Total Annual Burden on Respondents: 12.

Copies of this information collection can be obtained from Cathy McDuffie, the Agency Support Services Specialist, at (301) 734–5190.

Comments: 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 will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or forms of information technology. Comments may be sent to: Gerald Grinnell, Industry Analysis Staff, GIPSA, USDA, STOP 3647, 1400 Independence Avenue SW., Washington, DC 20250–3647 or FAX 202–690–1266, telephone: 202 720–7455.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done at Washington, DC this 25th day of November 1997.

James R. Baker,

Administrator.

[FR Doc. 97–31565 Filed 12–1–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

United States Standards for Whole Dry Peas, Split Peas, and Lentils

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice.

The Grain Inspection, Packers and Stockyards Administration (GIPSA) is revising the voluntary United States Standards for Whole Dry Peas, Split Peas, and Lentils by eliminating the classes Persian and Mixed lentils and establishing a new class, Miscellaneous peas, and a new grading factor for lentils, Inconspicuous Admixture. GIPSA is changing these standards to facilitate the marketing of peas and lentils.

Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture ''to develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices. . . .'' The Grain Inspection, Packers and Stockyards Administration (GIPSA) is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities and makes copies of official standards available upon request.

The Grain Inspection, Packers and Stockyards Administration (GIPSA) published a notice in the **Federal Register** on August 15, 1997 (62 FR 43695), that it was proposing to eliminate the classes Persian and Mixed lentils, and to establish a new class, Miscellaneous peas, and a new grading factor for lentils, Inconspicuous Admixture.

GIPSA received no comments in response to that notice.

Since these changes to the standards were recommended and reviewed by the affected trade and are consistent with current practices in the trade, they will become effective on August 1, 1998, the beginning of the next marketing season.

The United States Standards for Whole Dry Peas, Split Peas, and Lentils do not appear in the Code of Federal Regulations but are maintained by the U.S. Department of Agriculture. The revised United States Standards for Whole Dry Peas, Split Peas, and Lentils are available either by accessing GIPSA's Home Page on the Internet at: www.usda.gov/gipsa/strulreg/standard/beans or by contacting the Audiovisual, Regulatory and Training Staff, GIPSA, USDA, STOP 3649, 1400 Independence Avenue, SW., Washington, DC 20250–3649; telephone (202) 720–1734; FAX (202) 720–4628.

Authority: 7 U.S.C. 1621 *et seq.*

Dated: November 25, 1997.

James R. Baker,

Administrator.

[FR Doc. 97–31564 Filed 12–1–97; 8:45 am]

BILLING CODE 3410–EN–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 12:30 p.m. on Wednesday, December 17, 1997, at the Providence Marriott Hotel, One Orms Street, Providence, Rhode Island 02096. The purpose of the meeting is for the Committee to plan for a future briefing on the project concept, ''An Examination of the Impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on Legal Immigrants in Rhode Island.''

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Robert Lee, 401–863–1693, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 19, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–31477 Filed 12–1–97; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 4:00 p.m. on Wednesday, December 17, 1997, at the Library of Virginia, 800 East Broad Street, Richmond, Virginia 23221. The purpose of the meeting is (1) to welcome new members and returning members; (2) present an administrative orientation and report on the status of the Commission and its State Advisory Committees; and (3) discuss a draft report of its project, ''The Treatment of Blacks on the Peninsula.''

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Roger A. Galvin, 703–838–0083, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 19, 1997.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 97–31476 Filed 12–1–97; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Reveiw

ACTION: Notice of Application to Amend Certificate.

SUMMARY: The Office of Export Trading Company Affairs (''OETCA''), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export

Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1800H, Washington, D.C. 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the certificate. Comments should refer to this application as ''Export Trade Certificate of Review, application number 95–2A006.''

The Water and Wastewater Equipment Manufacturers Association (''WWEMA'') original Certificate was issued on June 21, 1996 (61 FR 36708, July 12, 1996), and previously amended on May 20, 1997 (62 FR 29104). A summary of the application for an amendment follows.

Summary of the Application

Applicant: Water and Wastewater Equipment Manufacturers Association (''WWEMA''), 101 E. Holly Avenue, Suite 14, Sterling, Virginia 22170.

Contact: Randolph J. Stayin, Partner.

Telephone: (202) 289–1313.

Application No.: 95–2A006.

Date Deemed Submitted: November 26, 1997.

Proposed Amendment: WWEMA seeks to amend its Certificate to:

1. Add the following company as a new ''Member'' of the Certificate within the meaning of Section 325.2(1) of the Regulations (15 CFR 325.2(1)): Conservatek Industries, Inc. of Conroe, Texas;

2. Delete ABB Kent Meters, Inc. of Ocala, Florida and Galaxy Environmental Corporation of Warminster, Pennsylvania as Members of the Certificate; and

3. Change the listing of the company name for the current Member ''Capital Controls Co., Inc.'' to the new listing ''The Capital Controls Group''.

Dated: November 26, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 97–31543 Filed 12–1–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. # 112497C]

Marine Mammals; Permit No. 917 (P774#2)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Scientific research permit amendment.

SUMMARY: Notice is hereby given that a request for amendment of scientific research permit no. 917 submitted by The Northeast Fisheries Science Center, National Marine Fisheries Service, 166 Water Street, Woods Hole, MA 02543–1097, has been granted.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Northeast Region, One Blackburn Drive, Gloucester, MA 01930–2298 (508/281–9250).

SUPPLEMENTARY INFORMATION: On September 17, 1997, notice was published in the **Federal Register** (62 FR 48822) that an amendment of permit no. 917, issued May 12, 1994 (59 FR 25892), had been requested by the above-named organization. The original permit authorized a number of studies on several cetacean species as well as gray and harbor seals in the northeastern U.S. and Canadian waters over a five-year period. The research activities include: vessel surveys, aerial surveys and photogrammetry, photo-identification studies, and the collection of biopsies. The research also includes import and export of cetacean tissue samples taken via projectile dart for genetic analyses. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The permit was amended to authorize the increased number of biopsy samples to be collected from 25 to 50 annually from humpback whales, and 25 to 100 annually from common dolphins (*Delphinus delphis*), Atlantic white-sided dolphins (*Lagenorhynchus acutus*), bottlenose dolphins (offshore stock, *Tursiops truncatus*), and striped dolphins (*Stenella coeruleoalba*).

Issuance of this amendment, as required by the ESA was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: November 24, 1997.

Ann D. Terbush, Chief,

Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–31581 Filed 12–1–97; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 22, 1997.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31687 Filed 11–28–97; 11:24 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Wednesday, December 17, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31688 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 19, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31689 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 12, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31690 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11:00 a.m., Friday, December 5, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31691 Filed 11–28–97; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 15, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31692 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Monday, December 8, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Adjudicatory Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31693 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 3:00 p.m., Tuesday, December 16, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Oral Presentation by the Chicago Mercantile Exchange on the petition for exemptions for the dual trading prohibition.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31694 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 2:00 p.m., Thursday, December 18, 1997.

PLACE: 1155 21st St., N.W., Washington, D.C., Lobby Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Oral Presentation by the Chicago Board of Trade on the petition for exemptions from the dual trading prohibition.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97–31695 Filed 11–28–97; 11:42 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Commission Finding That Shortens Periods for Issuing News Release on Cadet Heaters

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission finds that certain heaters made by Cadet present a potential hazard to consumers and that, to protect the public health and safety, the customary manufacturer comment and notification periods preceding public release of certain information shall be shortened.

FOR FURTHER INFORMATION CONTACT: Renae Rauchschwalbe, Division of Corrective Actions, Office of Compliance, Consumer Product Safety Commission, Washington, DC 20207; telephone: (301) 504–0608 ext. 1362.

SUPPLEMENTARY INFORMATION:

A. Background

In October 1997, the Consumer Product Safety Commission and Cadet Manufacturing Company, Inc. issued a joint news release about the recall and retrofit of certain hazardous heaters. However, Cadet is not conducting the corrective action described in the news release. Therefore, the Commission has issued its own news release to inform consumers about the situation.

B. Statutory and Regulatory Provisions

Under section 6(b)(1) of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2055(b)(1), the Commission must provide manufacturers or private labelers with at least 30 days advance notice before disseminating information that identifies the manufacturer's product. In addition, section 6(b)(2) of the CPSA, 15 U.S.C. 2055(b)(2), requires at least 10 days additional notice if the manufacturer or private labeler claims that the information to be released is inaccurate. However, the Commission may provide lesser periods of notice, in both cases, if ''the Commission finds that the public health and safety requires a lesser period of notice.''

Under the CPSA and the Commission's regulations, the Commission must publish its ''public health and safety'' findings in the **Federal Register.** 16 CFR §§ 1101.23 (b) and (c) and 1101.25 (b) and (c). Disclosure of the information in the news release may be made concurrently with the filing of the Federal Register notice, and need not await its publication.

C. Commission Finding

The Commission finds that the public health and safety requires less notice than the periods of time specified in section 6(b) of the Consumer Product Safety Act. The Cadet heaters, which present to the public the serious risks of burns, smoke inhalation, and electrocution, should not be used until they are properly and adequately repaired. The onset of cold weather in most of the country underscores the urgency of informing consumers of the risks inherent in the use of these particular heaters. Therefore, the Commission authorizes issuance of a news release 24 hours after Cadet has been provided an opportunity to comment on it, and an additional 24 hours after Cadet has been notified that the Commission intends to issue the release over Cadet's accuracy objections (if Cadet submits comments and if the Commission, after evaluating the comments, decides to issue the release).

Dated: November 25, 1997.

Sadye E. Dunn,

Secretary of the Commission.

[FR Doc. 97–31500 Filed 11–26–97; 9:12 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

ACTION: Submission for OMB review; comment request.

SUMMARY: The Deputy Chief Information Officer, Office of the Chief Information Officer, invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before January 2, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, S.W., Room 5624, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Deputy Chief Information Officer, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: November 25, 1997.

Gloria Parker,

Deputy Chief Information Officer, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: REINSTATEMENT.

Title: 1999 National Study of Postsecondary Faculty (NSOPF—99): Faculty Questionnaire.

Frequency: One Time.

Affected Public: Individuals or households.

Reporting Burden and Recordkeeping:
Responses: 500.
Burden Hours: 391.

Abstract: The third cycle of the NSOPF is being conducted in response to a continuing need for data on faculty and instructors. The study will provide information about faculty in postsecondary institutions which is key to learning about the quality of education and research in these institutions. This study will expand the information about faculty and

instructional staff in two ways—allowing comparisons to be made over time and examining critical issues surrounding faculty that have developed since the first two studies. This clearance request covers field test and full scale activities for the second phase of the study—collection of information from a nationally representative sample of faculty and instructional staff at postsecondary institutions. This information, together with information collected in the first phase of the study (1850–0665) on the institutions themselves, will provide a source of descriptive, analytical, trend and policy relevant research on the way postsecondary education functions.

Office of the Under Secretary

Type of Review: NEW.

Title: Guidance for Reporting on Waivers Granted by the U.S. Department of Education.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs or LEAs.

Annual Reporting and Recordkeeping Hour Burden:

Responses: 20.

Burden Hours: 100.

Abstract: The Department is required by statute to collect reports from state education agencies on the uses of waivers in their states. The purpose of this guidance is to assist states in meeting the statutory requirements. Information from this collection will be used to monitor the progress of waiver recipients in improving teaching and learning and to inform the Department's annual report to Congress on waivers.

[FR Doc. 97–31495 Filed 12–1–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Intent To Solicit Comments for Financial Assistance Awards

AGENCY: Department of Energy.

ACTION: Notice of intent to solicit comments for financial assistance awards.

SUMMARY: The U.S. Department of Energy's Office of Geothermal Technologies, Advanced Drilling Systems Research Program, via the Idaho Operations Office (DOE–ID), is soliciting comments on its draft solicitation for cost-shared cooperative agreements, industry-government Research & Development projects to develop advanced drilling technologies and transfer the results to industry. These new developments can then be used by the U.S. geothermal industry to solve technical problems.

Comments regarding the draft solicitation are welcome from potential developers, owners and operators of geothermal facilities, including utilities, as well as from manufacturers, universities, and other non-industry groups.

DATES: Comments to the draft solicitation should be sent to the point of contact shown below by January 8, 1998. A copy of the draft solicitation in its full text can be found at the following internet address: *http://www.inel.gov/doeid/solicit.html* under Current Solicitations.

ADDRESSES: Comments regarding the draft solicitation or requests to be placed on the final solicitation mailing list shall be submitted in writing to: Ms. Peggy Brookshier, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1220, Idaho Falls, Idaho 83401–1563, e-mail: *brookspa@inel.gov*, Tele: (208) 526–1403, Fax: (208) 526–5964.

It is the agency preference that all submitted comments be received by e-mail. All written comment responses must include name, title, organization, address, phone number, fax number, e-mail address.

A **Federal Register** notice soliciting applications will be published at a later date upon issuance of the final solicitation.

FOR FURTHER INFORMATION CONTACT: Michael K. Barrett, Contracting Officer at (208) 526–5743 or Peggy Brookshier, Program Manager at (208) 526–1403; U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, Mail Stop 1221, Idaho Falls, Idaho 83401–1563.

SUPPLEMENTARY INFORMATION: The solicitation will be issued pursuant to 10 CFR 600.6(a) with no eligibility restrictions. The statutory authority for the issuance of this solicitation is Pub. L. 93–410, the Geothermal Energy Research, Development & Demonstration Act of 1974. The catalog of Federal Domestic Assistance Number for this program is 81.087.

This notice is also intended to promote the formation of industry partnerships, to stimulate interaction among potential participants, and to encourage organizations to investigate creative solutions. Funding for phase I will be available to support several awards for a period of approximately six to twelve months. Funding for phase II will be available to support one or more awards, for a period of 12–24 months. Applications may include Federally Funded Research and Development Centers, but only as lower tier participants with funding for their expected costs provided through their existing arrangements with the Government.

THE PURPOSE OF THIS NOTICE IS TO SOLICIT COMMENTS FOR INCLUSION IN THE FINAL ISSUANCE OF THE SOLICITATION. PLEASE DO NOT SEND APPLICATIONS AT THIS TIME.

Issued in Idaho Falls, ID, November 24, 1997.

B.G. Bauer,

Acting Director, Procurement Services Division.

[FR Doc. 97–31555 Filed 12–1–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Revised Draft Request for Proposals for Waste Acceptance and Transportation Services

AGENCY: Office of Civilian Radioactive Waste Management, U.S. Department of Energy.

ACTION: Request for Comments on a Revised Draft Request for Proposals.

SUMMARY: The Office of Civilian Radioactive Waste Management (OCRWM) is responsible under the Nuclear Waste Policy Act of 1982, as amended (NWPA), for accepting and transporting spent nuclear fuel (SNF) from commercial nuclear reactor sites to a federal facility for storage or disposal. The Standard Contract for Disposal of Spent Nuclear Fuel and/or High-Level Radioactive Waste (10 CFR part 961) details the arrangements between the Department of Energy (DOE) and the owners and generators of SNF (Purchasers) for the Department to accept the SNF at the Purchasers' sites for transport to a federal facility. Section 137(a)(2) of the NWPA requires the utilization of private industry to the ''fullest extent possible'' in the transportation of SNF.

OCRWM anticipates seeking competitive proposals for commercial SNF acceptance and transportation services, including the provision of storage equipment, in accordance with the final version of this revised draft Request for Proposals (RFP). In May 1996, OCRWM published in the **Federal Register** (61 FR 26508) and the *Commerce Business Daily*, a Request for Expression of Interest and Comments on a previous draft Statement of Work for these services. In July 1996, comments were received from interested parties at a presolicitation conference. In December 1996, OCRWM issued a draft

RFP that requested comments on all aspects of its proposed contracting approach embodied in that draft document. In February 1997, OCRWM held another presolicitation conference to receive additional comments and questions on the first draft RFP. The draft RFP has been extensively revised to reflect the public review and comments received as a result of these activities. Comments and suggestions included input from industry, utilities, and other interested parties.

DOE is seeking further comments on all aspects of the proposed contracting approach embodied in this revised draft RFP to use the innovative powers of the marketplace for meeting DOE's mission objectives.

DATES: Comments in response to this Notice should be received by the Department no later than February 13, 1998.

ADDRESSES: Written comments should be sent to: Contracting Officer, U.S. Department of Energy, 1000 Independence Avenue, SW, Attn: HR–542, Draft RFP Number DE–RP01–98RW00320, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Contracting Officer (DOE HR–542), (202) 426–0067 or (202) 426–0076, (fax) 202–426–0168.

SUPPLEMENTARY INFORMATION:

Comments

OCRWM is interested in receiving comments relating to this revised draft RFP, especially with regard to the following areas:

1. Contracting refinements concerning financing and business aspects, as in structuring the procurement to provide sufficient financial incentive and appropriate risk balancing mechanisms between DOE and contractors in order for industry to provide efficient waste acceptance and transportation services.
2. Mitigation of delays which may occur during Phase C that are beyond the control of the contractor and/or the Department.
3. Technical details associated with the logistics of waste acceptance and transportation services.
4. Potential extensions of the contract durations of Phase A and Phase B for up to one year each.
5. Mechanisms and refinements for economic price adjustments over the duration of the contract period.
6. Any other areas, terms or conditions that DOE should consider in formulating this acquisition.

DOE will consider and may utilize all information, recommendations, and suggestions provided in response to this Notice. Respondents should not provide any information that they consider to be privileged or confidential or which the respondent does not want disclosed to the public. DOE does not intend to respond to comments, either to individual commentors or by publication of a formal Notice. Several RFP reference documents have been placed in the DOE Forrestal Building Public Reading Room that are listed in the revised draft RFP. Also, copies of all comments received as a result of this notice will be placed in the DOE Public Reading Room at the end of the comment period, as were copies of previous comments received on the December 1996 draft RFP. Each submittal should consist of one original and three photocopies.

This Notice should not be construed as: (1) a commitment by the Department to enter into any agreement with any entity submitting comments in response to this Notice, (2) a commitment to issue any RFP concerning the subject of this Notice, or (3) an RFP.

DOE anticipates that the revised draft RFP will be available on the internet within two weeks of the date of this Notice on the ''Current Business Opportunities at Headquarters Procurement Operations'' Home Page located at address http://www.pr.doe.gov./solicit.html. It will also be available on the OCRWM Home Page, Waste Acceptance, Storage and Transportation Section, located at http://www.rw.doe.gov/. Interested parties that do not have the electronic capability to download the revised draft RFP may submit a written request to the Contracting Officer at the address listed above. Offerors who have previously submitted written comments on the December 1996 draft RFP or placed their names on the mailing list at the OCRWM Spent Nuclear Fuel Transportation Workshop held on August 12–13, 1997, in Reston, Virginia, will be mailed a copy of the revised draft RFP.

Issued in Washington, DC, on November 24, 1997.

Lake H. Barrett,

Acting Director, Office of Civilian Radioactive Waste Management.

[FR Doc. 97–31554 Filed 12–1–97; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–80–000]

NorAm Gas Transmission Company, Notice of Request Under Blanket Authorization

November 20, 1997.

Take notice that on November 14, 1997, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP98–80–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) to abandon and construct certain facilities in Union County, Arkansas, under NorAm's blanket certificates issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

NorAm states that it would abandon 6,647 ft. of 2-inch plastic pipe on Line HM–2, 7,401 ft. of 2 to 8-inch coupled steel pipe on Line HM–1 and three inactive delivery taps. NorAm states further that it would reconfigure its delivery facilities to Arkla at Smackover, Arkansas and abandon deteriorated and unreliable facilities.

NorAm indicates that the estimated cost of the facilities to be abandoned is $49,721 and the estimated cost of the new facilities to relocate the delivery meter is $59,513.

No service, it is said, would be abandoned as a result of the proposal.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 97–31482 Filed 12–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–95–000]

NorAm Gas Transmission Company; Notice of Application

November 25, 1997.

Take notice that on November 19, 1997, NorAm Gas Transmission Company (NorAm), 1600 Smith Street, Houston, Texas, 77002, pursuant to Section 7(c) of the Natural Gas Act (NGA), filed an application with the Commission in Docket No. CP98–95–000 for a certificate of public convenience and necessity to upgrade and operate a compressor facility, located on NorAm's Line J, at its design horsepower level, in order to create additional capacity on Line J, all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Specifically, NorAm proposes to operate the Solar Centaur T–4700 turbine unit, which was recently installed at NorAm's existing Round Mountain Compressor Station located on Line J in Conway County, Arkansas, at its design capacity rather than the 4,000 horsepower at which it is currently operating.[1] NorAm states that the upgrade compressor, when operating at its design capability, will create approximately 3,100 MMBtu per day of additional capacity on Line J.

Any person desiring to be heard or to make any protest with reference to said application should, on or before December 16, 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 385.211 and 385.214) and the Regulations under the NGA (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. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. 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.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filings it makes with the Commission to every other intervenor in the proceeding, as well as an original and 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

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 NGA 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 NorAm to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31483 Filed 12–1–97; 8:45 am]

BILLING CODE 6717–01–M

[1] The original compressor was a T–4002 unit, and the operation of the new T–4700 compressor has been limited to the design capability of the original unit.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1982–017]

Northern States Power Company; Notice of Meeting to Discuss a Settlement Process for Relicensing Northern States Power Company's Lower Chippewa River Hydroelectric Projects

November 25, 1997.

On December 3, at 1:00 p.m. Central Standard Time, Commission staff from the Office of Hydropower Licensing will attend a meeting for the proposed relicensing of the Holcombe Hydroelectric Project and Northern States Power Company's other lower Chippewa River hydroelectric projects. The meeting will be held at Northern States Power Company's Western Avenue Service Center, located at 1400 Western Avenue in Eau Claire, WI.

The purpose of this meeting is to discuss a settlement process and to organize a negotiation team.

For further information, please contact Mark Pawlowski at (202) 219–2795, or Lloyd Everhart at 715–839–2692.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31484 Filed 12–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2000–010]

Power Authority of the State of New York; Notice of 1998 Schedule of Meetings To Discuss Settlement for Relicensing of the St. Lawrence–FDR Power Project

November 25, 1997.

The establishment of the Cooperative Consultation Process (CCP) Team and the Scoping Process for relicensing of the St. Lawrence–FDR Power Project was identified in the NOTICE OF MEMORANDUM OF UNDERSTANDING, FORMATION OF COOPERATIVE CONSULTATION PROCESS TEAM, AND INITIATION OF SCOPING PROCESS ASSOCIATED WITH RELICENSING THE ST. LAWRENCE–FDR POWER PROJECT issued May 2, 1996, and found in the **Federal Register** dated May 8, 1996, Volume 61, No. 90, on page 20813.

The following is a list of the 1998 schedule of meetings for the CCP Team

and Subcommittee to continue settlement negotiations. The subcommittee will forward any tentative settlement agreements to the CCP Team for discussion. The meetings will be conducted at the New York Power Authority's (NYPA) Robert Moses Powerhouse, at 10:00 a.m., located in Massena, New York.

1. The CCP Team will meet: January 30, 1998, April 21–22, 1998, May 28–29, 1998, and June 23–24, 1998.

2. The Ecological Subcommittee will meet: January 15–16, 1998, February 27, 1998, March 28, 1998, April 20, 1998, and May 27, 1998.

3. The Land Management and Recreation Subcommittee will meet: January 28, 1998, February 26, 1998, and March 25, 1998.

4. The Socioeconomic Subcommittee will meet: January 29, 1998, February 25, 1998, and March 24, 1998.

If you would like more information about the CCP Team and the relicensing process, as well as the subcommittees, please contact any one of the following individuals:

Mr. Thomas R. Tatham, New York Power Authority, (212) 468–6747, (212) 468–6172 (fax), EMAIL.Ytathat@P3GATE.USA.COM

Mr. Keith Silliman, New York State Dept. of Environmental Conservation, (518) 457–0986, (518) 457–3978 (fax), EMAIL:Silliman@ALBANY.NET

Mr. Thomas Russo, Ms. Patti Leppert-Slack, Federal Energy Regulatory Commission, (202) 219–2700 (Tom), (202) 219–2767 (Patti), (202) 219–0205 (fax), EMAIL: Thomas.Russo@FERC. FED. US, EMAIL: Patricia.LeppertSlack@FERC. FED. US

Further information about the NYPA and the St. Lawrence-FDR Power Project can be obtained through the Internet at http://www.stl. nypa.gov/index.html. Information about the Federal Energy Regulatory Commission can be obtained at http://www. ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31485 Filed 12–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–344–000]

Texas Gas Transmission Corporation; Notice of Informal Settlement Conference

November 25, 1997.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, December 10, 1997, at 10:00 a.m. and Thursday, December 11, 1997, at 10:00 a.m., at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purposes of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Kathleen M. Dias at (202) 208–0524 or Michael D. Cotleur at (202) 208–1076.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31481 Filed 12–1–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–55–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

November 24, 1997.

Take notice that on November 20, 1997, Transwestern Pipeline Company (Transwestern) submits for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective on December 20, 1997:

Eighth Revised Sheet No. 1
Fifth Revised Sheet No. 1A
Third Revised Sheet No. 116
First Revised Sheet No. 116A
First Revised Sheet No. 116B
First Revised Sheet No. 116C
Second Revised Sheet No. 117
First Revised Sheet No. 117A
First Revised Sheet No. 117B
Second Revised Sheet No. 118
First Revised Sheet No. 119A
Fifth Revised Sheet No. 126
Fourth Revised Sheet No. 127
Seventh Revised Sheet No. 128
Fifth Revised Sheet No. 129
First Revised Sheet No. 129A
Second Revised Sheet No. 130
Second Revised Sheet No. 138
First Revised Sheet No. 139
Fourth Revised Sheet No. 140
First Revised Sheet No. 142
Third Revised Sheet No. 143

Transwestern states that these tariff sheets are being filed to simplify and shorten Transwestern's form of Service Agreement under Rate Schedules FTS–1 (including the Form D applicable to capacity release) and ITS–1.

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. All protests will be considered by the Commission in determining the appropriate action to be taken in this proceeding, but will not serve to make protestant a party to the proceeding. 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 inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–31541 Filed 12–1–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5930–9]

Agency Information Collection Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed and/or continuing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the

proposed information collections as described below.

DATES: Comments must be submitted on or before February 2, 1998.

ADDRESSES: U.S. EPA, 401 M St., S.W., Washington D.C. 20460. Interested persons may obtain a copy of the ICR without charge by calling Sandy Farmer of OPPE at (202) 260–2740.

FOR FURTHER INFORMATION CONTACT: NSPS subpart Ka: Everett Bishop, phone number, 202–564–7032; facsimile, 202–564–0050; or by e-mail at Bishop.Everett@epamail.epa.gov. NSPS subpart O and NSPS subpart UU: John Dombrowski, (202) 564–7036; Facsimile number, (202) 564–0009; E-mail address ''dombrowski.john@epamail.epa.gov''. NSPS subpart QQ: Ginger Gotliffe at (202) 564–7072 or via e-mail (gotliffe.ginger@epamail.epa.gov). NSPS subpart BBB: Maria Malave at (202) 564–7027 or via e-mail (MALAVE.MARIA@EPAMAIL. EPA.GOV.) or send a fax to (202) 564–0050 her attention. NESHAP subpart C and MACT subpart X: Jane Engert, (202) 564–5021; FAX (202) 564–0050; e-mail: engert.jane@epamail.epa.gov; NESHAP subpart F: Dawn Banks-Waller, (202) 564–7034; Facimile number, (202) 564–0009; Email address ''banks-waller.dawn@epamail. epa.gov''. MACT subpart W: Sally Sasnett at (202) 564–7074(phone); 202 564–0009 (Fax) or sasnett.s@epamail .epa.gov (e-mail).

NSPS Subpart Ka (Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.)

Supplementary Information:

Affected entities: Entities potentially affected by this action are those which have storage vessels containing petroleum liquids which have a storage capacity greater than 151,416 liters that were constructed, reconstructed or modified commencing after May 18, 1978 and prior to July 23, 1984.

Title: 40 CFR Part 60, NSPS Subpart Ka (Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.) OMB Control Number 2060–0121, expiring on 5/31/98.

Abstract: The EPA is charged under Section 111 of the clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

> * * * application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, or any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section ill(a) (1)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review and, if appropriate, revise such standards every 4 years. In addition, Section 114 (a) states that:

> * * * the Administrator may require any owner or operator subject to any requirement of this Act to, (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (D) provide such other information, as he may reasonably require.

In the Administrator's judgment, VOC emissions from VOL storage vessels cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS have been promulgated for this source category.

The control of emissions of VOC from storage vessels requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. VOC emissions are the result of evaporation of volatile organic liquids contained in the vessels. These standards rely on the enclosure of the tanks by fixed or floating roofs, or a vapor recovery system or equivalent control device.

(2) *Description and Practical Utility of the Information Collection Activity.* In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Generally, this information will be readily available because it is needed for plant records. As a result, there should be no additional burden from these requirements.

The format of the rule is that of an equipment standard. A performance test is not required because conducting a performance test is not feasible for floating roofs. Floating roofs are subject to visual inspections and periodic measurements. Flares must meet the General Provisions at section 60.18(f). The owner/operator must notify the date of construction or reconstruction no later than 30 days after such date, notify 60 days prior to a physical or operational change to an existing facility which may increase emissions, record occurrences of any start-up, shutdown or malfunction, record gap measurements: primary seals every five years, secondary seals every year, report within 60 days if seal gap measurements exceed regulatory limits (§ 60.112a), provide notice 30 days prior to seal gap measurement, provide information on vapor recovery system including emissions data, operations design and maintenance plan and record whenever the liquid is changed, type of petroleum liquid, period of storage and maximum true vapor).

Information generated by notifications, recordkeeping, and reporting requirements is used by the Agency to ensure that facilities affected by the NSPS continue to operate the control equipment used to achieve compliance. Notification of construction and startup indicates to enforcement personnel when a new affected facility has been constructed and therefore is subject to the standards. If the information were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by the new, modified, or reconstructed sources subject to the regulation. Under these circumstances, an owner or operator could elect to reduce operating expenses by not installing, maintaining, or otherwise operating the control technology required by the standards. In the absence of the recordkeeping requirements, the standards could be enforced only through continuous onsite inspection by regulatory agency personnel. Consequently, not collecting the information results in (1) greatly increased resource requirements for enforcement agencies or (2) the inability to enforce the standards.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

> (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
>
> (ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
>
> (iii) Enhance the quality, utility, and clarity of the information to be collected; and
>
> (iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other

technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Based upon the data the Agency had from the last ICR, the burden was estimated as follows: notifying and reporting roof gaps is 5 hours, recording primary seal measurements is 18 hours, recording secondary seal measurements is 90 hours and fill/refill records is 5 hours. The frequency of response is one time and 183 respondents are estimated to be subject to these requirements. The average annual O&M cost for complying with NSPS Subpart Ka is estimated to be $3,578 per respondent. 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.

NSPS Subpart O: Sewage Treatment Plant Incineration

Supplementary Information

Affected entities: Entities potentially affected by this action are those which incinerate wastes containing more than 10 percent sewage sludge (dry basis) produced by municipal sewage treatment plants or each incinerator which charges more than 1000 kg (2205 lb) per day municipal sewage sludge (dry basis) and which commenced construction or modification after June 11, 1973.

Title: NSPS Subpart O: Sewage Treatment Plant incineration, OMB Control Number 2060–0035, expires June 30, 1998.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60.150, et seq., Subpart O, New Source Performance Standards (NSPS) for sewage sludge treatment plant incinerators. This information notifies EPA when a source becomes subject to the regulations, informs the Agency if a source is in compliance when it begins operation, and informs the Agency if the source remained in compliance during any period of operation. In the Administrator's judgment, particulate matter emissions from sewage treatment plant incinerators cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, NSPS were promulgated for this source category.

The control of emissions of particulate matter from sewage treatment plant incinerators requires not only the installation of properly designed equipment, but also the operation and maintenance of that equipment. Particulate matter emissions from sewage treatment plant incinerators are the result of the physical and chemical characteristics of the sludge feed and fuel use, the excess air rate, the temperature profile within the incinerator, the pressure drop across the control device, and operating procedures. These standards rely on the reduction of particulate matter emissions by wet scrubbers.

In order to ensure compliance with these standards, adequate recordkeeping is necessary. In the absence of such information, enforcement personnel would be unable to determine whether the standards, that are protective of public health, are being met on a continuous basis, as required by the Clean Air Act.

The standards require recordkeeping to document information relating to the continuous monitoring of: the pressure drop across the emission control device, the amount of oxygen in the incinerator exhaust gases upstream of the emissions control device, devices which measure temperature profiles, feed rates and fuel uses (for sources over the .75 lb/ton input cutoff), and document information relating to the daily results of grab samples each day of incineration to determine moisture and volatile content of the sludge. Specifically, incinerators from which particulate emission rate measured during the performance test is less than or equal to 0.38 g/kg of dry sludge input (0.75 lb/ton), shall be exempted from continuously monitoring and recording the following: incinerator temperature, fuel flow, sludge feed rate, and sludge moisture and volatiles content.

The standards require initial notification reports with respect to construction, modification, reconstruction, startups, shutdowns, and malfunctions. The standards also require reports on initial performance tests.

Under the standard, the data collected by the affected industry is retained at the facility for a minimum of two (2) years and made available for inspection by the Administrator.

The information is recorded in sufficient detail to enable owners or operators to demonstrate compliance with the standards. This information is used to monitor particulate emissions directly, thus ensuring continuous compliance with the standards. The semiannual reporting requirement for scrubber pressure drop and average oxygen content provide good indications of a source's compliance status. There is a direct correlation between particulate removal efficiencies, pressure drop across the scrubber, and elevated oxygen levels in the incinerator exhaust gases. For this reason, the Agency is requiring all sludge incinerators to continuously monitor and record pressure drop across the scrubber and oxygen levels in the incinerator exhaust gases. Other incinerator operating variables such as fuel use, incinerator temperature, and sludge quality have also been found by EPA to affect measures of particulate removal efficiencies.

The Agency considers that information on continuous sludge feed rates is necessary to evaluate cases for potential periods of increased particulate emissions (as indicated by changes in either scrubber pressure drop or oxygen content). Furthermore, an increase in the sludge feed rate, especially accompanied by increased moisture and volatile content, requires a proportional increase in the specific fuel consumption. Hence, excess emissions could potentially occur when sludge feed rates are above specific fuel consumption rates. Therefore, should either the fuel use increase, incinerator temperature increase, sludge moisture content increase, or sludge volatile content decrease compared to the values observed at the time of a performance test, it is reasonable to suspect that increased emissions of particulate matter could result. By requiring this information, EPA or other agencies to which enforcement authority is delegated will be given the means to identify those facilities that should be more frequently subjected to on-site inspections. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the

agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Public reporting and recordkeeping burden for this collection is estimated to average 106 hours per respondent per year. It is estimated that approximately 72 sewage treatment plants that are equipped with sludge incinerators are currently affected by the NSPS. It is estimated that an additional 3 sources will become subject to the standard each year over the next three years. Therefore, the ICR will apply to an average of 72 + 5.0, or 77 sources over the next 3 years. For the purpose of this cost analysis, it is assumed that 50 percent of the 77 sewage sludge plants (includes estimated increase) would fall under the size threshold (.75 lb/ton sludge input) and thereby are exempt from monitoring incinerator temperature profiles, sludge feed rates, fuel use, and moisture and volatile contents of the sludge. Likewise, it is assumed that 50 percent of all the facilities would be required to file annual excess emissions reports. Reports of excess monitoring data are assumed to require 40 person hours per year to prepare. Reports indicating no excess would take 8 hours to prepare. Other assumptions used in estimating the burden hours include: there will be 18 plants (respondents) in 5 years equal to 3.6 respondents per year, and 20 percent of initial performance tests must be repeated due to failure. The burden to respondents has been minimized by requiring the collection of only that information which the Agency considers essential to ensure that sewage sludge incinerators subject to the NSPS are properly maintained and operated on a continuing basis. In addition, the monitoring, recordkeeping, and reporting requirements have been designed to reduce the incidence of reporting for plants that achieve compliance at emission rates well below the existing NSPS emission limit. Thus, those plants that are less likely to exceed the existing emission limit will be less burdened by the requirements. This estimate 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. The average annual burden to industry from these recordkeeping and reporting requirements is estimated at 8181.3 person-hours and $360,795.33. The specific frequency for some of the information collection activities within this request are: initial performance tests, 72 hrs/event; repeat performance tests (estimated at 20%), 72 hrs/event; notify of construction or reconstruction, 2 hrs/event; notify of anticipated start-up, 2 hrs/event; notify of actual startup, 2 hrs/event; notify of demonstration of CMS, 40 hrs/event; notify of initial performance test, 2 hrs/event; excess emissions reports, excess reports, 40 hrs/event; non-excess Reports, 8 hrs/event; records of startups, shutdowns, malfunctions, etc., 1.5 hrs/event; record operating parameters of CMS, non-exempted facilities, 1.5 hrs/event and exempted Facilities: 0.5 hrs/event.

NSPS Subpart QQ

Supplementary Information

Affected entities: Entities potentially affected by this action are those which are subject to NSPS Subpart QQ for the graphic arts industry, or each publication rotogravure printing press (not including proof presses) and for which construction, modification, or reconstruction commenced after October 28, 1980.

Title: NSPS Subpart QQ: Standards of Performance for the Graphic Arts Industry—Publication Rotogravure Printing, OMB number 2060–0105, expires April 30, 1998.

Abstract: The EPA is charged under Section 111 of the Clean Air Act, as amended, to establish standards of performance for new stationary sources that reflect:

* * * application of the best technological system of continuous emissions reduction which (taking into consideration the cost of achieving such emissions reduction, or any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated [Section 111(a)(l)].

The Agency refers to this charge as selecting the best demonstrated technology (BDT). Section 111 also requires that the Administrator review and, if appropriate, revise such standards every four years. In addition, Section 114(a) states that:

* * * the Administrator may require any owner or operator subject to any requirement of this Act to (A) establish and maintain such records, (B) make such reports, (C) install, use and maintain such monitoring equipment or methods (in accordance with such methods at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (D) provide such other information, as he may reasonably require.

In the Administrator's judgment, VOC emissions from the graphic arts industry, publication rotogravure printing industry cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, the New Source Performance Standards (NSPS) were promulgated for this source category. The NSPS for the Graphic Arts Industry were proposed on October 28, 1980, and promulgated on November 8, 1982. These standards apply to each publication rotogravure printing press (not including proof presses) for which construction, modification or reconstruction commenced after the date of proposal. Volatile organic compounds (VOCs) are the pollutants regulated under this Subpart. The standards prohibit the discharge into the atmosphere from any affected facility VOC equal to more than 16 percent of the total mass of VOC solvent and water used at that facility during any one performance averaging period.

Owners or operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction (40 CFR 60.7(a)(1)); notification of the anticipated and actual dates of startup (40 CFR 60.7(a)(2) and (a)(3)); notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate (40 CFR 60.7(a)(4)); and the notification of the date of the initial performance test (40 CFR 60.7). Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility (40 CFR 60.7(b)). Test reporting requirements apply only to the initial performance test. A written report must be furnished to the Administrator describing the results of the initial performance test (40 CFR 60.8(a), 60.433(e)(6)). These notifications, reports and records are required, in general, of all sources subject to NSPS.

Recordkeeping specific to publication rotogravure operations include: performance test records and all other information required by this part/subpart recorded in a permanent file suitable for inspection. The file shall be maintained for at least two years. (40 CFR 60.7(f), and 60.434 (a)). This other information includes: the amount of solvent and water used, solvent recovered, and estimated emission percentage for each performance averaging period. The performance averaging period for monitoring of proper operation and maintenance is a calendar month or 4 consecutive weeks. In order to calculate corrected volumes and mass quantities, temperatures and liquid densities determined during the most recent performance test are used, or the owner can measure temperature to determine actual liquid densities for each performance period.

All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional Office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act. 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.

This estimate is based on the assumption that there would be 45 new affected facility over the three years of the existing ICR and that there were approximately 165 sources in existence at the start of the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart QQ are summarized by the following information. The reporting requirements are as follows: Read Instructions (1 person-hour), Initial performance test (280 person-hours). It is assumed that 20% of tests are repeated due to failure. Estimates for report writing are: Notification of construction/reconstruction (2 person-hours), Notification of anticipated startup (2 person-hours), Notification of actual startup ((1 person-hour), Notification of initial performance test (2 person-hours), Report of performance test (included in reporting requirements listed above), Semiannual report (4 person-hours). Records must be kept for a period of two years. The average burden to industry over the three years of the current ICR from these recordkeeping and reporting requirements was estimated to be 8277 person hours.

NSPS Subpart UU: Asphalt Processing & Asphalt Roofing Manufacturers

Supplementary Information

Affected entities: Entities potentially affected by this action are each saturator and each asphalt storage facility at asphalt roofing plants, and each asphalt storage tank and each blowing still at asphalt processing plants, petroleum refineries, and asphalt roofing plants.

Title: NSPS Subpart UU: Asphalt processing and asphalt roofing manufacturers; EPA ICR #0661.05; OMB Control #2060–0002; expiring July 31, 1998.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 60, New Source Performance Standards (NSPS), Subpart UU. The respondents of the recordkeeping and reporting requirements are asphalt processing and roofing manufacturers (SIC Codes 2911, 2951, and 2952) which commenced construction, modification, or reconstruction after November 18, 1980, or May 26, 1981 as appropriate. Owners and operators of the affected facilities described must make the following one-time-only reports: notification of the date of construction or reconstruction; notification of the anticipated and actual dates of startup; notification of any physical or operational change to an existing facility which may increase the regulated pollutant emission rate; notification of demonstration of the continuous monitoring system (CMS); notification of the date of the initial performance test; and the results of the initial performance test. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports and records are required, in general, of all sources subject to NSPS.

Recordkeeping and reporting requirements specific to asphalt processing and roofing manufacturers consist mainly of temperature measurements. Owners or operators of affected facilities are required to continuously monitor and record the temperature of the gas at the inlet of the pollution control device if that control device is an electrostatic precipitator or a high velocity air filter. If the pollution control device is an afterburner, the owner or operator is required to continuously monitor and record the temperature in the combustion zone of the afterburner. If the control device is not one of the three mentioned above, the owner or operator is required to provide to the Administrator information describing the operating parameters, which indicate proper operation and maintenance of the device. The industry is exempted from periodic reporting of excess emissions.

Therefore, the recordkeeping requirements for asphalt processing and

roofing manufacturing consist of the occurrence and duration of any startup and malfunctions as described. They include the initial performance test results including information necessary to determine the conditions of the performance test, and performance test measurements and results; including temperature measurements. Records of startups, shutdowns, and malfunctions should be noted as they occur. Additional records to be maintained include all continuous monitoring system performance evaluations, all continuous monitoring system calibration checks, and adjustments and maintenance performed on these systems or devices. Any owner or operator subject to the provisions of this part shall maintain a file of these measurements, and retain the file for at least two years following the date of such measurements, maintenance reports, and records.

The reporting requirements for this industry currently include the initial notifications listed, and the initial performance test results. For performance test reports, owners or operators must report the operating temperature of the control device during the test. All reports are sent to the delegated State or local authority. In the event that there is no such delegated authority, the reports are sent directly to the EPA Regional office. Notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. The reviewing authority may then inspect the source to check if the pollution control devices are properly installed and operated and the standard is being met. Performance test reports are needed as these are the Agency's record of a source's initial capability to comply with the emission standard, and not the operating conditions under which compliance was achieved. If the information required by the standards were not collected, the Agency would have no means for ensuring that compliance with the NSPS is achieved and maintained by new, modified, or reconstructed sources subject to the regulations. Under these circumstances, an owner or operator could elect to reduce operating expenses by not installing, maintaining, or otherwise operating the control technology required by the standards. In the absence of the information collection requirements, compliance with the standards could be ensured only through continuous on-site inspections by regulatory agency personnel. Consequently, not collecting the information would result in either greatly increased expenditures of resources, or the inability to ensure compliance with the standards.

The information collected from recordkeeping and reporting requirements are also used for targeting inspections, and is of sufficient quality to be used as evidence in court.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: Public reporting and recordkeeping requirements over the next three years for this collection is estimated at 3033 person-hours per year. It is estimated that approximately 46 facilities are currently affected and that an additional 3 new plants will become subject to the standards over the next three years. It is assumed that the facility operates for 250 days per year. The average annual burden to industry over the next three years of the ICR is estimated to be $92,361.

The breakdown of this burden is as follows. The reporting requirements are estimated to be 89 person-hours per year, at a cost of $2716. This includes reading instructions (2 hrs.), creating and gathering information through the initial performance tests (48 hrs.), reference Method 9 test (9.6 hrs.), and repeating performance tests (9.6 hrs.). There are several areas under writing reports: notification of construction or reconstruction (4 hrs.), notification of anticipated start/up (4 hrs.), notification of actual start/up (4 hrs.), notification of initial performance test (4 hrs.), report of CMS demonstration (4 hrs.), and report of performance test (4 hrs.). Excess emission reports, applications, and surveys and studies are not applicable to this ICR.

The recordkeeping requirements are estimated to be 2944 person-hours per year, at a cost of $89,644. The burden in this area for reading instructions, planning and implementing activities are included under reporting requirements. The estimated time to enter information for recording startups, shutdowns, malfunctions, etc. is 69 hours. The estimated time to enter information for maintaining the records of operating the parameters of the continuous monitoring system (CMS) is 2875 hours. Development of the record system, training personnel, and conducting audits are not applicable to this ICR.

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.

NSPS Subpart BBB: Rubber Tire Manufacturing

Supplementary Information

Affected entities: Entities potentially affected by this action are facilities in rubber tire manufacturing plants: each undertread cementing operations, sidewall cementing operations, each tread end cementing operations, each bead cementing operations, each green tire spraying operations, each Michelin-A operations, each Michelin-B operations, and each Michelin-C-automatic operations, commencing construction, modification or reconstruction after January 20, 1993, the date of proposal.

Title: National Emission Standards (NSPS) for Rubber Tire Manufacturing, Part 60, Subpart BBB; OMB No. 2060–0156; EPA No. 1158.06; Expiration date April 30, 1998.

Abstract: In addition to the monitoring, recordkeeping and notification requirements specified in the General Provisions in § 60.7(a), (b), (d), (f), and (h), owners or operators are to comply with the requirements specified in NSPS Subpart BBB. These specific requirements are: Install,

calibrate, maintain, and operate a control device and monitor process parameters, as specified in § 60.544. Maintain records of operating parameters of monitoring device results for catalytic or thermal incinerators, or carbon absorbers; monthly VOCs use, number of days in compliance period, and other information needed to verify results of monthly tests; and of, formulation data or results of Method 24 analysis of water-based sprays containing less than 1.0 percent of VOC; as specified in § 60.545. Report on the initial compliance report that includes initial performance test results, monthly schedule to be use in making compliance determinations, design and equipment specifications and compliance method; the initial and annual formulation data or method 24 results to verify VOC content of water based-sprays; and on the semiannual reports of each monthly exceedance of applicable emission limit and monitoring device exceedance of acceptable limits; as specified in § 60.546.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The Agency computed the burden for each of the recordkeeping and reporting requirements applicable to the industry for the currently approved 1995 Information Collection Request (ICR). Where appropriate, the Agency identified specific tasks and made assumptions, while being consistent with the concept of burden under the Paper Reduction Act. A 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.

This estimate is based on the assumption that there would be 9 new affected facilities over the three years of the existing ICR and that there were approximately 26 sources in existence at the start of the three years covered by the ICR. The annual burden of reporting and recordkeeping requirements for facilities subject to Subpart BBB are summarized by the following information. The reporting requirements are as follows: Read Instructions (1 person-hour), Initial performance test (240 person-hours). It is assumed that 20% of tests are repeated due to failure. Estimates for report writing are: Notification of construction/reconstruction (2 person-hours), Notification of anticipated startup (2 person-hours), Notification of actual startup (2 person-hours), Notification of initial performance test (2 person-hours), Report of performance test (included in reporting requirements listed above), Semiannual exceedance report (8 person-hours), Annual report of formulation data/Method 24 results (2 person-hours), and Report of change in operating parameters (3 person-hours). We assume to estimate the reporting requirement burden that: (1) one-third of the sources report exceedance reports each month, (2) 80 percent of sources use water-based sprays and submit the annual report of formulation data, (3) 20 percent of all sources will have to report operational parameter changes, and (4) sources operate 250 days per year. Records must be kept for a period of two years. The average burden to industry over the three years of the current ICR from these recordkeeping and reporting requirements was estimated to be 10,914.6 person-hours.

NESHAP Subpart C: Beryllium

Supplementary Information

Affected entities: Entities potentially affected by this action are extraction plants, foundries, incinerators, propellent plants, and machine shops which process beryllium ore, beryllium, beryllium oxide, beryllium alloys, or beryllium-containing waste.

Title: National Emission Standards for Hazardous Air Pollutants (NESHAP) Subpart C—Beryllium (OMB Control Number 2060–0092; expiration date, 3/30/98).

Abstract: Beryllium and many of its compounds are considered to be among the most toxic and hazardous of the nonradioactive substances in industrial use. Consequently, EPA promulgated standards in 1973 to control airborne releases from affected facilities such that ambient air concentrations would not exceed 0.01 micrograms per cubic meter. Alteration of a beryllium product by burning, grinding, cutting, or other physical means can, if uncontrolled, produce a significant hazard in the form of dust, fumes, or mist. Approximately 200 operations, such as machine shops, ceramic plants, propellant plants, extraction plants, and foundries, comprise the major users of beryllium that could cause emission to the atmosphere. All sources known to have caused, or to have the potential to cause, dangerous levels of beryllium in the ambient air are covered by the Beryllium NESHAP. In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The only recordkeeping and reporting requirements under this regulation are associated with the initial performance test. This is a one-time-only demonstration at start-up that a source's emissions are below the limit of 10 grams of beryllium per 24-hour period. Such a demonstration is required only of new sources and those that have modified, reconstructed, or otherwise altered their operations. It is estimated that three such sources will come on line over the next three years (one facility per year). These new, modified, or reconstructed facilities must submit initial notifications of construction, anticipated date of start-up, actual start-up date, and the date and results of the initial performance test. It is expected that the notifications (total of 4) would take two hours each to prepare; the initial performance test would take 24 hours to conduct; and it would take 4 hours to complete the performance test report. The burden for each new source would therefore be 36 hours. The total annual cost associated with this information collection would be $1,292, based on a technical wage rate of $35.89 per hour ($17.09 per hour + 110% overhead). This estimate 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.

NESHAP Subpart F: Vinyl Chloride

Supplementary Information

Affected entities: Entities potentially affected by this action are exhaust gases and oxychlorination vents at ethylene dichloride (EDC) plants; exhaust gases at vinyl chloride monomer (VCM) plants; and exhaust gases, reactor opening losses, manual vent valves, and stripping residuals at polyvinyl chloride (PVC) plants. The standards also apply to relief valves and fugitive emission sources at all three types of plants.

Title: NESHAP Subpart F: National Emissions Standards for Hazardous Air Pollutants for Vinyl Chloride, OMB Control Number 2060–0071, expiration 6/30/98.

Abstract: The owner/operator must make the following one-time-only reports: application for approval of construction or modification; notification of startup; application of waiver of testing (if desired by source); application for equivalency (if desired by source); and an initial report. The initial report includes a list of the equipment installed for compliance, a description of the physical and functional characteristics of each piece of equipment, a description of the methods which have been incorporated into the standard operation procedures for measuring or calculating emissions, and a statement that the equipment and procedures are in place and are being used. Generally, the one-time-only reports are required of all sources subject to NESHAP. The record keeping and other reporting requirements, are specific to this NESHAP. To fulfill the record keeping requirement, sources detect leaks in accordance with an approved leak detection and elimination program, which generally consists of an area VC monitoring system and a portable hydrocarbon detector to find small leaks of VC and to pinpoint major VC leaks indicated by the area system. Action taken to repair leaks must also be recorded and kept on file. Excess stack emissions are generally recorded automatically by a continuous emission monitor. Reactor operation parameters (temperature and pressure) are also recorded automatically by a device that continuously monitors these parameters. Owners and operators are also required to submit quarterly reports of reactor opening losses (PVC plants only), stripping residuals (PVC plants only), and excess emissions. They are also required to report within 10 days of each relief valve discharge and manual vent valve discharge. The information generated by the monitoring, record keeping and reporting requirements described above is issued by the Agency to ensure that facilities affected by the NESHAP continue to operate the control equipment and use proper practices to achieve compliance with NESHAP. Notification startup indicates enforcement personnel when a new facility has been constructed and is thus subject to the standards. If information required by the standards were not collected, the Agency would have no means for ensuring that compliance with the NESHAP is achieved and maintained by the sources subject to the regulation. EPA uses this information to directly determine the compliance status of sources in lieu of on-site surveillance. The burden to respondents has been minimized by requiring the collection of only that information which the Agency considers essential that PVC, EDC, and VCM plants are properly maintained and operated on a continuous basis. Certain reports required by State or local agencies may duplicate information required by the recommended standards. In such cases, a copy of the report submitted to the State or local agency can be sent to the Administrator in lieu of the report required by the recommended standard. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 255 hours per reporting response and 1.25 hours for recordkeeping. To minimize the burden, much of the information the EPA would need to determine compliance is recorded and stored at the facility. Minimal reporting is necessary unless a violation occurs. Owners or operators of the affected facilities described must make the following one-time-only reports: application of construction or reconstruction, 2 hours; notification of the anticipated and actual dates of startup 2 hours; application for waiver of testing, 8 hours; application of equivalency, 40 hours; initial report, 24 hours; quarterly report, 50 hours; MVV/RVD report, 8 hours; initial performance test, 60 hours. It is assumed 20% of performance tests will be repeated due to failure. Owners or operators are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility.

Specific vinyl chloride recordkeeping includes records of reactor parameters and emissions, .25 hour. It is assumed

the plant operates 365 days a year. Records of leaks detected is one hour per week. Recordkeeping 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.

MACT Subpart W: Epoxy Resins and Non-Nylon Polyamides

Supplementary Information

Affected entities: Entities potentially affected by this action are those which manufacture polymers and resins from epichlorohydrin.

Title: National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production, Information Collection Request, OMB control number 2060–0290, expires July 31, 1998.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR Part 63.1–15, Subpart H, and 63.520 –528, Subpart W, hazardous air pollutants from process vents, storage vessels, waste water systems and equipment leaks. The standards require recordkeeping and reporting to document process information related to the source's ability to comply with the standards. This information is used by the Agency to identify sources subject to the standards and to insure that the maximum achievable control is being properly applied. Respondents are owners or operators of new and existing facilities that manufacture polymers and resins from epichlorohydrin. Source categories include basic liquid epoxy resin (BLR) producers and epichlorohydrin-modified non-nylon polyamide resins also known as wet strength resins (WSR).

Section 112 of the Clean Air Act, as amended in 1990, requires that EPA establish standards to limit emissions of hazardous air pollutants (HAPs) from stationary sources. The sources subject to these provisions emit the HAPs epichlorohydrin, and in lesser amounts, hydrochloric acid and methanol. In the Administrator's judgment, hazardous air pollutant (HAP) emissions in this industry cause or contribute to air pollution that may be reasonably anticipated to endanger public health or welfare. Therefore, NESHAPs have been promulgated for this source category as required under section 112 of the Clean Air Act.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: There are approximately thirteen facilities which must comply with these provisions, three are plants that produce basic liquid epoxy resins and ten are producers of wet strength resins. The growth rate for this industry is so low that no new plants are expected in the next three years. The average burden per facility per year is estimated to be 1483 hours. This includes 1050 hours for daily wastewater monitoring, and additional hours for record-keeping, reporting and notifications related to compliance status, leak detection and repair, startup/shutdown and malfunction events, process changes, emissions exceedances, and construction/reconstruction and startups. Because this is not a new information collection, it assumes that most facilities will have already developed the record-keeping and reporting mechanisms to maintain and report the required data except for process additions or changes.

MACT Subpart X: Secondary Lead Smelters

Supplementary Information

Affected entities: Entities potentially affected by this action are owners or operators of secondary lead smelters that operate furnaces to reduce scrap lead metal and lead compounds to elemental lead.

Title: National Emission Standards for Hazardous Air Pollutants (NESHAP)—Secondary Lead Smelters (OMB Control Number 2060–0296; expiration date March 30, 1998)

Abstract: The EPA is required under Section 112(d) of the 1990 Clean Air Act, to regulate emissions of 189 hazardous air pollutants (HAPs). The pollutants emitted from secondary lead smelters include both metal and organic HAPs identified in this list of 189 pollutants. In the Administrator's judgment, such emissions cause or contribute significantly to air pollution that may reasonably be anticipated to endanger public health. Consequently, NESHAP for this source category were promulgated on June 23, 1995.

Certain records and reports are necessary to enable the Administrator to identify sources subject to the standard and to ensure that the standard, which is based on maximum achievable control technology (MACT), is being achieved. The information will be used by Agency enforcement personnel to: (1) identify sources subject to the standard; (2) ensure that MACT is being properly applied; (3) ensure that emission control devices are being properly operated and maintained on a continuous basis to reduce HAP emissions from furnaces and process fugitive sources; and (4) ensure that fugitive dust controls are being fully implemented. In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other

forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: There are 23 sources currently subject to this standard, and no additional sources are anticipated during the next three years. Since most of the reporting requirements are one-time-only activities for new sources, these will not apply to the 23 existing facilities and consequently, have not been included in estimating the respondent burden for this ICR. The total annual burden for all recordkeeping and monitoring requirements plus the preparation of semi-annual reports is estimated to be 5,686 hours technical, 285 hours managerial, and 568 hours clerical. The total annual cost associated with this ICR is $231,561 or approximately $10,000 per facility per year. This estimate 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: November 25, 1997.

Elaine G. Stanley,

Director, Office of Compliance.

[FR Doc. 97–31575 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5960–6]

Proposed Settlement Agreement, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance, with section 113(g) of the Clean Air Act, as amended (Act), 42 U.S.C. 7413(g), notice is hereby given of a proposed partial consent decree, which was lodged with the United States District Court for the District of Columbia by the United States Environmental Protection Agency (EPA) on November 19, 1997, to address a lawsuit filed by the Sierra Club. This lawsuit, which was filed pursuant to section 304(a) of the Act, 42 U.S.C. 7604(a), concerns, among other things, EPA's alleged failure to meet a mandatory deadline under section 112(f)(1) of the Act, 42 U.S.C. 7412(f)(1). Section 112(f)(1) of the Act relates to a report to Congress on the risk to public health remaining, or likely to remain, from sources subject to hazardous air pollutant regulation under section 112 of the Act, 42 U.S.C. 7412, after the application of technology-based standards under section 112(d) of the Act, 42 U.S.C. 7412(d). The proposed partial consent decree provides that no later than March 24, 1998, the Administrator shall sign a notice of availability of the proposed report, and that no later than February 1, 1999, the Administrator shall sign the letter transmitting the final report to Congress.

For a period of thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed partial consent decree from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed partial consent decree if the comments disclose facts or circumstances that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, following the comment period, that consent is inappropriate, the final partial consent decree will establish the deadlines listed above for specific actions under section 112(f)(1) of the Act.

A copy of the proposed partial consent decree was lodged with the Clerk of the United States District Court for the District of Columbia on November 19, 1997. Copies are also available from Phyllis Cochran, Air and Radiation Division (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, (202) 260–7606. Written comments should be sent to Diane E. McConkey at the address above and must be submitted on or before January 2, 1998.

Dated: November 24, 1997.

Scott C. Fulton,

Acting General Counsel.

[FR Doc. 97–31571 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00514; FRL–5759–4]

Pesticide Environmental Stewardship Program Regional Workshops; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: The Pesticide Environmental Stewardship Program (PESP) is a voluntary partnership between the pesticide user community and EPA. EPA, in conjunction with the National Foundation for IPM Education, will hold two meetings in December to allow PESP members to discuss pesticide risk reduction issues of common interest and to exchange ideas on risk reduction techniques. Further, the meetings will serve as an introduction to PESP for organizations considering membership and for other parties interested in pesticide risk reduction. Both meetings are open to the public.

DATES: The meetings will be held on December 4, 1997, from 8:30 a.m. to 6 p.m and December 8, 1997, from 8:30 a.m to 6 p.m.

ADDRESSES: The meeting on December 4 will be held at Skamania Lodge, Stevenson, WA. The meeting on December 8 will be held at the University Club, University of California, Davis, CA.

FOR FURTHER INFORMATION CONTACT: By mail: Frank W. Ellis, Jr., Office of Pesticide Programs (7501W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th floor, 2800 Crystal Drive, Arlington, VA, 703–308–8107; e-mail: ellis.frank@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Begun in 1994 with 23 charter partners, PESP has grown to include 77 partners encompassing interests as diverse as almond growers in California, villages in the Northeast and utility rights-of-way managers throughout the country and 15 supporters encompassing interests as diverse as major food processors and stormwater management agencies. Partner organizations

represent pesticide users. Supporter organizations influence pesticide use or have an interest in pesticide issues.

In 1996, a National PESP Workshop was held in the Washington, DC area. At that workshop, many participants suggested that regional workshops be held to provide for more one-on-one contact between members in smaller groups. These workshops are in response to that request. The Agency anticipates holding additional regional workshops in the future.

Topics to be discussed at the workshops include: The development and implementation of risk reduction strategies; results from funded PESP projects; and the PESP grant process. There will be time for open discussion among the participants. A separate session will be held immediately following the general session for any organizations interested in joining the program.

List of Subjects

Environmental protection.

Dated: November 25, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, ffice of Pesticide Programs.

[FR Doc. 97–31735 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5930–7]

Notice Of Public Meeting on Drinking Water Analytical Methods

Notice is hereby given that the Environmental Protection Agency (EPA) is holding a public meeting on December 16, 1997, for the purpose of summarizing the findings and other information discussed during the Protozoan Method Development Workshop held on October 20–22 in Arlington, VA. EPA will present its programmatic and regulatory needs for improved protozoan methods, describe a possible approach for defining method performance criteria, present current status on the development of an improved near-term *Cryptosporidium* analytical method, and discuss possible methods that may be available for future regulations.

EPA is inviting all interested members of the public to attend the meeting, which will be held at RESOLVE, 1255 23rd Street, NW, Suite 275, Washington, D.C. For further information regarding agenda or other aspects of the meeting, members of the public are requested to contact Crystal Rodgers of EPA's Office of Ground Water and Drinking Water at (202) 260–0676 or by e-mail at rodgers.crystal@epamail.epa.gov.

Dated: November 25, 1997.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 97–31572 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5931–1]

Science Advisory Board; Notification of Public Teleconference Meeting

December 18, 1997.

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee, will conduct a public teleconference meeting on Thursday, December 18, 1997, between the hours of 12:00 and 2:00 pm, Eastern Time. The meeting will be coordinated through a conference call connection in Room 2103 of the Mall at the Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson at (202) 260–8414 by December 12, 1997.

In this meeting the Executive Committee plans to review reports from several of its Committees. Expected reports include: (1) *Environmental Engineering Committee (EEC)—a) Review of the Toxic Release Inventory; and b) Review of the Waste Research Strategy;* (2) *Ecological Processes and Effects Committee (EPEC)—Review of the Ecological Research Strategy.* Please contact Ms. Tillery-Gadson a week prior to the meeting to confirm that a given report will be reviewed.

Any member of the public wishing further information concerning the meeting or wishing to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official for the Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; telephone (202) 260–4126; FAX (202) 260–9232; and via the INTERNET at barnes.don@epamail.epa.gov. Copies of the relevant documents are available from the same source.

Dated: November 25, 1997.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 97–31577 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50836; FRL–5758–9]

Receipt of an Application for an Experimental Use Permit; Genetically Engineered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

SUMMARY: This notice announces receipt of an application (EUP No. 524-EUP-II) from Monsanto Company requesting an experimental use permit for a genetically engineered microbial plant-pesticide CryIA(c) expressed in tomato plant cells. The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before January 2, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under Unit II. of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Willie H. Nelson, PM 90, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 5th floor CS #1, 2805 Crystal Drive, Arlington, VA, telephone: (703) 308–8682, e-mail: nelson.willie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA has received an application from Monsanto Company of St. Louis Missouri for an experimental use permit (EUP). This EUP application is assigned EUP No. 524-EUP-II. The proposed experiment involves the field testing of the transgenic plant-pesticide CryIA(c) expressed in tomato plant cells. The program will involve field testing of a maximum of 500 acres of transgenic plantings in California, Florida, Georgia, and Puerto Rico. CryIA(c) is currently registered for use on cotton (EPA registration number 524–478). CryIA(c) is currently exempted from the requirements of a tolerance under 40 CFR 180.1154 and 180.1155; therefore, a tolerance exemption is not needed for this product.

Testing will be conducted in the following states: California, Florida, Georgia, and Puerto Rico. The purpose of this EUP is to test the efficacy of this active ingredient against target pests, conduct research for the better understanding of resistance management, development of IPM logistics, evaluate agronomic performance and continue plant breeding activities, and test marking potential of the fruit. The total acreage testing will be no more than 500, and only a maximum of 138.9 grams of the active ingredient CryIA(c) will be shipped, in the form of tomato seed and/or transplants.

Plantings grown for agronomic evaluation will be sold to processors. Seeds will be saved for future research or planting by Monsanto.

II. Public Record and Electronic Submissions

The official record for this action, as well as the public version, has been established for this action under docket control number ''OPP–50836'' (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official rulemaking record is located at the Virginia address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number ''OPP–50836.'' Electronic comments on this document may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection.

Dated: November 21, 1997.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 97–31550 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Submitted to OMB for Review and Approval

November 24, 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, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and 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 January 2, 1998. 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 Control No.: 3060–0192.

Title: Section 87.103, Posting station license.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for profit; individuals or households; not-for-profit institutions; state, local, or tribal governments.

Number of Respondents: 47,800.

Estimated Time Per Response: 0.25 hours.

Frequency of Response: Recordkeeping requirement.

Cost to Respondents: N/A.

Total Annual Burden: 11,950 hours.

Needs and Uses: The recordkeeping requirement contained in Section 87.103 is necessary to demonstrate that all transmitters in the Aviation Service are properly licensed in accordance with the requirements of Section 301 of the Communications Act of 1934, as amended. The information is used by the FCC Compliance and Information Bureau personnel during inspections and investigations to insure the particular station is licensed and operated in compliance with applicable rules, statutes, and treaties. In the case of aircraft stations, the information may be utilized for similar purposes by appropriate representatives of foreign governments when the aircraft is operated in foreign nations.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 97–31471 Filed 12–1–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL ELECTION COMMISSION

[Notice 1997–16]

Filing Dates for the California Special Election

AGENCY: Federal Election Commission.

ACTION: Notice of filing dates for special election.

SUMMARY: California has scheduled a special election on January 13, 1998, to fill the U.S. House seat in the Twenty-Second Congressional District held by the late Congressman Walter Capps. Should no candidate achieve a majority vote, a Special Runoff Election will be held on March 10, 1998, among the top vote-getters of each qualified political party, including qualified independent candidates.

Committees required to file reports in connection with the Special General Election on January 13 should file a 12-day Pre-General Election Report on January 2, 1998. Committees required to file reports in connection with both the Special General and Special Runoff Election must file a 12-day Pre-General Election Report on January 2, a Year-End Report on January 31, a Pre-Runoff Report on February 26, and a consolidated Post-Runoff & April Quarterly Report on April 9, 1998.

FOR FURTHER INFORMATION CONTACT:

Ms. Bobby Werfel, Information Division, 999 E Street, N.W., Washington, DC 20463, Telephone: (202) 219–3420; Toll Free (800) 424–9530.

SUPPLEMENTARY INFORMATION: All principal campaign committees of candidates who participate in the California Special General and Special Runoff Elections and all other political committees not filing monthly which support candidates in these elections shall file a 12-day Pre-General Report on January 2, 1998, with coverage dates from the close of the last report filed, or the day of the committee's first activity, whichever is later, through December 24, 1997; a Year-End Report on January 31, 1998, with coverage dates from December 25 through December 31, 1997; a Pre-Runoff Report on February 26, 1998, with coverage dates from January 1 through February 18, 1998; and a consolidated Post-Runoff & April Quarterly Report on April 9, 1998, with coverage dates from February 19 through March 31, 1998.

All principal campaign committees of candidates in the Special General Election *only* and all other political committees not filing monthly which support candidates in the Special General Election shall file a 12-day Pre-General Report on January 2, with coverage dates from the close of the last report filed, or the date of the committee's first activity, whichever is later, through December 24; a Year-End Report on January 31, with coverage dates from December 25 through December 31; and a Post-General Report on February 12, with coverage dates from January 1 through February 2, 1998.

All political committees not filing monthly which support candidates in the Special Runoff *only* shall file a 12-day Pre-Runoff Report on February 26, with coverage dates from the last report filed or the date of the committee's first activity, whichever is later, through February 18, and a consolidated Post-Runoff & April Quarterly Report on April 9, with coverage dates from February 19 through March 31, 1998.

CALENDAR OF REPORTING DATES FOR CALIFORNIA SPECIAL ELECTION

Report	Close of books [1]	Reg./cert. mailing date [2]	Filing date
If Only the Special General Is Held (01/13/98), Committees Must File:			
Pre-General	12/24/97	12/29/97	[3] 01/02/98
Year-End	12/31/97	01/31/98	01/31/98
Post-General	02/02/98	02/12/98	02/12/98
If Two Elections Are Held, But a Committee Is Involved Only in the Special General (01/13/98)			
Pre-General	12/24/97	12/29/97	[3] 01/02/98
Year-End	12/31/97	01/31/98	01/31/98
Committees Involved in the Special General (01/13/98) and Special Runoff (03/13/98) Must File			
Pre-General	12/24/97	12/29/97	[3] 01/02/98
Year-End	12/31/97	01/31/98	01/31/98
Pre-Runoff	02/18/98	02/23/98	02/26/98
Post-Runoff and April Quarterly [4]	03/31/98	04/09/98	04/09/98
Committees Involved in the Special Runoff (03/10/98) Only Must File			
Pre-Runoff	02/18/98	02/23/98	02/26/98
Post-Runoff and April Quarterly [4]	03/31/98	04/09/98	04/09/98

[1] The period begins with the close of books of the last report filed by the committee. If the committee has filed no previous reports, the period begins with the date of the committee's first activity.
[2] Reports sent by registered or certified mail must be postmarked by the mailing date; otherwise, they must be received by the filing date.
[3] The date has been adjusted because the computed date would have fallen on a Federal holiday.
[4] Committees should file a consolidated Post-Runoff and April Quarterly Report by the filing date of the Post-Runoff Report.

Joan D. Aikens,

Vice Chairman, Federal Election Commission.

[FR Doc. 97–31464 Filed 12–1–97; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962.

Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011279–005.

Title: Caribbean and Central America Discussion Agreement.

Parties:

Central America Discussion Agreement
Southeastern Caribbean Discussion Agreement
Hispaniola Discussion Agreement
U.S./Jamaica Discussion Agreement
Venezuela American Maritime Association
Caribbean Shipowners Association
Aruba Bonaire Curacao Liner Association
Inter-American Freight Conference
Venezuelan Discussion Agreement
Puerto Rico/Caribbean Discussion Agreement

Synopsis: The proposed modification changes the name of the Agreement to the Western Hemisphere Discussion Agreement, expands the Agreement's geographic scope to include South America, deletes the Panam discussion Agreement as a party, and adds both the Inter-American Freight Conference and the Venezuela Discussion Agreement as parties to the Agreement.

Agreement No.: 206–011596.

Title: APL/MOL/HMM Reciprocal Slot Exchange Agreement.

Parties:

American President Lines, Ltd. (''APL'')
Hyundai Merchant Marine Co., Ltd. (''HMM'')
Mitsui O.S.K. Lines, Ltd. (''MOL'')

Synopsis: The proposed Agreement authorizes HMM to use up to an annualized average of 6000 TEUs of space per week on vessels operated by either APL or MOL, and for APL and MOL to use up to an annualized average of 7000 TEUs per week on vessels operated by HMM in the trade between the Pacific Coast of the United States and the Far East. The parties may also interchange empty containers and agree upon sailing schedules, service frequency and the number, type and size of vessels to be used.

Agreement No.: 232–011597.

Title: CAGEMA Gulf Express Slot Charter Agreement.

Parties:

Caribbean General Maritime Ltd. (''CAGEMA'')
Compagnie Maritime D'Affretement (''CMA'')

Synopsis: The proposed Agreement would permit CAGEMA to charter space to CMA in the trade between U.S. South Atlantic and Gulf ports, and inland points via such ports, and Freeport, the Bahamas. The parties may also agree upon the type and size of vessels CAGEMA will operate in the trade as well as CAGEMA's sailing schedules, port rotation, and ports to be served. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: November 25, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–31490 Filed 12–1–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Frontier International Forwarders, 6073 N.W. 167 Street, Suite C–10, Miami, FL 33015, Officer: Leylani del Valle, President

Superior Freight Services, Inc., 2600 East 81st Street, Bloomington, MN 55425, Officers: Todd A. Nelson, President; Paul J. Goff, Vice President

Wimpex, Inc., 2983 Center Court, Eagan, MN 55121, Officers: Mark Culley, President; Chris Mady, Vice President

Globe Express Services, Ltd., 3801–F1 Beam Road, Charlotte, NC 28217, Officers: Edouard T. Rassie, President; Antoine G. Bikhazi, Vice President.

Dated: November 26, 1997.

Joseph C. Polking,

Secretary.

[FR Doc. 97–31562 Filed 12–1–97; 8:45 am]

BILLING CODE 6730–01–M

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 December 29, 1997.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106-2204:

1. Hoosac Financial Services, Inc., North Adams, Massachusetts; to become a bank holding company by acquiring 100 percent of the voting shares of North Adams Hoosac Savings Bank, North Adams, Massachusetts.

B. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. SNB Bancorp, Pine Plains, New York; to become a bank holding company by acquiring 100 percent of the voting shares of The Stissing National Bank of Pine Plains, Pine Plains, New York.

2. Millbrook Bank Systems, Inc., Millbrook, New York; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Millbrook, Millbrook, New York.

3. HUBCO, Inc., Mahwah, New Jersey; to merge with Poughkeepsie Financial Corp., Poughkeepsie, New Jersey, and thereby indirectly acquire Bank of The Hudson, FSB, Poughkeepsie, New Jersey.

C. Federal Reserve Bank of Minneapolis (Karen L. Grandstrand, Vice President) 90 Hennepin Avenue,

P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Glacier Bancorp, Inc., Kalispell, Montana; to acquire 100 percent of the voting shares of Glacier Bank, Kalispell, Montana, a *de novo* bank. In addition, an existing subsidiary of Glacier Bancorp, Inc., Glacier Bank, FSB, Kalispell, Montana, will be merged into Glacier Bank and Glacier Bank will become a state member bank.

Board of Governors of the Federal Reserve System, November 25, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31468 Filed 12–1–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 15, 1997.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Credit Commercial de France, S.A., Paris, France; to acquire International Finance Corporation, Paris, France, and thereby engage in extending credit and servicing loans, pursuant to § 225.28(b)(1) of the Board's Regulation Y; activities related to extending credit, pursuant to § 225.28(b)(2) of the Board's Regulation Y; financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; agency transactional services for customer investments, pursuant to § 225.28(b)(7) of the Board's Regulation Y; and investment transactions as principal, pursuant to § 225.28(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 25, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–31467 Filed 12–1–97; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission (FTC or Commission) has submitted information collection requirements associated with the Mail or Telephone Order Merchandise Trade Regulation Rule, 16 CFR Part 435, to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520). The FTC previously solicited comments from the public concerning these information collection requirements, and provided the information specified in 5 CFR 1320.5(a)(1)(iv). 62 FR 46498 (September 3, 1997). No comments were received. The current OMB clearance for these requirements expires on December 31, 1997. The FTC has requested that OMB extend the PRA clearance through December 31, 2000.

DATES: Comments must be filed by January 2, 1998.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, D.C. 20530, ATTN: Edward Clarke, Desk Officer for the Federal Trade Commission. Comments may also be sent to Elaine W. Crockett, Attorney, Office of the General Counsel, Room 598, 6th St. and Pennsylvania Ave., N.W. 20580, telephone: (202) 326–2453; fax: (202) 326–2477; e-mail ecrockett@ftc.gov

SUPPLEMENTARY INFORMATION:

Title: Mail or Telephone Order Merchandise Trade Regulation Rule, 16 CFR Part 435—(OMB Control Number 3084–0106)—Extension

The Mail Order Merchandise Rule was promulgated in 1975 in response to consumer complaints that many merchants were failing to ship mail order merchandise on time, failing to ship at all, or failing to provide prompt refunds for unshipped merchandise. The Rule took effect on February 2, 1976. A second rulemaking proceeding in 1993 demonstrated that the delayed shipment and refund problems of the mail order industry were also being experienced by consumers who ordered merchandise over the telephone. The Commission therefore amended the Rule, effective on March 1, 1994, to include merchandise ordered by telephone, including by fax or by computer through the use of a modem.

Generally, the Rule requires a merchant to: (1) have a reasonable basis for any express or implied shipment representation made in soliciting the sale; (2) ship within the time period promised, and if no time period is promised, within 30 days; (3) notify the consumer and obtain the consumer's consent to any delay in shipment; and (4) make prompt and full refunds when the consumer exercises a cancellation option or the merchant is unable to meet the Rule's other requirements.

Under the notice provisions in the Rule, a merchant who is unable to ship within the promised shipment time or 30 days must notify the consumer of a revised date and of his or her right to cancel the order and obtain a prompt refund. Delays beyond the revised shipment date also trigger a notification requirement to consumers. When the Rule requires the merchant to make a refund and the consumer paid by credit card, it also requires the merchant to notify the consumer either that any charge to the consumer's charge account will be reversed or that the merchant will take no action resulting in a charge.

Burden statement: In its 1995 PRA submission to OMB, the FTC estimated that 1,897 large businesses and 68,663 small businesses were covered by the Rule, for a total of 70,560 businesses. As stated in the agency's 1995 submission, the conditional nature of some of the Rule's requirements makes it difficult to quantify the exact PRA burden involved. Nonetheless, the agency estimated that, at that time, 70,560 businesses spent an average of 229.78 hours per year on compliance with the Rule, for a total estimate of 16,213,300 burden hours. In the September 3, 1997,

Federal Register notice, we calculated that established businesses would need 150 hours annually toward maintenance of associated computer programs. We have now reduced that figure further after determining that most maintenance and upkeep of computer systems would be part of ordinary business practice in the industry. The OMB regulation that implements the PRA defines ''burden'' to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2).

No provisions in the Mail or Telephone Order Merchandise Rule have been amended or changed in any manner. All of the Rule's requirements relating to disclosure and notification remain the same. We have, however, reduced the 1995 total burden estimate for the following reasons.

Most of the 1995 estimated burden hours were associated with one-time start up tasks associated with establishing implementing standard systems and processes. This is because the Rule had recently been amended (in 1994) to include the telephone order industry. The mail order industry, in contrast, had been subject to the basic provisions of the Rule since 1976. Thus, most of the 230 burden hours that we estimated per firm related to the development and installation of computer systems to handle telephone ordering, and not to the maintenance of such systems.

As noted above, the OMB regulation that implements the PRA defines ''burden'' to exclude any effort that would be expended regardless of any regulatory requirement. 5 CFR 1320.3(b)(2). In past rulemaking proceedings, industry trade associations and individual witnesses have testified that compliance with the Rule is now widely regarded by direct marketers as being good business practice. The Rule's notification requirements would be followed in any event by most merchants to meet consumer expectations with respect to timely shipment, notification of delay, and prompt and full refunds. Providing consumers with notice about the status of their orders encourages repeat purchase behavior that is essential to the survival of direct mail or telephone order businesses.

Also, the industry is highly automated; notices are produced mechanically and little labor is involved. Nonetheless, even for established businesses, there may be some burden attributable strictly to the existence of the rule. For example, some merchants rely on contractors to handle orders and must therefore monitor how the contractor complies with the Rule. This entails reviewing consumer complaints to determine whether appropriate delay notification is being provided. The Rule allows merchants to use as much or as little time as necessary to assure that notification and disclosure requirements are being met. Companies employ a broad range of energy, time, and resources for performing these tasks. Also, while established companies spend some time maintaining existing compliance systems, their expenditures are only a fraction of those by new businesses required to establish entirely new systems. An exact figure is difficult to quantify; however, based on staff's familiarity with the industry, we have determined that the average among the industry is unlikely to be more than 50 hours per year.

Staff responsible for the Rule have also estimated that approximately 1,000 additional companies have entered the market since 1995 (for a total of 71,560 incumbent firms) and that, due to escalating sales, approximately 1,000 new companies will enter the market during the coming year. We estimate that these 1,000 new companies will each expend 230 hours per year (the 1995 figure of 229.78 rounded to 230) to establish compliance measures associated with system start-up, although it could be argued once again that most of these efforts would be undertaken even absent the Rule. Nonetheless, we have estimated the total burden imposed by the disclosure and notification requirements at approximately 3,808,000 hours (1,000×230=230,000)+(71,560×50+3,578,000).

Debra A. Valentine,

General Counsel.

[FR Doc. 97–31728 Filed 12–1–97; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0221]

Proposed Collection; GSA Board of Contract Appeals Rules Procedure

AGENCY: GSA Board of Contract Appeals (GSBCA), GSA.

ACTION: Notice of request for public comments regarding reinstatement to a previously approved OMB clearance (3090–0221).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a reinstatement of a previously approved information collection requirement concerning GSA Board of Contract Appeals Rules Procedure. A request for public comments was published at 62 FR 49518, September 22, 1997. No comments were received.

DATES: Comment Due Date: January 2, 1998.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret Pfunder, Deputy Chief Counsel, GSA Board of Contract Appeals, (202) 501–0272.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget (OMB) to reinstate information collection, 3090–0221, concerning the GSA Board of Contract Appeals Rules Procedure. The GSBCA requires the information collected in order to conduct proceedings in contract appeals and petitions, and cost applications. Parties include those persons or entities filing appeals, petitions, and cost applications, and government agencies.

B. Annual Reporting Burden

Respondents: 86; *annual responses;* 86; *average hours per response:* .20; *burden hours:* 10.2.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: November 24, 1997.

Ida M. Ustad,

Deputy Associate Administrator, Office of Acquisition Policy.

[FR Doc. 97–31487 Filed 12–1–97; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the Genetics Subcommittee, National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is given of a meeting of the Genetics Subcommittee of the National Bioethics Advisory Commission. The subcommittee members will continue addressing issues concerning genetics and genetic testing. The meeting is open to the public and opportunities for statements by the public will be provided.

DATES: Tuesday, December 9, 1997, 7:30 a.m. to 3:30 p.m.

LOCATION: The subcommittee will meet at the Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) by Executive Order 12975 on October 3, 1995. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council and other entities on bioethical issues arising from the research on human biology and behavior, and in the applications of that research including clinical applications.

Tentative Agenda

The subcommittee will continue discussion on issues surrounding tissue samples including what they are, how they are collected and stored; the moral decisions involved in donation; religious, ethnic, and cultural differences in attitudes; and other related issues.

Public Participation

The meeting is open to the public with attendance limited by the availability of space. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below as soon as possible, prior to the meeting. The Chair of the subcommittee will reserve time for presentations by persons requesting an opportunity to speak. The order of speakers will be assigned on a first come first serve basis. Individuals unable to make oral presentations are encouraged to mail or fax their comments to the NBAC at least two business days prior to the meeting for distribution to the subcommittee members and inclusion in the record.

Persons needing assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, MSC–7508, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: November 25, 1997.

Henrietta D. Hyatt-Knorr,

Deputy Executive Director, National Bioethics Advisory Commission.

[FR Doc. 97–31463 Filed 12–1–97; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Notice of 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 special emphasis panel scheduled to meet during the month of December 1997:

Name: Health Care Policy and Research Special Emphasis Panel.

Date and Time: December 10–11, 1997, 8:00 a.m.

Place: Doubletree Hotel, 1750 Rockville Pike, Conference Room TBA, Rockville, Maryland 20852.

Open December 10, 1997, 8:00 a.m. to 8:30 a.m.

Closed for remainder of meeting.

Purpose: This Panel is charged with conducting the initial review of grant applications for research and demonstration projects on the use of measurements in improving the quality of health care. Applications are sought in three areas: (1) methods and measures to allow translation of scientific information about medical care into quality measures and strategies to improve clinical practice; (2) studies of the relationship between organizational change and quality measurement and improvement in health care; and (3) studies of the use of information derived from measurement about quality of care by consumers, patients, employers, providers, and insurers to make decisions.

Agenda: The open session of the meeting on December 10 from 8:00 a.m. to 8:30 a.m. will be devoted to a business meeting covering administrative matters and reports. During the closed sessions, the Panel will be reviewing and discussing grant applications dealing with health services research issues. In accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6), the Administrator, Agency for Health Care Policy and Research, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Sheila S. Simmons, Committee Management Officer, Agency for Health Care Policy and Research, Suite 400, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1452 ext. 1627.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: November 25, 1997.

John M. Eisenberg,

Administrator.

[FR Doc. 97–31589 Filed 12–1–97; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–05]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

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 for other forms of information technology. Send comments to Wilma Johnson, CDC Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Projects

1. National Exposure Registry (0923–0006)—Extension—The information collected is part of the Agency for Toxic Substances' on-going National Exposure Registry (NER)—a database composed of a listing of persons, along with health and demographic information, with documented exposure to selected toxic substances subregistries). The NER was

created in response to a Congressional Superfund mandate to create a registry of persons with exposure to hazardous substances and a registry of persons with illness or health problems as a result of exposure to hazardous substances. The mandate was created because there is little or no information available about the potential health effects of low-level, long-term exposure to hazardous substances on a general population—such as is found at waste sites. Unlike most occupationally exposed populations, this environmentally-exposed population has extremely vulnerable components such as pregnant women, the elderly, those with compromised health, and children.

Since the adverse health effects are not known, neither is the latency period for the potential health effects. Therefore, the NER is a longitudinal project: a baseline and biennial follow-ups that will continue until all parties involved agree the established criteria for ending that chemical specific subregistry have been met. The questionnaire is administered (usually in a personal interview) at baseline; the same questionnaire is administered (using computer assisted interviews) to each registrant longitudinally. The data is compared to national norms at each collection and intrafile comparisons are made over multiple collections. Other than their time to participate, there is no cost to respondents. The period requested is for 3 years.

Respondents	No. of respondents	No. of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Established Registrants	7,333	1	0.25	1,833
New Registrants	4,300	1	.5	2,150
Total				3,983

Dated: November 25, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–31533 Filed 12–1–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–05–98]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Office on (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received on or before January 2, 1998.

Proposed Projects

1. Health Hazard Evaluations/Technical Assistance and Emerging Problems (0920–0260)—Reinstatement—In accordance with its mandates under the Occupational Safety and Health Act of 1970 and the Federal Mine Safety and Health Act of 1977, the National Institute for Occupational Safety and Health (NIOSH) responds each year to approximately 400 requests for health hazard evaluations to identify potential chemical, biological, or physical hazards at the workplace. Approximately half of these requests require that NIOSH conduct a ''short-term'' field study to adequately address the issues raised by the requestor. Since 1970, more than 10,000 of these studies have been completed. The main purpose of these studies is to help employers and employees identify and eliminate occupational health hazards. Ninety-five percent of these investigations respond to specific requests for assistance from employers, employees, employee representatives, or other government agencies. The remaining investigations are short-term field investigations initiated by NIOSH because it received information that a chemical, biological, or a physical agent may be hazardous to workers. In these studies, NIOSH determines whether they warrant more detailed studies. Approximately 50% of the field investigations involve interviews or the administration of a questionnaire to the workers. Each questionnaire is specific to that worksite and its suspected diseases and/or hazards; however, questionnaires are derived from standard medical evaluation techniques. NIOSH distributes interim and final reports of the investigations, excluding personal identifiers, to requesters, employers, employee representatives, the Department of Labor (OSHA and MSHA), and, as appropriate, other state and federal agencies. Following the completion of field investigations, NIOSH plans to administer telephone follow-back questionnaires to employer and employee representatives at each site to assess program effectiveness and identify areas for improvement. Because of the large volume of investigations conducted each year, the need to quickly respond to requests for assistance, and the diverse nature of these investigations, NIOSH requests clearance for data collection in these investigations. The total annual burden hours are 4,095.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)
Employees (initial interviews)	4,200	1	.25
Employees (questionnaires, interviews)	5,250	1	.50
Employees (follow-back questionnaires)	420	1	.50
Employers (follow-back questionnaires)	420	1	.50

Wilma G. Johnson,

Acting Associate Director for Policy Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–31532 Filed 12–1–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Temporary Assistance for Needy Families (TANF) Tribal Plan.

OMB No.: 0970–0157.

Description: This information collection is authorized by section 412 of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act. It consists of an outline of how an Indian tribe's Temporary Assistance for Needy Families (TANF) program will be administered and operated. It will be used to determine whether the plan is approvable and that the Indian tribe is eligible to receive a TANF grant.

Respondents: Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	(1)
Number of Respondents	18
Number of Responses per Respondent	1
Average Burden Hours per Response	60
Total Burden Hours	1,080

1 Tribal Plan.

Estimated Total Annual Burden Hours: 1,080.

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, Attn: Ms. Wendy Taylor.

Dated: November 25, 1997.

Robert Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–31466 Filed 12–1–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Request for State Data to Determine the Tribal Family Assistance Grant Amount.

OMB No.: New request.

Description: This information collection will be used to request data from States that will be used to determine the amount of Tribal Family Assistance Grants. The data requested is the data required to be used by Section 412(a)(1)(B) of the Social Security Act, as amended by the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

Respondents: State Governments.

ANNUAL BURDEN ESTIMATES

Instrument	(1)
Number of respondents	18
Number of responses per respondent	1
Average burden hours per response	42
Total burden hours	756

1 Request.

Estimated Total Annual Burden Hours: 756.

Additional Information:

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, N.W., Washington, D.C. 20503, *Attn:* Ms. Kristie Guillory.

Dated: November 24, 1997.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 97–31469 Filed 12–1–97; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0260]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the information collection by January 2, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Mark L. Pincus, Office of Information Resources Management (HFA–80), Food and Drug Administration, 5600 Fishers Lane, rm. 16B–31, Rockville, MD 20857, 301–827–1471.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance:

Customer/Partner Satisfaction Surveys

Under section 903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 393), FDA is authorized to conduct research relating to regulated articles and to conduct educational and public information programs relating to the responsibilities of the agency. Executive Order 12862, entitled ''Setting Customer Service Standards,'' directs Federal agencies that ''provide significant services directly to the public'' to ''survey customers to determine the kind and quality of services they want and their level of satisfaction with existing services.'' FDA is seeking OMB

clearance to conduct a series of surveys to implement Executive Order 12862. Participation in the surveys will be voluntary. This request covers customer service surveys of regulated entities, such as food processors; cosmetic, drug, biologic and medical device manufacturers; consumers; and health professionals. The request also covers partner surveys of State and local governments.

FDA will use the information gathered through these surveys to identify strengths and weaknesses in service provided to customers and partners and to make improvements in it. The surveys will assess timeliness, appropriateness, accuracy of information, courtesy, and problem resolution in the context of individual programs.

In the **Federal Register** of July 15, 1997 (62 FR 37923), FDA invited comments on this proposed collection of information. FDA received no comments in response to this notice.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Type of Survey	No. of Respondents	Annual Frequency per Response	Hours per Response	Total Hours
Mail/telephone surveys	29,040	1	0.09	2,614
Total	29,040	1	0.09	2,614

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

These estimates are based on experience with other surveys FDA has conducted, and they have been adjusted downward since the July 15, 1997, notice because the agency plans to conduct fewer surveys than previously anticipated. In addition, the agency does not believe that focus groups will be necessary for effective implementation of Executive Order 12862.

Dated: November 23, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–31586 Filed 12–1–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget (OMB) for Reinstatement Approval under the Paperwork Reduction Act

ACTION: Notice.

SUMMARY: The collection of information listed below has been submitted to OMB for approval under the provisions of the Paperwork Reduction Act. Copies of the proposed information collection requirement, related forms, and explanatory material may be obtained by contacting the Service Information Collection Clearance Officer at the address listed below.

DATES: Comments must be submitted on or before January 2, 1998.

ADDRESSES: Comments and suggestions on the requirement should be sent directly to the Office of Information and Regulatory Affairs; Office of Management and Budget; Attention: Desk Officer for the Department of the Interior; 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.

FOR FURTHER INFORMATION CONTACT: Phyllis H. Cook, Service Information Collection Clearance Officer, 703/358–1943; 703/358–2269 (fax).

SUPPLEMENTARY INFORMATION: The Service has submitted the following information collection requirements to OMB for review and approval under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are invited on (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the collection of information; (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 appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The information collection requirements in this submission implement the regulatory requirements of the Endangered Species Act (16 U.S.C. 1539), the Migratory Bird Treaty Act (16 U.S.C. 704), the Lacey Act (18 U.S.C. 42–44), the Bald Eagle Protection Act (16 U.S.C. 668), the Convention on International Trade in Endangered Species of Wild Fauna and Flora, (CITES) (27 UST 108), the Marine Mammal Protection Act (16 U.S.C. 1374), and the Wild Bird Conservation Act of 1992, contained, or will be contained in Service regulations in Chapter I, Subchapter B of Title 50 of the Code of Federal Regulations (CFR). Common permit application and record keeping requirements have been consolidated in 50 CFR 13, and unique requirements of the various statutes in separate parts as identified below.

The Service has redesigned the standard license/permit application form 3–200 to assist persons in applying for Service permits issued under Subchapter B. Under the present clearance, the Service consolidated all requirements in one submission, and they were assigned OMB Approval Number 1018–0022, the Federal Fish and Wildlife License/Permit and Related Reports. In an attempt to take the application process more ''user friendly,'' and to aid the public in commenting on specific license/permit requirements without having to comment on the entire package, similar types of permits have been grouped together and numbered. The permits have been divided into four groups: migratory bird permits, law enforcement, endangered species and Office of Management Authority. The application to apply for Service permits issued under Subchapter B of 50 CFR, will still require completion of the Service form 3–200, which has been revised and renumbered and is now Service form 3–200–1. In addition to the permit application, attachments are often necessary to provide additional information required for each specific type of permit, and these attachments have been assigned numbers, e.g., 3–200–2.

The information to be supplied on the application form and the attachments will be used to review the application and allow the Service to make decisions, according to criteria

established in various Federal wildlife conservation statutes and regulations on the issuance, suspension, revocation, or denial of permits. The obligation to respond is, ''required to obtain a benefit.'' An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number. The following requirements are included in this submission:

1. *Native Endangered/Threatened Species—Incidental Take.* The regulations in 50 CFR 17.22[b][1] & [3] and 17.32[b][1] & [3], and the parts listed below, implement the Endangered Species Act (ESA), except for those provisions in the ESA concerning the Convention on International Trade in Endangered Species of Fauna and Flora, for which regulations are provided in Part 23 of this subchapter. The ESA provides for the protection of listed species through establishments of programs for their recovery and through prohibition of harmful activities.

The ESA also provides for a number of exceptions against ''take'' of listed species. The Federal regulations cited above have been promulgated to guide implementation of these exceptions to the ''take'' prohibitions through permitting programs. Form 3–200–56, was developed to facilitate collection of information required by these regulations.

Form 3–200–56 addresses applications and reporting requirements for Incidental Take Permits under Section 10[a][1][B] of ESA. These permits will allow ''take'' of listed species that is incidental to otherwise lawful non-federal actions. Take authorized under this permit program would otherwise be prohibited by the ESA.

2. *Native Endangered and Threatened Species—Recovery and Interstate Commerce.* Service form number 3–200–55 addresses application and reporting information requirements for Interstate Commerce and for Scientific Research permits under Section 10[a][1][A] of the ESA. Interstate Commerce permits allow transport and sale of listed species across State lines as part of breeding programs enhancing the survival of the species. Scientific Research permits allow ''take'' of listed species as part of research and management actions, enhancement of propagation or survival, or zoological exhibition, or educational purposes, or special purposes consistent with the ESA designed to benefit the species involved. Detailed descriptions of the proposed taking, its necessities for success of the proposed action, and benefits to the species resulting from the proposed action are required under the implementing regulations cited above. Take authorized under this permit program would otherwise be prohibited by the ESA.

3. *Safe Harbor and Candidate Conservation Agreements.* The ESA provides number of exceptions to its prohibitions against ''take'' of listed species. Regulations have not been promulgated at 50 CFR 17.22 (endangered species) and 17.32 (threatened species) to guide implementation of these exceptions to the ''take'' prohibitions through permitting programs. However, a proposed rule was published in the **Federal Register** on June 12, 1997 (62 FR 32189). (NOTE: The current Part 17.22[c] and 17.32[c] will be redesignated 17.22 [e] and 17.32[e], respectively, to allow insertion of the new subsections). Currently, Part 17.22 [a] and [b] contain application requirements, issuance, criteria, and permit conditions for permits for scientific research, enhancement of propagation and survival, and incidental take. The regulations for which this information collection clearance is sought, have not yet been promulgated.

Service form number 3–200–54 addresses application requirements for permits for enhancement of survival through safe harbor and candidate conservation agreements. The permittee will be required to notify the Service of any transfer of lands subject to the Safe Harbor Agreement so that any landowners may be offered the opportunity to continue the actions which the original landowner agreed to and thus he or she may be offered the same legal assurances. A major incentive for landowner participation in the Safe Harbor program is the long-term certainty the program provides, including the certainty that the incidental takes authorization will stay with the land when it changes hands. The Service also requires the permittee/landowner to notify the Service as far in advance as possible when he or she expects to incidentally take any species covered under the permit and provide the Service with an opportunity to translocate affected individual specimens if possible and appropriate.

Description of respondents: Individuals and households.

BURDEN ESTIMATE FOR THE FEDERAL FISH AND WILDLIFE LICENSE/PERMIT—ENDANGERED SPECIES

Permit/report	Number of respondents	Completion time	Annual burden
Safe Harbor & Candidate Agreements, 3–200–54	50	2.5	125
Annual Report	150	5.0	750
Native E/T Species Recovery & Comm. 3–200–55	525	2.0	1,050
Annual Report	100	2.0	200
Native E/T Species Incidental Take 3–200–56	100	2.5	250
Annual Report	350	5.0	1,750
Totals	1,275	.....	4,125

Dated: November 25, 1997.

Gerry A. Jackson,

Acting Assistant Director—Ecological Services.

[FR Doc. 97–31491 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–933–1990–00]

Notice of Availability of the Finding of No Significant Impact and the Programmatic Environmental Assessment for Selected Actions for Mining Claim Use and Occupancy in Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), and Use and Occupancy Under the Mining Laws regulations (43 CFR 3715), the Bureau of Land Management (BLM) has prepared an environmental assessment (EA) that evaluates the impacts of typical mining claim and/or millsite occupancies. This EA describes and analyzes the proposed action, consisting of seven typical occupancy scenarios, and the no action option. The BLM provided a 30-day comment period. Analysis and response to the comments received have been incorporated into the present document and the final Finding of No Significant Impact (FONSI).

DATES: Copies of the EA and the Finding of No Significant Impact will be provided to any person, agency, or other interested parties, upon request.

ADDRESSES: Requests for copies should be addressed to: Bureau of Land Management, Arizona State Office, AZ-933, 222 North Central Avenue, Phoenix, AZ 85004–2203.

FOR FURTHER INFORMATION CONTACT: Ralph Costa, Mining Engineer, Arizona State Office. Telephone: (602) 417–9349.

Dated: November 19, 1997.

Gary D. Bauer,

Associate State Director.

[FR Doc. 97–31474 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(CA–067–7122–6606); CACA–35511]

Environmental Statements; Availability, Etc.; Imperial Project Proposed Gold Mining/Processing Operation; Imperial County

AGENCY: Bureau of Land Management.

ACTION: Notice of availability of the Imperial Project Draft Environmental Impact Statement on the Imperial Project Proposed Gold Mining/Processing Operation, Imperial County.

SUMMARY: Notice is hereby given of the availability of the joint Draft Environmental Impact Statement/Impact Report (DEIS/EIR) prepared by the Bureau of Land Management and the County of Imperial for a 60-day public review.

DATES: Written comments must be received no later than January 27, 1998.

ADDRESSES: Written comments should be addressed to the Area Manager, Attn: Imperial Project, El Centro Resource Area, 1661 South Fourth St., El Centro, California 92243.

FOR FURTHER INFORMATION CONTACT: Douglas Romoli (909) 697–5237.

SUPPLEMENTARY INFORMATION: The Imperial Project is a proposal by Glamis Imperial Corporation (a sister corporation of the former project applicant Chemgold Inc.) to develop an open-pit, gold mining operation utilizing a heap leach process. Located in eastern Imperial County, California, approximately 45 miles northeast of El Centro, California and 20 miles northwest of Yuma, Arizona, the proposed project area comprises approximately 1,625 acres. Up to 150 million tons of ore would be leached, and 300 million tons of waste rock would be deposited at the proposed waste rock stockpiles or the mined-out portions of the three planned open pits. The maximum average mining rate would be 130,000 tons per day. Five alternatives besides the proposed action were analyzed in the DEIS/EIR. Impacts on air quality, noise, groundwater, vegetation, desert tortoise among other resources were analyzed. Impacts on cultural resources and Native America values were identified. Two public hearings have been scheduled:

December 10, 1997 at 7:00 p.m., Comfort Inn, 8000 Parkway Drive, La Mesa, CA

December 11, 1998 at 7:00 p.m., Barbara Worth Country Club, 2050 Country Club Dr., Holtville, CA

Comments, including names and street addresses of respondents, will be available for public review. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or business, and from individuals identifying themselves as representatives or officials of organization or businesses, will be made available for public inspection in their entirety.

Dated: November 24, 1997.

Alan Stein,

Acting District Manager.

[FR Doc. 97–31478 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–40–M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Approved Collections

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of approval of information collections (1010–0006 and 1010–0050).

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, this notice informs the public and other Federal agencies of the approval by the Office of Management and Budget (OMB) of two collections of information. The Paperwork Reduction Act of 1995 (PRA) provides that 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.

ADDRESSES: Direct all correspondence to the Rules Processing Team, Minerals Management Service, Mail Stop 4020, 381 Elden Street, Herndon, VA 20170–4817.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of these collections of information.

SUPPLEMENTARY INFORMATION: Titles: 30 CFR 250, Subpart J, Pipelines and Pipeline Rights-of-Way; and 30 CFR Part 256, Leasing of Sulphur or Oil and Gas in the Outer Continental Shelf. OMB Control Numbers: 1010–0050 and 1010–0006.

Abstract: On July 24, 1997 MMS published a final rule on Pipeline Right-

of-Way Applications and Assignment Fees; Requirements for Filing of Lease Transfers (RIN 1010–AC04, 62 FR 39773). The final rule became effective on September 22, 1997. In the preamble to the final rule, MMS stated that the information collection aspects of the rule had been submitted to OMB for approval and would not take effect until OMB approved the collections. On August 25, 1997, OMB approved both of the related collections of information with expiration dates of August 31, 2000. The information collection aspects of the final rule are effective with the final rule.

Bureau Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: November 21, 1997.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 97–31475 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 22, 1997. Pursuant to section 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, D.C. 20013–7127. Written comments should be submitted by December 17, 1997.

Patrick Andrus,

Acting Keeper of the National Register.

Florida

Marion County, Ocala Union Station, 31 NE First Ave., Ocala, 97001557.

Georgia

Dooly County, Lilly Historic District, Roughly bounded by CSX RR tracks, and Church, Montezuma, Third, and School Sts., Lilly, 97001558.

Massachusetts

Essex County, Peabody Institute, 15 Sylvan St., Danvers, 97001559.

Worcester County, Hope Cemetery, 119 Webster St., Worcester, 97001560.

New Jersey

Burlington County, New Jersey Manual Training and Industrial School for Colored Youth, N of Burlington Rd., W of I–295, Bordentown, 97001563.

North Carolina

Mecklenburg County, Potts Plantation, (Rural Mecklenburg County MPS), S of Davidson, SW of Cornelius, between NC 2693 and NC 115, Cornelius vicinity, 97001561.

Watauga County, Wilson—Vines House, 3400 Rush Branch Rd., Beaver Dam vicinity, 97001562.

Ohio

Auglaize County, Fountain Hotel, The, 100–110 W. Spring St., St. Marys, 97001564.

Tennessee

Marion County, RyeMabee, 224 E. Main St., Monteagle, 97001565.

Montgomery County, Tip Top, 15 Trahern Ter., Clarksville, 97001566.

Utah

Utah County, Bringhurst, William and Ann, House, (Springville MPS), 306 S 200 W, Springville, 97001567.

Deal, Roe A. and Louise R., House, (Springville MPS), 39 E 200 N, Springville, 97001568.

Deal—Mendenhall Hall, (Springville MPS), 163 E 200 N, Springville, 97001569.

Johnson, Mont and Harriet, House, (Springville MPS), 153 E 400 N, Springville, 97001570.

Johnson—Kearns Hotel, (Springville MPS), 94 W 200 S, Springville, 97001571.

Kindred, Nephi and Annie, House, (Springville MPS), 188 W Center, Springville, 97001573.

Meneray, William H. and Sarah D., House, (Springville MPS), 190 S 200 W, Springville, 97001574.

Oakley, Ami and Amanda, House, (Springville MPS), 219 E 400 N, Springville, 97001575.

Packard, Milan and Margaret, House, (Springville MPS), 10 W 100 S, Springville, 97001576.

Reynolds, Henry T. and Rebecca, House, (Springville MPS), 270 W 200 S, Springville, 97001577.

Senior Hotel, (Springville MPS), 296 S Main St., Springville, 97001578.

Strang, James P. and Lydia, House, (Springville MPS), 306 S 200 W, Springville, 97001579.

Ward, Patrick L. and Rose O., House, (Springville MPS), 511 S Main St., Springville, 97001580.

Yard—Groesbeck House, (Springville MPS), 157 W 200 S, Springville, 97001581.

Wisconsin

Sauk County, Thompson House Hotel, 200 Ash St., Baraboo, 97001583.

[FR Doc. 97–31461 Filed 12–1–97; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

Emergency Notice of Additional Agenda Item

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: December 2, 1997 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

ADDITIONAL AGENDA ITEM:

6. The Chairman's proposal for Fiscal Year 1998 Expenditure Plan and Fiscal Year 1999 Budget Request.

In accordance with 19 CFR 201.35(d)(2), the Commission is hereby giving notice of the addition of an agenda item for the Commission meeting being held Tuesday, December 2, 1997, at 2:30 p.m. By unanimous consent, the Commission has authorized issuance of the Government in the Sunshine Notice, and hereby announces that earlier announcement of same was not possible.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: November 26, 1997.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–31719 Filed 11–28–97; 12:32 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 97–26]

Anthony P. Dalton, M.D. Revocation of Registration

On June 19, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Anthony P. Dalton, M.D. (Respondent), of Viroqua, Wisconsin, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BD0469254, and deny any pending applications for renewal of his registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(3), for reason that he is not currently authorized to handle controlled substances in the State of Wisconsin.

On July 21, 1997, Respondent filed a request for a hearing, and the matter was docketed before Administrative Law Judge Mary Ellen Bittner. On July 21, 1997, Judge Bittner issued an Order for Prehearing Statements. Thereafter, on July 25, 1997, the Government filed a Motion for Summary Disposition,

alleging that effective January 30, 1996, the Medical Examining Board of the State of Wisconsin (Board) terminated a stay of an earlier suspension of Respondent's license to practice medicine in the State of Wisconsin, and therefore, Respondent is not authorized to handle controlled substances in that state.

By Order dated July 29, 1997, Judge Bittner gave Respondent the opportunity to file a response to the Government's motion by August 19, 1997. No such response was filed by Respondent.

On September 18, 1997, Judge Bittner issued her Opinion and Recommended Decision, finding that Respondent lacked authorization to handle controlled substances in the State of Wisconsin; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. Neither party filed exceptions to her opinion, and on October 22, 1997, Judge Bittner transmitted the record of these proceedings to the Acting Deputy Administrator.

The Acting Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Acting Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

The Acting Deputy Administrator finds that on December 14, 1995, the Board issued its Final Decision and Order, suspending Respondent's Wisconsin medical license for a period of not less than four years, with the provision for successive three-month stays of the suspension conditioned upon compliance with certain conditions and limitations on the license. Subsequently, the Board ordered that the stay of the suspension of Respondent's medical license be terminated, and his license was suspended effective January 30, 1996. Thereafter, on March 1, 1996, and February 3, 1997, the Board denied petitions filed by Respondent for the reinstatement of the stay of suspension of his medical license. Therefore, the Acting Deputy Administrator finds that Respondent is not currently authorized to handle controlled substances in the State of Wisconsin.

The Acting Deputy Administrator finds that in light of the fact that Respondent is not currently licensed to practice medicine in the State of Wisconsin, it is reasonable to infer that he is not currently authorized to handle controlled substances in that state. Respondent did not file a response to the Government's motion, and therefore does not dispute that he is not currently authorized to practice medicine or handle controlled substances in the State of Wisconsin.

The DEA does not have statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. See *Romeo J. Perez, M.D.,* 62 FR 16,193 (1997); *Demetris A. Green, M.D.,* 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.,* 58 FR 51,104 (1993).

Here it is clear that Respondent is not currently authorized to handle controlled substances in the State of Wisconsin, the state where he is registered with DEA. Therefore, Respondent is not entitled to a DEA registration in that state.

The Acting Deputy Administrator further finds that under the circumstances, Judge Bittner properly granted the Government's Motion for Summary Disposition. It is well-settled that when no question of material fact is involved, a plenary, adversary administrative proceeding involving evidence and cross-examination of witnesses is not obligatory. See *Phillip E. Kirk, M.D.,* 48 FR 32,887 (1983), *aff'd sub nom Kirk* v. *Mullen,* 749 F.2d 297 (6th Cir. 1984); *NLRB* v. *International Association of Bridge, Structural and Ornamental Ironworkers,* AFL–CIO, F.2d 634 (9th Cir. 1977); *United States* v. *Consolidated Mines & Smelting Co.,* 44 F.2d 432 (9th Cir. 1971).

Accordingly, the Acting Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BD0469254, previously issued to Anthony P. Dalton, M.D., be, and it hereby is, revoked. The Acting Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective January 2, 1998.

Dated: November 20, 1997.

James S. Milford,

Acting Deputy Administrator.

[FR Doc. 97–31470 Filed 12–1–97; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Request OMB emergency approval; guarantee of payment.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this Part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. Therefore, OMB approval has been requested by November 30, 1997. If granted, the emergency approval is only valid for 180 days. *All* comments and/or questions pertaining to this pending request for emergency approval *Must* be directed to OMB, Office of Information and Regulatory Affairs, Attention: Ms. Debra Bond, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Ms. Bond at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Comments are encouraged and will be accepted until [Insert date of the 60th day from the date that this notice is published in the **Federal Register**]. During the 60-day regular review *All* comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary

for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of current information collection.

(2) *Title of the Form/Collection:* Guarantee of Payment.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–510. Office of Detention and Deportation, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Section 253 of the Immigration and Nationality Act (Act) provides that the master or agent of a vessel or aircraft shall guarantee payment for expenses incurred for an alien crewman who arrived in the United States and is afflicted with any disease or illness mentioned in Section 255 of the Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100 respondents at .083 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 8 annual burden hours.

If additional information is required during the first 60 days of this same regular review period contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: November 25, 1997.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 97–31498 Filed 12–1–97; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Mountain Coal Company

[Docket No. M–97–117–C]

Mountain Coal Company, P.O. Box 591, Somerset, Colorado 81434 has filed a petition to modify the application of 30 CFR 75.1906(e) and (f) (transport of diesel fuel) to its West Elk Mine (I.D. No. 05–03672) located in Gunnison County, Colorado. The petitioner proposes to use 1700 gallons of diesel fuel that would be transported at one time on a diesel fuel transportation unit with the tank permanently fixed to the unit, with a total capacity no greater than 1700 gallons of diesel fuel. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Arch of Kentucky

[Docket No. M–97–118–C]

Arch of Kentucky, P.O. Box 787, Lynch, Kentucky 40855 has filed a petition to modify the application of 30 CFR 75.360(b)(9) (preshift examination) to its 37 Mine (I.D. No. 15–04670) located in Harlan County, Kentucky. The petitioner requests a variance for three different isolated locations involving dewatering pumps and the associated electrics located at the 95 and 96 Crosscuts—Main Track Heading, the 150 Crosscut—Main Track Heading, and the 34 Crosscut L–14. The petitioner proposes to have the electrical installations ventilated by a separate intake split of air that would be ventilated directly into the return where no employees regularly work in the vicinity or by the electrical installations; to install a carbon monoxide detection sensor at each location that would be monitored at all times while employees are underground and to implement the preshift requirement in the event the carbon monoxide system becomes inoperative, until the system is repaired; and to inspect the electrical installations for hazardous conditions on a weekly basis. The petitioner states that the excessive travel to the three locations specified in this petition would result in a diminution of safety because the fireboss is traveling alone each shift for long distances to remote areas of the mine.

3. The Pittsburg & Midway Coal Mining Company

[Docket No. M–97–119–C]

The Pittsburg & Midway Coal Mining Company, P.O. Box 6518, Englewood, Colorado 80155–6518 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Sebree #1 Mine (I.D. No. 15–17044) located in Webster County, Kentucky. The petitioner requests a variance to allow the use of a spring-loaded device with specific fastening characteristics with its fastening configuration to secure plugs and electrical-type connectors to batteries and to the permissible mobile-powered equipment, which the batteries serve, instead of using a padlock. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Island Creek Coal Company

[Docket No. M–97–120–C]

Island Creek Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1905–1(g) (diesel fuel piping system) to its Ohio No. 11 Mine (I.D. No. 15–03178) located in Union County, Kentucky. The petitioner requests a variance to permit the transportation of diesel fuel from a surface diesel fuel oil storage tank directly into the fuel tank of individual units of underground diesel equipment. The petitioner has listed specific procedures in this petition for implementing its alternative method of transporting fuel from the surface to underground diesel equipment. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Consol of Kentucky, Inc.

[Docket No. M–97–121–C]

Consol of Kentucky, Inc., Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its Ridge No. 8 Mine (I.D. No. 15–17972) located in Floyd County, Kentucky. The petitioner requests a variance to permit the use of a single line of automatic sprinklers for its fire protection system on main and secondary belt conveyors. The petitioner proposes to use a single overhead pipe system with ½-inch orifice automatic sprinklers located on 10-foot centers, located to cover 50 feet

of fire-resistant belt or 150 feet of non-fire resistant belt, with actuation temperatures between 200 to 230 degrees Fahrenheit, and with water pressure equal to or greater than 10 psi; to locate the sprinklers not more than 10 feet apart so that the discharge of water will extend over the belt drive, belt take-up, electrical control, and gear reducing unit; to conduct a test using the specific procedures outlined in this petition during the installation of each new system, during any subsequent repair or replacement of any critical part, and annually to ensure proper operation. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Consolidation Coal Company

[Docket No. M–97–122–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.380(f)(4) (escapeways; bituminous and lignite mines) to its Blacksville No. 2 Mine (I.D. No. 46–01968), Humphrey No. 7 Mine (I.D. No. 46–01453), and Loveridge No. 22 Mine (I.D. No. 46–01433) all located in Monongalia County, West Virginia; to its Dilworth Mine (I.D. No. 36–04281) located in Greene County, Pennsylvania; and its Robinson Run No. 95 Mine (I.D. No. 46–01318) located in Harrison County, West Virginia. The petitioner proposes to use fire resistant hydraulic fluid instead of fire suppression on mobile equipment operated in the primary escapeway. The petitioner proposes to operate mobile equipment in a primary escapeway using fire resistant fluid, and to equip such equipment with a 20 pound dry chemical fire extinguisher; to have a qualified person examine batteries, electrical cables and brake equipment on a weekly basis; to maintain dry chemical fire extinguishers on the mobile equipment operated in the primary escapeway in usable and operative condition; to instruct mobile equipment operators to conduct a pre-operational check of the equipment prior to operation in the primary escapeway; and to instruct mobile equipment operators on an annual basis on the fire-fighting plan, the use of dry chemical fire extinguishers, and the requirements of any decision and order issued on this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Del Rio, Inc.

[Docket No. M–97–123–C]

Del Rio, Inc., P.O. Box 2218, Middlesboro, Kentucky 40965 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Mine DR #7 (I.D. No. 15–17607), and its Mine DR #8 (I.D. No. 15–17951) both located in Bell County, Kentucky. The petitioner proposes to use a 9 foot steel tongue to couple the motor to the flatcar instead of using automatic couplers. The petitioner states that due to mining heights, flatcars instead of regular supply cars are being used in their mine to haul supplies. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. BR&D Enterprises, Inc.

[Docket No. M–97–124–C]

BR&D Enterprises, Inc., P.O. Box 2218, Middlesboro, Kentucky 40965 has filed a petition to modify the application of 30 CFR 75.1405 (automatic couplers) to its Mine BR&D #1, (I.D. No. 15–17907), and its Mine BR&D #2 (I.D. No. 15–17908) both located in Bell County, Kentucky. The petitioner proposes to use a 9 foot steel tongue to couple the motor to the flatcar instead of using automatic couplers. The petitioner states that due to mining heights, flatcars instead of regular supply cars are being used in their mine to haul supplies. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Island Creek Coal Company

[Docket No. M–97–125–C]

Island Creek Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Ohio No. 11 Mine (I.D. No. 15–03178) located in Union County, Kentucky. The petitioner proposes to use a spring-loaded metal locking device instead of padlocks to secure battery charging plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered scoop cars. The petitioner has outlined in this petition specific procedures for implementation of its alternative method of using a spring-loaded locking device. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

10. Bass Energy, Inc.

[Docket No. M–97–126–C]

Bass Energy, Inc. P.O. Box 206, Bruceton Mills, West Virginia 26525 has filed a petition to modify the application of 30 CFR 75.380(d)(4)(i) (escapeways; bituminous and lignite mines) to its Mine No. 1 (I.D. No. 46–01162) located in Upshur County, West Virginia. Due to adverse roof conditions along the beltlines, the petitioner has installed additional roof support to protect the affected areas which has caused the walkway to be narrowed down to less than four feet at specific beltline locations. The petitioner states that where possible, the escapeway has been re-routed to another entry with common air and properly marked, start-stop switches have been installed inby and outby where individuals would have to cross the beltline, and that close clearance signs have been posted to caution individuals of the narrow walkway. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

11. Genwal Resources, Inc.

[Docket No. M–97–127–C]

Genwal Resources, Inc., P.O. Box 1420, 195 North 100 West, Huntington, Utah 84528 has filed a petition to modify the application of 30 CFR 75.1101–8 (water sprinkler systems; arrangement of sprinklers) to its Crandall Canyon Mine (I.D. No. 42–01715) located in Emery County, Utah. The petitioner requests a variance to permit the use of a water sprinkler system with a single overhead pipe system and automatic sprinklers located not more than 10 feet apart so that the water discharged from the sprinklers will cover 50 feet of fire resistant belt, or 150 feet of non-fire resistant belt adjacent to the belt drive; and to permit automatic sprinklers to be located not more that 10 feet apart so that water discharged from the sprinkler(s) will cover the drive motor(s), belt take-up electrical controls, and gear reducing unit for each belt drive. The petitioner proposes to conduct a functional test to ensure proper operation during the installation of each new system and during subsequent repair or replacement of any critical part; and to submit to the District Manager proposed revisions to their Part 48 training plan that would specify initial and refresher training for compliance to this petition. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 2, 1998. Copies of these petitions are available for inspection at that address.

Dated: November 20, 1997.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 97–31580 Filed 12–1–97; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (97–165)]

NASA Advisory Council; Meeting.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Tuesday, December 16, 1997, 9:00 a.m. to 3:30 p.m.; and Wednesday, December 17, 1997, 9:00 a.m. to 3:00 p.m.

ADDRESSES: NASA Headquarters, Room 9H40, 300 E Street SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Anne L. Accola, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–2096.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Space Science Enterprise Overview
—Technology Development in the Space Science Enterprise
—Earth Science Enterprise Overview
—NRC Report on Space Shuttle Meteoroid/Debris Risk Management
—Astrobiology
—Student Opportunities for Access to Space
—Faster, Better, Cheaper
—Committee and Task Force Reports
—Discussion of Findings and Recommendations

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: November 25, 1997.

Alan M. Ladwig,

Associate Administrator for Policy and Plans, National Aeronautics and Space Administration.

[FR Doc. 97–31528 Filed 12–1–97; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permits Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy, Permit Office, Office of Polar Programs, Rm. 755, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

SUPPLEMENTARY INFORMATION: On October 27, 1997, the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permits were issued on November 24, 1997 to the following applicants:

Alexandra C. Brown and Maria Uhle—Permit No. 98–016

Philip R. Kyle—Permit No. 98–018

Gary Miller—Permit No. 98–019

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 97–31584 Filed 12–1–97; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978, Pub. L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to these permit applications by December 31st. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to the Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 306–1033.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), has developed regulations that implement the ''Agreed Measures for the Conservation of Antarctic Fauna and Flora'' for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

Applicant ..... Howard E. Evans, Veterinary College, Cornell University, Ithaca, NY 14853.	Permit Application: 98–020.
Activity for Which Permit is Requested	
Take and Import into the United States	
The applicant will be leading a Cornell Adult University tour on a cruise ship in the Antarctic Peninsula and applicant proposes salvage carcasses and remains of penguins, birds or seals as study materials. These materials will be imported to the U.S. and stored in the Cornell University Collections for use as teaching aides or in research.	
Location	
Various sites within the Antarctic Peninsula Area	
Dates	
January 7, 1998 to January 21, 1998	
2. *Applicant* ..... Rennie S. Holt, Chief Scientist, AMLR Program, Southwest Fisheries Science Center, National Marine Fisheries Service, 8604 La Jolla Shores Drive, La Jolla, CA 92093.	Permit Application: 98–021.
Activity for Which Permit is Requested	
Taking, Import into the United States, and Enter Site of Special Scientific Interest. The applicant will be conducting ship-supported and land-based studies in the region of the Antarctic Peninsula. Studies encompassing census surveys, attendance, energetics, foraging, and long term monitoring (censusing/tagging) of Antarctic fur seals (*Arctocephalus gazella*) will be initiated at the newly established AMLR Program campsite at Cape Shirreff, Livingston Island and continued at their existing camp on Seal Island. Up to 80 adult and 1180 pups will be captured and tagged. In addition up to 40 female/pup pairs will be captured to quantify the foraging costs of maternal investment in pups associated with changes in foraging strategies observed. Energetic costs and benefits of different foraging patterns can be determined by simultaneous measurements of energy expenditure (isotope), food intake (isotope), dive depth, duration, time of day and dive frequency (via TDR's), swim speed (TDR), and foraging location (satellite transmitter). Attendance information collected from these instrumented females will address issues such as (a) prey availability and subsequent impact on females and pups, and (b) attendance-related factors of pup growth. Milk extraction and gastric lavage/intubation will be used for energetic studies, providing trophic information.	
In addition the applicant proposes to salvage bones and carcasses of dead seals for importation to the U.S. These materials will be stored at the Southwest Fisheries Science Center for education and research purposes.	
Location	
Cape Shirreff, Livingston Island (SSSI #32), Byers Peninsula (SSSI #6), South Shetland Island, Antarctic Peninsula.	
Dates	
January 1, 1998 to April 1, 2001.	

Nadene G. Kennedy,

Permit Officer.

[FR Doc. 97–31585 Filed 12–1–97; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension*: New.

2. *The title of the information collection*: Joint NRC/EPA Survey of Sewage Sludge/Ash.

3. *The form number if applicable*: None.

4. *How often the collection is required*: This is a one-time collection.

5. *Who will be required or asked to report*: Selected publicly owned treatment works (POTWs), and Agreement States.

6. *An estimate of the number of responses*: 600 POTWs for the questionnaire and 300 POTWs for sample collection, plus 30 Agreement States for reporting of licensees associated with Zip Codes.

7. *An estimate of the total number of hours needed annually to complete the requirement or request*: An average of 1 hour per respondent for questionnaire and 6 hours each for selected respondents for collecting samples, plus 8 hours each for 30 Agreement States. The total burden is 2,640 hours.

8. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

9. *Abstract*: The survey will obtain national estimates of high probability occurrences of elevated levels of radioactive materials in sludge and ash at POTWs, estimate the extent to which radioactive contamination comes from either NRC/Agreement State licensees or from naturally-occurring radioactivity, and support possible rulemaking decisions by NRC and EPA. NRC and EPA will send questionnaires to selected POTWs. Based on the results of that survey, NRC and EPA will identify approximately 300 POTWs from which samples of sewage sludge/ash will be taken and analyzed. Results of the full survey will be published for use by

Federal agencies, States, POTWs, local POTW officials and other interested parties.

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance packages are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by January 2, 1998. Norma Gonzales, Office of Information and Regulatory Affairs (3150-) NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 415–7233.

Dated at Rockville, Maryland, this 24th day of November 1997.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer.

[FR Doc. 97–31518 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 97–087]

Finis Scott Bandy; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

Finis Scott Bandy was formerly employed by Omaha Public Power District (OPPD) as an instrumentation and control technician at OPPD's Fort Calhoun Station nuclear power plant, Blair, Nebraska. OPPD holds license No. DPR–40, issued August 9, 1973, by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 50. The license authorizes the operation of the Fort Calhoun Station (FCS) in accordance with the conditions specified therein.

II

In August 1996, the NRC inspected access authorization files during an NRC security inspection at FCS. The NRC raised a question about arrest information that Mr. Bandy had supplied to OPPD during the course of 1993, in connection with his application for unescorted access to the plant. The information in question pertained to whether Mr. Bandy had been arrested for theft of personal property, as certain documents in his file appeared to indicate, or had been arrested for excessive speed while driving, as Mr. Bandy claimed. As a result of the NRC's questions, OPPD agreed to interview Mr. Bandy in the presence of the NRC inspector. During the interview, Mr. Bandy denied that he had been arrested for theft and asserted that the only charge he was aware of involved excessive speed while driving.

Based on further questions about the accuracy of Mr. Bandy's statements and the information provided by him, Mr. Bandy's unescorted access to FCS was temporarily suspended on August 22, 1996. On August 26, 1996, OPPD terminated Mr. Bandy's employment and revoked his unescorted access to FCS. OPPD then conducted an investigation and determined that: (1) The only charge brought against Mr. Bandy in 1991 was a charge of theft of personal property; (2) copies of court records provided to OPPD by Mr. Bandy had been altered to make it appear that the charge had been for speeding; and (3) Mr. Bandy made false statements when questioned about his criminal history in 1993 by OPPD and in 1996 when questioned by OPPD and the NRC during its inspection. The NRC's investigation of this matter concluded that Mr. Bandy deliberately falsified criminal history information submitted to OPPD in 1993, and provided false information to OPPD and an NRC inspector when questioned about this in August 1996.

On July 22, 1997, the NRC issued a Demand for Information to Mr. Bandy, seeking information as to why the NRC should not conclude that he engaged in deliberate misconduct and, if so, why the NRC should not prohibit his involvement in NRC-licensed activities. On July 29, 1997, Mr. Bandy contacted the NRC's Office of Enforcement, indicated that he had no interest in being involved in NRC-licensed activities, and indicated that he would be willing to consent to an order prohibiting his involvement in NRC-licensed activities. On August 19, 1997, the NRC sent a letter to Mr. Bandy formally seeking his consent to a confirmatory order prohibiting his involvement in NRC-licensed activities for five years. Mr. Bandy failed to respond to this letter or to NRC efforts to contact him.

III

Based on the above, the NRC has concluded that Mr. Bandy engaged in deliberate misconduct in 1993 and in August 1996, by: (1) Deliberately falsely stating to OPPD during the course of 1993 that he had been convicted in 1991 of excessive speeding while driving when, in fact, he had been convicted of theft of personal property, and by deliberately altering copies of court records that were provided to OPPD; and (2) deliberately falsely stating in August 1996 to OPPD and an NRC inspector that he had been convicted in 1991 of excessive speeding while driving. These actions constituted a violation of 10 CFR 50.5(a)(2), which prohibits an individual from deliberately submitting to the NRC or a licensee information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the NRC. In this case, the information that Mr. Bandy provided regarding his personal history was material because licensees are required to consider such information in making unescorted access determinations in accordance with the requirements of 10 CFR 73.56.

The NRC must be able to rely on the licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Bandy's actions in deliberately providing false information to the licensee and to the NRC constitute deliberate violations of Commission regulations. His conduct raises serious doubt about his trustworthiness and reliability; particularly whether he can be relied upon to comply with NRC requirements and to provide complete and accurate information to NRC licensees in the future.

Consequently, I lack the requisite reasonable assurance that licensed activities can be conducted in compliance with the Commission's requirements and that the health and safety of the public would be protected if Mr. Bandy were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Mr. Bandy be prohibited from any involvement in NRC-licensed activities for a period of five years from the date of this Order. Additionally, Mr. Bandy is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Mr. Bandy's conduct described above is such that the public health, safety and interest require that this Order be effective immediately.

IV

Accordingly, pursuant to Sections 103, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR Part 50, It is hereby ordered, effective immediately, that:

1. Finis Scott Bandy is prohibited from involvement in activities licensed by the NRC for a period of 5 years. NRC-licensed activities are those that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Finis Scott Bandy is currently involved with another employer in NRC-licensed activities, he must immediately cease such activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this Order to the employer.

3. For the five-year period after the above period has expired, Mr. Bandy will notify the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C., 20555, within 20 days of the first time he accepts employment in NRC-licensed activities, as defined in Paragraph IV.1 above. In the notification, he will include a statement of his commitment to comply with regulatory requirements and address why the NRC should have confidence that he will comply with regulatory requirements, and the name, address and telephone number of his employer or entity where he will be involved in licensed activities.

The Director, Office of Enforcement, may relax or rescind, in writing, any of the above conditions upon a showing by Mr. Bandy of good cause.

V

In accordance with 10 CFR 2.202, Mr. Bandy must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing within 20 days of its issuance. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Bandy, or any other such person adversely affected, relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, D.C. 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Bandy. If a person other than Mr. Bandy requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Bandy or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Bandy may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order, on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for a hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. AN ANSWER OR A REQUEST FOR HEARING SHALL NOT STAY THE IMMEDIATE EFFECTIVENESS OF THIS ORDER.

Dated at Rockville, Maryland this 19th day of November 1997.

For The Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 97–31521 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–382]

Entergy Operations, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–38 issued to Entergy Operations Inc., (the licensee) for operation of the Waterford Steam Electric Station, Unit 3, located in St. Charles Parish, Louisiana.

The proposed amendment would increase the Spent Fuel Pool storage capacity and increase the maximum fuel enrichment from 4.9 w/o (nominal weight percent) to 5.0 w/o U–235. This proposed modification will be accomplished by removing the existing racks in the Spent Fuel Pool and replacing them with higher density racks. The neutron absorber (BORAL) for the new racks, has been licensed by the NRC for use in other nuclear power plant spent fuel storage applications.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

In the analysis of the safety issues concerning the expanded pool storage capacity, the following previously postulated accident scenarios have been considered:

a. A spent fuel assembly drop in the Spent Fuel Pool.

b. Loss of Spent Fuel Pool cooling flow.

c. A seismic event.

d. An accidental drop of a fully loaded fuel shipping cask.

The probability that any of the accidents in the above list can occur is not significantly increased by the modification itself. The probabilities of a seismic event or loss of Spent Fuel Pool cooling flow are not influenced by the proposed changes. The probabilities of accidental fuel assembly or shipping cask drops are primarily influenced by the methods used to lift and move these loads. The method of handling loads during normal plant operations remains unchanged, since the same equipment (i.e., Spent Fuel Handling Machine and Cask Handling Crane) and procedures will be used. A new offset handling tool will be required to access some storage rack cells located adjacent to the pool walls. The grapple mechanism, procedures, and fuel manipulation methods will be very similar to those used by the standard fuel handling tool on the Spent Fuel Handling Machine. Therefore, this tool does not represent a significant change in the methods used to lift or move fuel in the Fuel Handling Building. Since the methods used to move loads during normal operations remain nearly the same as those used previously, there is no significant increase in the probability of an accident.

During rack removal and installation, all work in the pool area will be controlled and performed in strict accordance with specific written procedures. Any movement of fuel assemblies required to be performed to support the modification (e.g., removal and installation of racks) will be performed in the same manner as during normal refueling operations. Shipping cask movements will not be performed during the modification period.

Accordingly, the proposed modification does not involve a significant increase in the probability of an accident previously evaluated.

The consequences of the previously postulated scenarios for an accidental drop of a fuel assembly in the Spent Fuel Pool have been re-evaluated for the proposed change. The results show that the postulated accident of a fuel assembly striking the top of the storage racks will not distort the racks sufficiently to impair their functionality. The resulting structural damage to a falling assembly and/or a stored assembly has been determined to remain unchanged. The minimum subcriticality margin, Keff less than or equal to 0.95, will be maintained. The structural damage to the Fuel Handling Building, pool liner, and fuel assembly resulting from a fuel assembly drop striking the pool floor or another assembly located within the racks remains unchanged. The resulting structural damage to these items subsequent to this event is not influenced by the proposed changes. The radiological dose at the exclusion area boundary will increase due to the changes in fuel enrichment and burnup. The previously calculated doses to the thyroid and whole body were 0.47 and 0.11 rem, respectively. The new thyroid and whole body doses based on the proposed change will be 0.553 and 0.304, respectively. These dose levels are extremely small when compared to the levels required by 10 CFR 100. Therefore, the increase in dose is not considered a significant increase in consequence. Thus, the results of the postulated fuel drop accidents remain acceptable and do not represent a significant increase in consequences from any of the same previously evaluated accidents.

The consequences of a loss of Spent Fuel Pool cooling have been evaluated and found to have no increase. The concern with this accident is a reduction of Spent Fuel Pool water inventory from bulk pool boiling resulting in uncovering fuel assemblies. This situation would lead to fuel failure and subsequent significant increase in offsite dose. Loss of spent fuel pool cooling at Waterford 3 is mitigated by ensuring that a sufficient time lapse exists between the loss of forced cooling and uncovering fuel. This period of time is compared against a reasonable period to re-establish cooling or supply an alternative water source (such as fire water). Evaluation of this accident usually includes determination of the time to boil. This time period is much less than the onset of any significant increase in offsite dose, since once boiling begins it would have to continue unchecked until the pool surface was lowered to the point of exposing active fuel. The time to boil represents the onset of loss of pool water inventory and is commonly used as a gage for establishing the comparison of consequences before and after a refueling project. The heat up rate in the Spent Fuel Pool is a nearly linear function of the fuel decay heat load. The fuel decay heat load will increase subsequent to the proposed changes because of the increase in the number of assemblies and higher fuel burnups. The heat up rate established for the limiting normal heat load conditions prior to reracking was 5.41°F per hour. This would result in the pool temperature increasing from the maximum normal temperature of 140 °F to boiling in a period of 13.3 hours. The heat up rate established for the limiting normal heat load conditions subsequent to the proposed changes has been determined as 13.6 °F per hour. This would result in the pool temperature increasing from the maximum normal temperature of 140 °F to boiling in a period of 5.3 hours.

This time to boil comparison was made for limiting normal heat load conditions. However, the end of this period of time does not represent the onset of any significant increase in offsite doses. As stated above, this consequence would result subsequent to fuel being uncovered through unchecked boiling and resulting water level drop of approximately 24.5 feet from normal surface to the top of the fuel storage racks. This depth is conservative, since the top of active fuel is below this level. Subsequent to the proposed changes under limiting normal heat loads the time lapse between the onset of unchecked boiling and uncovering of the racks has been determined to exceed 50 hours.

As stated above in the safety assessment, subsequent to reracking, the time to boil after loss of forced cooling in the most severe scenario is 2.89 hours (the ensuing rate of evaporative loss would not result in the fuel being uncovered until after an additional 34 hours, which is 168 hours after reactor shutdown). However, the design basis limiting pool heat load under these conditions actually decreases after the proposed modification, because of conservatisms previously used to determine the heat load for this condition. Therefore, the calculated time to boil in this most severe scenario will increase subsequent to the proposed modification. In the unlikely event that all pool cooling is lost, sufficient time will be available subsequent to the proposed changes for the operators to provide alternate means of cooling (i.e., fire water) before fuel is uncovered. Therefore, the proposed changes represents no increase in the consequences of loss of pool cooling.

The consequences of a design basis seismic event are not increased. The consequences of this accident are evaluated on the basis of subsequent fuel damage or compromise of the fuel storage or building configurations leading to radiological or criticality concerns. The new racks have been analyzed in their new configuration and found safe during seismic motion. Fuel has been determined to remain intact and the storage racks maintain the fuel and fixed poison configurations

subsequent to a seismic event. The structural capability of the pool and liner will not be exceeded under the appropriate combinations of dead weight, thermal, and seismic loads. The Fuel Handling Building structure will remain intact during a seismic event and will continue to adequately support and protect the fuel racks, storage array, and pool moderator/coolant. Thus, the consequences of a seismic event are not increased.

The consequences of a spent fuel cask drop into the Cask Storage Pit have been analyzed along with the new rack storage configuration. This evaluation concluded that there is no increase in consequences. Administrative controls, appropriate changes in load paths, and crane travel limits will continue to preclude handling heavy loads above stored fuel. Therefore, casks impacting stored fuel is not a postulated event. Potential damage to the cask and contained fuel remain unchanged, since the pertinent parameters for this analysis (i.e., lift height, weight, impact zone configurations, etc.) are not affected by the new rack configurations. The floor was reanalyzed to assess the effect of the additional loading from higher density fuel storage. It was determined that the floor remains intact with minor local crushing of concrete. The liner plate would sustain limited damage, which is repairable. Leakage would be limited to flow through the leak chase system and would be collected at the sump. The Fuel Handling Building integrity would not be compromised; therefore, there would be no release of contaminated pool water outside of the building. Makeup water from the Condensate Storage Pool and/or the Refueling Water Storage Tank would be adequate to offset loss of water inventory due to any leakages. This accident does not result in any increase in offsite or Fuel Handling Building doses. Thus, the proposed changes do not represent any increase in the consequences of a postulated spent fuel cask drop.

Therefore, it is concluded that the proposed changes do not significantly increase the probability or consequences of any accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

To assess the possibility of new or different kind of accidents, a list of the critical parameters required to ensure safe fuel storage was established. Safe fuel storage is defined here as providing an environment which would not present any significant threats to workers or the general public. In other words, meeting the requirements of 10 CFR 100 and 10 CFR 20. Any new events which would modify these parameters sufficiently to place them outside of the boundaries analyzed for normal conditions and/or outside of the boundaries previously considered for accidents would be considered a new or different accident. The criticality and radiological safety evaluations were reviewed to establish the list of critical parameters. The fuel configuration and the existence of the moderator/coolant were identified as the only two parameters which were critical to safe fuel storage. Significant modification of these two parameters represents the only possibility of an unsafe storage condition. Once the two critical parameters were established, an additional step was taken to determine what events (which were not previously considered) could result in changes to the storage configuration or moderator/coolant presence during or subsequent to the proposed changes. This process was adopted to ensure that the possibility of any new or different accident scenario or event would be identified.

Due to the proposed changes, the following events were considered as the only events which might represent a new or different kind of accident:

a. An accidental drop of a rack module during construction activity in the pool.

b. Draining the Cask Storage Pit and Refueling Canal through the floor drains.

c. Fuel assembly mispositioning accident in Region 2.

A construction accident resulting in a rack drop is an unlikely event. A new rack lifting rig will be introduced to lift and suspend all but one of the racks using the existing Fuel Handling Building Cranes. Either a new temporary hoist or a combination of one of the existing 15 ton cranes and a lifting bag will be used to lift one of the existing eighty cell racks that is adjacent to the east wall of the Spent Fuel Pool. The cranes, hoists and lifting rig have been or will be designed using the guidance of NUREG–0612 and ANSI N14.6. The postulated rack drop event is commonly referred to as a ''heavy load drop'' over the pools. Heavy loads will not be allowed to travel over any racks containing fuel assemblies. The danger represented by this event is that the pool structure will be compromised leading to loss of moderator/coolant, which is one of the two critical parameters identified above. However, although the analysis of this event has been performed and shown to be acceptable, the question of a new or different type of event is answered by determining whether heavy load drops over the pool have been considered previously. The postulated drop of a pool gate was previously evaluated and represents a heavy load drop similar to a rack drop. All movements of heavy loads over the pool will comply with the applicable administrative controls and guidelines (i.e. plant procedures, NUREG–0612, etc.). Therefore, the rack drop does not represent a new or different kind of accident.

The Cask Storage Pit and Refueling Canal both have floor drains which will be plugged (a welded closed cover plate) prior to installation of the new storage racks in each of the respective areas. The plugs will preclude any water loss through the drain system. Therefore, draining the Cask Storage Pit and Refueling Canal through the floor drains is not a postulated event.

Fuel assembly mispositioning in Region 2 is an unlikely event, since locating assemblies which do not meet the burnup criteria will be administratively controlled. Administrative controls will consist of developing a checkerboarding storage pattern in the Region 2 racks prior to storage or placement of the non-compliant fuel in Region 1 racks. The Region 2 mispositioning event represents a change from the previously analyzed condition, since Waterford 3 currently has only Region 1 style storage. Therefore, a new fuel storage configuration is possible. However, the event does not represent a new or different kind of accident, since fuel assembly mispositioning is possible with the existing racks through controlled or uncontrolled (assembly drop) lowering of an assembly adjacent to the outside of the storage racks. This condition was previously evaluated and found to be acceptable. The new event was evaluated using similar techniques with similar acceptance criteria and was shown to remain acceptable. Therefore, due to the similarity of this new event with that which was previously analyzed it is not considered to represent a new or different kind of accident.

The proposed change does not alter the operating requirements of the plant or of the equipment credited in the mitigation of the design basis accidents. The proposed change does not affect any of the important parameters required to ensure safe fuel storage. Therefore, the potential for a new or previously unanalyzed accident is not created.

3. Involve a significant reduction in the margin of safety.

The function of the Spent Fuel Pool is to store the fuel assemblies in a

subcritical and coolable configuration through all environmental and abnormal loadings, such as an earthquake or fuel assembly drop. The new rack design must meet all applicable requirements for safe storage and be functionally compatible with the Spent Fuel Pool.

EOI has addressed the safety issues related to the expanded pool storage capacity in the following areas:

a. Material, mechanical, and structural considerations.

b. Nuclear criticality.

c. Thermal-hydraulic and pool cooling.

The mechanical, material and structural designs of the new racks have been reviewed in accordance with the applicable provisions of the NRC Guidance entitled ''Review and Acceptance of Spent Fuel Storage and Handling Applications''. The rack materials used are compatible with the spent fuel assemblies and the Spent Fuel Pool environment. The design of the new racks preserves the proper margin of safety during abnormal loads such as a dropped assembly and tensile loads from a stuck assembly. It has been shown that such loads will not invalidate the mechanical design and material selection to safely store fuel in a coolable and subcritical configuration.

The methodology used in the criticality analysis of the expanded Spent Fuel Pool meets the appropriate NRC guidelines and the ANSI standards (GDC 62, NUREG 0800, Section 9.1.2, NRC Guidance entitled, ''Review and Acceptance of Spent Fuel Storage and Handling Applications'', Reg. Guide 1.13, and ANSI ANS 8.17). The margin of safety for subcriticality is maintained by having the neutron multiplication factor equal to, or less than, 0.95 under all accident conditions, including uncertainties. This criterion is the same as that used previously to establish criticality safety evaluation acceptance and remains satisfied for all analyzed accidents. Therefore, the accepted margin of safety remains the same.

The thermal-hydraulic and cooling evaluation of the pool demonstrated that the pool can be maintained below the specified thermal limits under the conditions of the maximum heat load and during all credible accident sequences and seismic events. The pool temperature will not exceed 140 °F during the worst single failure of a cooling pump. The maximum local water temperature in the hot channel will remain below the boiling point. The fuel will not undergo any significant heat-up after an accidental drop of a fuel assembly on top of the rack blocking the flow path. A loss of cooling to the pool will allow sufficient time (5.3 hours for the limiting normal heat load) for the operators to intervene and line up alternate cooling paths and the means of inventory make-up before the onset of pool boiling. The thermal limits specified for the evaluations performed to support the proposed change are the same as those which were used in the previous evaluations. Therefore, the accepted margin of safety remains the same.

Thus, it is concluded that the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 2, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, *Attention:* Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to N.S. Renolds, Esq., Winston & Stran, 1400 L Street, N.W., Washington, D.C. 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to ''any matter which the Commission determines to be in controversy among the parties.'' The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, ''Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors'' (published at 50 FR 41670, October 15, 1985) to 10 CFR 2.1101 *et seq.* Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within 10 days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, Subpart G, and 2.714 in particular, continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of contentions.) The presiding officer shall grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in adjudicatory hearing. If no party to the proceedings requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G, apply.

For further details with respect to this action, see the application for amendment dated March 27, 1997, as supplemented on April 3, and November 13, 1997, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Dated at Rockville, Maryland, this 20th day of November 1997.

For the Nuclear Regulatory Commission.

Chandu P. Patel,

Project Manager, Project Directorate IV–1, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31517 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–245]

Northeast Nuclear Energy Company; Millstone Nuclear Power Station, Unit No. 1, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. DPR–21, issued to Northeast Nuclear Energy Company (NNECO or the licensee), for operation of the Millstone Nuclear Power Station, Unit 1 (Millstone Unit 1), located in New London County, Connecticut.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow for a one-time scheduler exemption from the containment local leak rate testing requirements of Title 10 of the *Code of Federal Regulation* (10 CFR) part 50, Appendix J, Option A, Sections III.D.2.(a) and III.D.3. Appendix J requires these tests to be performed at every refueling outage with the interval not to exceed 2 years. The temporary scheduler exemption would extend the interval for Type B and Type C local leak rate testing (LLRT) of containment penetrations beyond the 2-year limit of 10 CFR Part 50, Appendix J. Instead of performing the tests within the 2-year interval, NNECO would perform the tests prior to containment integrity being required for startup from the current refueling outage.

The proposed action is in accordance with the licensee's application for exemption dated October 16, 1997.

The Need for the Proposed Action

The proposed action is needed to postpone testing to maximize the use of limited resources during the current outage to allow for improving the Millstone Unit 1 Appendix J program. The postponement would also allow NNECO to avoid any additional radiation exposure and expense in testing a number of penetrations and valves more than once during the current refueling outage.

Environmental Impacts of the Proposed Action

The proposed exemption would postpone the next Type B and Type C tests until prior to restart from the current refueling outage (Refueling Outage Cycle 15). The NRC staff has reviewed the proposed exemption and concluded that the Type B and Type C tests are not required to ensure that offsite doses will be acceptable. This conclusion is based on the licensee's facility remaining shut down until after the Type B and Type C tests are performed. As long as Millstone Unit 1 remains shut down, containment integrity is not required and, therefore, testing for containment integrity is not required.

The change will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does involve features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Accordingly, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed action, any alternatives with equal or greater environmental impact need not be evaluated. As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Millstone Nuclear Power Station, Unit 1.

Agencies and Persons Consulted

In accordance with its stated policy, on October 30, 1997, the staff consulted with the Connecticut State official, Kevin Scott of the Department of Environmental Protection, Radiation Control Section, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated October 16, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and at the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Dated at Rockville, Maryland, this 25th day of November 1997.

For the Nuclear Regulatory Commission.

Phillip F. McKee,

Deputy Director for Licensing, Special Projects Office, Office of Nuclear Reactor Regulation.

[FR Doc. 97–31519 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of December 1, 8, 15, and December 22, 1997.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of December 1

There are no meetings the week of December 1.

Week of December 8—Tentative

Thursday, December 11

2:00 p.m.—Briefing on Investigative Matters (Closed—Ex. 5 & 7)

3:00 p.m.—Affirmation Session (Public Meeting) (if needed)

Friday, December 12

9:00 a.m.—Meeting with Northeast Nuclear on Millstone (Public Meeting) (Contact: Bill Travers, 301–415–1200)

Week of December 15—Tentative

Wednesday, December 17

2:00 p.m.—Briefing on Integration and Evaluation of Results from Recent Lessons-Learned Reviews (including 50.59 Process Improvements) (Public Meeting) (Contact: Eileen McKenna, 301–415–2189)

3:30 p.m.—Affirmation Session (Public Meeting) (if needed)

Thursday, December 18

10:00 a.m.—Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting) (Contact: John Larkins, 301–415–7360)

Week of December 22—Tentative

There are no meetings the week of December 22.

* The schedule for Commission meetings is subject to change on short

notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at

http://www.nrc.gov/SECY/smj/schedule@htm

This notice is distributed by mail to several hundred subscribers: if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661).

In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: November 26, 1997.

William M. Hill, Jr.,

Secy, Tracking Officer, Office of the Secretary.

[FR Doc. 97–31729 Filed 11–28–97; 2:48 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Extension of Comment Period

The Nuclear Regulatory Commission issued Draft Regulatory Guide DG–1070, ''Sampling Plans Used for Dedicating Simple Metallic Commercial Grade Items for Use in Nuclear Power Plants,'' for public comment in September 1997 (see 62 FR 52166). This draft guide is being developed to describe methods acceptable to the NRC staff for complying with the NRC's regulations with regard to quality assurance requirements when using a sampling plan for dedicating simple metallic commercial grade items for unrestricted use in nuclear power plants.

The Nuclear Energy Institute has requested a 60-day extension of the comment period. The NRC hereby grants NEI's request and extends the comment period from December 1, 1997, to January 30, 1998.

Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments may also be submitted via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail CAG@nrc.gov.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Printing, Graphics and Distribution Branch; or by fax at (301) 415–5272. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 25th day of November 1997.

For the Nuclear Regulatory Commission.

John W. Craig,

Deputy Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 97–31516 Filed 12–1–97; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on:

Thursday, January 15, 1998
Thursday, January 29, 1998
Thursday, February 12, 1998
Thursday, February 26, 1998
Thursday, March 12, 1998
Thursday, March 26, 1998

The meetings will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meetings either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606-1500.

Dated: November 21, 1997.

Phyllis G. Heuerman,

Chair, Federal Prevailing Rate Advisory Committee.

[FR Doc. 97–31538 Filed 12–1–97; 8:45 am]

BILLING CODE 6325–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #2990]

California

Yuba County and the contiguous counties of Butte, Nevada, Placer, Plumas, Sierra, and Sutter in the State of California constitute a disaster area as a result of damages caused by a severe fire which occurred on September 27–28, 1997. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on January 20, 1998 and for economic injury until the close of

business on August 20, 1998 at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795 or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.250
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 299005 and for economic injury the number is 967000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 20, 1997.

Aida Alvarez,

Administrator.

[FR Doc. 97–31496 Filed 12–1–97; 8:45 am]

BILLING CODE 8025–01–M

SMALL BUSINESS ADMINISTRATION

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration, Region III Advisory Council, located in the geographical area of Clarksburg, West Virginia, will hold a public meeting at 10:30 am–3:30 pm, on Thursday, December 4, 1997, at U.S. Small Business Administration, Charleston Branch Office, 4th Floor Conference Room, 405 Capitol Street, Charleston, WV, 25301 to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Ms. Jayne Armstrong, State Director, U.S. Small Business Administration, 168 West Main Street, Clarksburg, WV, 26301, (304) 623–5631.

Gene Carlson,

Associate Administrator, Office of Communications & Public Liaison.

[FR Doc. 97–31497 Filed 12–1–97; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 2655]

Bureau of Political-Military Affairs; Determination Under the Arms Export Control Act

Pursuant to Section 654(c) of the Foreign Assistance Act of 1961, as amended, notice is hereby given that the Acting Secretary of State has made a determination pursuant to Section 81 of the Arms Export Control Act and has concluded that publication of the determination would be harmful to the national security of the United States.

Dated: November 19, 1997.

Thomas E. McNamara,

Assistant Secretary of State for Political-Military Affairs.

[FR Doc. 97–31465 Filed 12–1–97; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice No. 2659]

Secretary of State's Advisory Committee on Private International Law (ACPIL); Study Group on Electronic Commerce Meeting Notice

The Department of Commerce and the Department of State's Advisory Committee Study Group on Electronic Commerce will cosponsor a meeting Monday, December 15 in Washington, DC, from 9:30 a.m. to 4:30 p.m. at the Department of Commerce. The purpose of the meeting is to review international and national developments concerning computer-based signature and message integrity systems, and consider possible approaches to international rules and related domestic concerns. In particular, consideration will be given to meetings on these and related topics at the United Nations Commission on International Trade Law (UNCITRAL), the OECD and other international bodies.

The Advisory Committee will also consider, where relevant, recent developments at the National Conference of Commissioners on Uniform State Laws (NCCUSL), legislative initiatives by states within the U.S., and programs of various federal agencies.

Issues that may be reviewed by the Advisory Committee include, but are not limited to, prior U.S. views encouraging international bodies to examine all forms of electronic signatures, and to encompass both regulated/licensed systems as well as unregulated private sector systems; whether rules for signature systems should distinguish between commercial and consumer transactions; possible rules on risk allocation, attribution and reliance; whether third party assurance providers, such as certifying authorities, should have to meet minimum levels of assurance; what role information security standards should play in this process; whether rules are needed on incorporation by reference; what types of rules for cross-certification between different countries are feasible; whether agreement should be sought on underlying rules for accreditation, and if so, in what international bodies, and other related issues. Jurisdictional issues will also be discussed as appropriate.

Participants may wish to review the recently completed UNCITRAL Model Law on Electronic Commerce, available with a Guide to Enactment from U,N. document outlets as Doc. V.97–22269, May 1997, or from the Office of the Legal Adviser at the address below, which covers the legal effect and validity of computer messages in commercial transactions; functional equivalents of signatures, writing, etc.; attribution of messages; time and place where communications are deemed to have taken place, and other matters.

The meeting is open to the public up to the capacity of the meeting room, and members of the public may participate subject to rulings of the Chair. The meeting will be held at the Department of Commerce in Conference Room 5855; entry to the Commerce Department should be through the main entrance on 14th Street between Constitution and Pennsylvania Avenues. Participants should register in advance since space may be limited. Please advise either the Office of Legal Adviser (L/PIL) at the State Department by calling Rosie Gonzales at (202) 776–8420 or by fax 776–8482, or e-mail at: pildb@his.com., or Brian Hengesbaugh at the Commerce Department, Office of Chief Counsel for International Commerce, (202) 482–4602 or fax (202) 482–4076, of your name and government agency identification, or affiliation and address, as well as telephone and fax number, and e-mail if available.

Members of the public who cannot attend are welcome to request available documentation and to comment in writing on this topic, including any recommendations for possible U.S. positions to be put forward at international meetings on electronic signatures. For documentation or additional information contact Harold Burman at the State Department Office indicated above. The mailing address is: Office of the Legal Adviser, Suite 355

South Building, 2430 E Street, NW., Washington, DC 20037–2800.

Harold S. Burman,

Executive Director, Secretary of State's Advisory Committee on Private International Law.

[FR Doc. 97–31662 Filed 12–1–97; 8:45 am]

BILLING CODE 4710–08–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. WTO/D–23]

WTO Dispute Settlement Proceeding Regarding U.S. Antidumping Duties on Dynamic Random Access Semiconductors (DRAMS) of One Megabyte or Above From Korea

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: Pursuant to section 127(b)(1) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3537(b)(1), the Office of the United States Trade Representative (USTR) is providing notice that the government of Korea has requested the establishment of a dispute settlement panel under the Marrakesh Agreement Establishing the World Trade Organization (WTO) to examine the continuing imposition by the United States of antidumping duties on dynamic access memory semiconductors (DRAMS) of one megabyte or above from Korea. Specifically, on July 16, 1997, in its final determination in the administrative review of an antidumping order on DRAMS from Korea, the Department of Commerce determined not to revoke the order. 62 FR 39809 (July 24, 1997). Commerce declined to revoke the order because it found that one of the regulatory criteria for revocation had not been satisfied; namely, based on the evidence before it, Commerce was not satisfied that future dumping of DRAMS by the Korean producers in question was ''not likely.''

DATES: Although USTR will accept any comments received during the course of the dispute settlement proceedings, comments should be submitted on or before January 5, 1998, to be assured of timely consideration by USTR in preparing its first written submission to the panel.

ADDRESSES: Comments may be submitted to Ileana Falticeni, Litigation Assistant, Office of Monitoring and Enforcement, Room 501, Attn: Korea DRAMS Dispute, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: William D. Hunter, Office of the General Counsel (202) 395–3582.

SUPPLEMENTARY INFORMATION: By letter dated November 6, 1997, the Government of Korea requested the establishment of a panel to examine the Department of Commerce's continuing imposition of an antidumping order on DRAMS of one megabyte or above from Korea. Although there currently are no scheduled meetings of the WTO Dispute Settlement Body (DSB) during the remainder of 1997, it is possible that a meeting could be scheduled during this time and that the DSB could establish a panel before the end of 1997. Under normal circumstances, the panel, which will hold its meetings in Geneva, Switzerland, would be expected to issue a report detailing its findings and recommendations within six to nine months after it is established.

Major Issues Raised by the Government of Korea and Legal Basis of Complaint

In its request for the establishment of a panel, the Government of Korea has identified as the measures at issue (1) the July 16 determination by Commerce; and (2) the U.S. Tariff Act of 1930, as amended (19 U.S.C. 1673 *et seq.*) and the relevant Commerce regulations (19 CFR Part 353 (1997), both as applied and on their face. The Government of Korea alleges that these measures are inconsistent with several provisions of the WTO agreements, including the following specific allegations:

- Commerce's final determination not to revoke the antidumping order, after findings of no or *de minimis* dumping margins, and respondent companies' certification that they would not dump in the future and agreement to reinstatement in the order in the event they were to dump the merchandise in the future, is inconsistent with Article 11 of the Antidumping Agreement and Article VI of GATT 1994;
- The ''not likely'' criterion under Commerce's regulations gives Commerce wide discretion in deciding on revocation, and allows Commerce to maintain an order in an arbitrary and unjustifiable manner despite the absence of dumping for several years, respondents' certification not to dump in the future, and the agreement to reinstatement of the order in the event they dump DRAMS in the future. This criterion, both as applied in Commerce's final determination and on its face, is inconsistent with Article 11 of the Antidumping Agreement and Article VI of GATT 1994 and exceeds the scope of those agreements;
- The negative standard of the ''not likely'' criterion and Commerce's practice as applied in the final determination shifted the burden of proof from the United States to the respondents in contradiction of Article II of the Antidumping Agreement;
- The United States has failed to publish promptly, and in such a manner as to enable governments and traders to become acquainted with them, objective and specific factors regarding the ''not likely'' criterion, and Commerce impermissibly accepted and rejected data in a biased fashion inconsistent with Article X of GATT 1994 and Articles 11 and 17 of the Antidumping Agreement;
- The U.S. maintenance of the antidumping order on DRAMS without considering whether the injury to the U.S. industry would be likely to continue or recur if the duty were removed is inconsistent with Article 11 of the Antidumping Agreement;
- Commerce's decision regarding the products subject to the order is inconsistent with Articles 2 and 3 of the Antidumping Agreement because it included products that were never found to have been dumped or to have caused injury, and it arbitrarily excluded products that were like products to those investigated;
- Commerce's final determination not to revoke the order based on unverified information from the petitioner and mere conjecture without any substantial data, and Commerce's failure to give adequate consideration to information submitted by the Korean respondents in the administrative review is inconsistent with Articles 2, 6 and 17.6(I) of the Antidumping Agreement and Article VI of GATT 1994;
- Commerce's selection of the period of review for the ''not likely'' criterion was improper and not objective, and therefore is inconsistent with Article 17.6(I) of the Antidumping Agreement and Article X of GATT 1994;
- Commerce's final determination is inconsistent with Article I of GATT 1994 in that it denied to the Korean respondents the revocation of the antidumping order after three consecutive reviews finding no or *de minimis* dumping margins, and after those respondents certified that they would not dump in the future, and after they agreed to the reimposition of the order if dumping occurred, even though Commerce revoked antidumping orders in the same circumstances involving other Members;
- Commerce's standard for determining whether to revoke antidumping orders is impossible to meet in proceedings involving cyclical industries such as the DRAMS industry, and, therefore, both on its face and as

applied in the final determination, is inconsistent with Article 11 of the Antidumping Agreement;

• The margin of dumping established by the United States to be *de minimis* in administrative review proceedings is inconsistent with Article 5.8 of the Antidumping Agreement; and

• The refusal by the United States to revoke the antidumping order in light of Korea's data collection proposal is inconsistent with Article I of GATT 1994, given the U.S. acceptance of such proposals and consequent revocation of antidumping orders in similar cases involving other Members.

Public Comment: Requirements for Submissions

Interested persons are invited to submit written comments concerning the issues raised in the dispute. Comments must be in English and provided in fifteen copies. A person requesting that information submitted be treated as confidential business information must certify that such information is business confidential and would not customarily be released to the public by the commenter in accordance with 15 CFR 2007. Confidential business information must be clearly marked ''BUSINESS CONFIDENTIAL'' in a contrasting color ink at the top of each page of each copy.

Information or advice contained in a comment submitted, other than business confidential information, may be determined by USTR to be confidential in accordance with section 135(g)(2) of the Trade Act of 1974 (19 U.S.C. 2155(g)(2)). If the submitter believes that information or advice may qualify as such, the submitter—

(1) Must so designate that information or advice;

(2) Must clearly mark the material as ''SUBMITTED IN CONFIDENCE'' in a contrasting color ink at the top of each page of each copy; and

(3) Is encouraged to provide a non-confidential summary of the information or advice.

Pursuant to section 127(e) of the URAA (19 U.S.C. 3537(e)), USTR will maintain a file on this dispute settlement proceeding, accessible to the public, in the USTR Reading Room: Room 101, Office of the United States Trade Representative, 600 17th Street, N.W., Washington, DC 20508. The public file will include a listing of any comments received by USTR from the public with respect to the proceeding; the U.S. submissions to the panel in the proceeding; the submissions, or non-confidential summaries of submissions, to the panel received from other participants in the dispute, as well as the report of the dispute settlement panel and, if applicable, the report of the Appellate Body. An appointment to review the public file (Docket WTO/D–23 (''U.S.-Anti-Dumping Duties on DRAMS from Korea'') may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 97–31524 Filed 12–1–97; 8:45 am]

BILLING CODE 3190–01–M

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 1995 (44 USC Chapter 35), this notice announces that the Information Collection Requests (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describes the nature of the information collections and their expected burden. The **Federal Register** (FR) Notice with a 60-day comment period soliciting comments on information collection 2125–0571 was published on July 22, 1997 [62 FR 39300] and the FR Notice for 2125–0572 was published on July 22, 1997 [62 FR 39301].

DATES: Comments must be submitted on or before (Insert 30 days from date of publication).

FOR FURTHER INFORMATION CONTACT: Contact Mr. Thomas Vining, Office of Motor Carriers, (202) 358–7028, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590; for information collections 2125–0571 and 2125–0572.

SUPPLEMENTARY INFORMATION:

Federal Highway Administration (FHWA)

Title: Request for Revocation of Authority Granted.

OMB Number: 2125–0571.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Affected Public: Motor Carriers, Freight Forwarders, and Brokers.

Form(s): OCE–46.

Abstract: The Secretary of Transportation is authorized to promulgate regulations that provide for the registration of for-hire motor carriers of regulated commodities under 49 U.S.C. 13902, for surface freight forwarders under 49 U.S.C. 13903, and for property brokers under 49 U.S.C. 13904. The Secretary has adopted regulations to implement these registration procedures. Under Title 49 U.S.C. 13905, each registration is effective from the date specified and remains in effect for such period as the Secretary of Transportation determines appropriate by regulation. Subsection (c) of 49 U.S.C. 13905 provides that, on application of the registrant, the Secretary may amend or revoke a registration. Authority pertaining to these registrations has been delegated to the FHWA.

Form OCE–46 allows transportation entities to apply voluntarily for revocation of their registration in whole or in part. The form asks for the registrant's docket number, name and address, and the reasons for the revocation request.

Estimated Annual Burden Hours: 400 hours.

Title: Application for Certificate of Registration for Foreign Motor Carriers and Foreign Motor Private Carriers under 49 U.S.C. 13902(c).

OMB Number: 2125–0572.

Affected Public: Foreign Motor Carriers.

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Form(s): OP–2.

Abstract: Basic licensing procedures for registering foreign motor carriers to operate across the border into the United States are found at 49 U.S.C. 13902(c). Related regulations appear at 49 CFR 368. The FHWA carries out this registration program under authority delegated by the Secretary of Transportation. Form OP–2 is used by foreign motor carriers to apply for registration with the FHWA. The form requests information on the motor carrier's location, the form of business, ownership and control, and proposed operations.

ADDRESS: 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 Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on November 25, 1997.

Phillip A. Leach,

Clearance Officer, United States Department of Transportation.

[FR Doc. 97–31510 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Global Air Cargo, Inc. For Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 97–11–39) Docket OST–97–2683.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue orders (1) finding Global Air Cargo, Inc., fit, willing, and able, and (2) awarding it a certificate to engage in interstate and foreign charter air transportation of property and mail.

DATES: Persons wishing to file objections should do so no later than December 10, 1997.

ADDRESSES: Objections and answers to objections should be filed in Docket OST–97–2683 and addressed to Department of Transportation Dockets (SVC–120.30, Room PL–401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT:

Ms. Janet A. Davis, Air Carrier Fitness Division (X–56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590, (202) 366–9721.

Dated: November 25, 1997.

Charles A. Hunnicutt,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 97–31509 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 121–29A]

Proposed Revised Advisory Circular—Carry-On Baggage

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments on proposed revision to Advisory Circular (AC) 121–29, Carry-On Baggage.

SUMMARY: The proposed Advisory Circular (AC) provides guidance about the information that should be contained in a certificated air carrier's approved carry-on baggage program and updates, provides clarification, and additional information to AC 121–29, Carry-On Baggage.

DATES: Comments must be received on or before March 2, 1998.

COMMENTS INVITED: Comments are invited on all aspects of the proposed AC. Commenters should give special attention to definition of proper stowage of carry-on baggage. Commenters must identify file number AC 121–29A.

ADDRESSES: Send all comments and requests for copies of the proposed AC to: Federal Aviation Administration, AFS–203, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Donell Pollard, AFS–203, at the above address, telephone (202) 267–3735 or (202) 267–8166 (6:00 a.m. to 3:30 p.m. est).

SUPPLEMENTARY INFORMATION: FAA personnel, certificated air carriers, airline personnel, and the public have asked the FAA to clarify existing policy found in AC 121–29, 14 CFR section 121.589, and in the model carry-on baggage programs. The FAA agrees that additional policy guidance is needed because of changes in the airline industry, such as reduction in personnel in the gate area. In addition, revisions to AC 121–29 are needed to add material that was otherwise omitted and to clarify certain confusing sections of the original guidance. The inclusion of an example of an acceptable definition of proper stowage should not be construed as invalidating any previously approved carry-on baggage programs.

Issued in Washington, DC, on November 25, 1997.

Richard O. Gordon,

Deputy Director, Flight Standards Service.

[FR Doc. 97–31520 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Technical Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for the RTCA Technical Management Committee meeting to be held December 16, 1997, starting at 9:00 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: (1) Chairman's Remarks; (2) Review and Approval of Summary of the Previous Meeting; (3) Consider and Approve Proposed Final Draft, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System II (TCAS II) Airborne Equipment, RTCA Paper No. 336–97/SC147–691, Prepared by SC–147; (4) Discuss/ Take Position on: a. Future of Special Committee 147; b. Committee Milestones; (5) Other Business; (6) Date and Place of Next Meeting.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, D.C. 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public present a written statement to the committee at any time.

Issued in Washington, DC, on November 24, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–31505 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government/Industry Free Flight Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held December 17, 1997, from 1:00 p.m. until 5:00 p.m. The meeting will be held in Conference Room 8ABC (8th floor) of the Federal Aviation Administration,

800 Independence Avenue, S.W., Washington, DC 20036.

The agenda will include: (1) Co-chairs' Introductory Remarks; (2) Review/Approval of Summary of the Previous Meeting; (3) Review/Discussion of European Civil Aviation Conference Air Traffic Management 2000+ Strategy Board Initiative; (4) Overview of the FAA Administrator's National Airspace System Modernization Task Force Initiative; (5) Free Flight Select Committee Report; (6) Other Business—Review Suggested Dates for 1998 Steering Committee Meetings.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairs, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, N.W., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 25, 1997.

Janice L. Peters,

Designated Official.

[FR Doc. 97–31506 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (#98–02–C–00–IDA) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Idaho Falls Municipal Airport; Submitted by the City of Idaho Falls, Idaho Falls, Idaho

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Idaho Falls Municipal Airport under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before January 2, 1998.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James Thorsen, A.A.E., Director of Aviation, at the following address: City of Idaho Falls, 2140 North Skyline Drive, Idaho Falls, ID 83402–4906.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Idaho Falls Municipal Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary E. Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (#98–02–C–00–IDA) to impose and use PFC revenue at Idaho Falls Municipal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 25, 1997, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Idaho Falls, Idaho Falls Municipal Airport, Idaho Falls, Idaho, was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 26, 1998.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 1998.

Proposed charge expiration date: December 1, 2000.

Total requested for use approval: $820,404.00.

Brief description of proposed project: Rehabilitation of runway 2/20; Airport master plan; Aircraft rescue and fire fighting station; Mandatory runway lighting/signage and apron; Snow removal equipment; Runway 17/35 lighting system replacement and ramp reconstruction.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 540, Renton, WA 98055–4056. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Idaho Falls Municipal Airport.

Issued in Renton, Washington on November 25, 1997.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 97–31507 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In October 1997, there were eight applications approved. Additionally, three approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph (d) of § 158.29.

PFC Applications Approved

Public Agency: Richland-Lexington Airport Commission, Columbia, South Carolina.

Application Number: 97–02–U–00–CAE.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue Approved For Use In This Decision: $587,186.

Charge Effective Date: November 1, 1993.

Estimated Charge Expiration Date: September 1, 2008.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Project Approved For Use: Runway/taxiway 11/29 overlay.

Decision Date: October 6, 1997.

For Further Information Contact: E.C. Hunnicutt, Atlanta Airports District Office, (404) 305–7145.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 97–06–C–00–ORD.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved In This Decision: $1,470,500.

Earliest Charge Effective Date: June 1, 2004.

Estimated Charge Expiration Date: July 1, 2004.

Class of Air Carriers Not Required To Collect PFC's: Air taxi operations.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Chicago O'Hare International Airport (ORD).

Brief Description of Projects Approved For Collection At ORD And Use At Gary Regional Airport:

Terminal renovations program.
Automated weather observation system.
General aviation apron overlay/expansion.

Decision Date: October 8, 1997.

For Further Information Contact: Louis H. Yates, Chicago Airports District Office, (847) 294–7335.

Public Agency: County of Dukes County, Vineyard Haven, Massachusetts.

Application Number: 97–01–C–00–MVY.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved In This Decision: $737,960.

Earliest Charge Effective Date: January 1, 1998.

Estimated Charge Expiration Date: December 1, 2005.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Project Approved For Collection And Use: Construct terminal building.

Decision Date: October 16, 1997.

For Further Information Contact: Priscilla Scott, New England Region Airports Division, (617) 238–7614.

Public Agency: City of Modesto, California.

Application Number: 97–04–U–00–MOD.

Application Type: Use PFC revenue.

PFC Level: $3.00.

Total PFC Revenue To Be Used In This Decision: $44,400.

Charge Effective Date: August 1, 1994.

Estimated Charge Expiration Date: April 1, 1999.

Class of Air Carriers Not Required To Collect PFC's: No change from previous decision.

Brief Description of Projects Approved For Use:

Runway 10R/28L pavement overlay.
Relocate runway 10R/28L edge lights.

Decision Date: October 17, 1997.

For Further Information Contact: Marlys Vandervelde, San Francisco Airports District Officer, (415) 876–2806.

Public Agency: City of Des Moines, Iowa.

Application Number: 97–02–C–00–DSM.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved In This Decision: $3,574,928.

Earliest Charge Effective Date: December 1, 1997.

Estimated Charge Expiration Date: July 1, 1999.

Class of Air Carriers Not Required to Collect PFC's: Part 135 air taxi/commercial operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Des Moines International Airport.

Brief Description of Projects Approved for Collection and Use:

Land acquisition for runway extension and road relocation; and grading and construction of relocated road.
Terminal concourse chiller update.
Reconstruct terminal apron (phase I and II).

Decision Date: October 21, 1997.

For Further Information Contact: Lorna Sandridge, Central Region Airports Division, (816) 426–4730.

Public Agency: Dothan-Houston County Airport Authority, Dothan, Alabama.

Application Number: 97–01–C–00–DHN.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved In This Decision: $5,515,948.

Earliest Charge Effective Date: February 1, 1998.

Estimated Charge Expiration Date: December 1, 2028.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Collection and Use:

Passenger terminal building.
Aircraft parking apron.
Security fencing.
Terminal access road relocation.
Delayed baggage delivery/pick-up area.
Directional/informational signage.

Decision Date: October 21, 1997.

For Further Information Contact: Roderick T. Nicholson, Jackson Airports District Office, (601) 965–4628.

Public Agency: City of Santa Barbara, California.

Application Number: 97–01–C–00–SBA.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved In This Decision: $2,572,182.

Earliest Charge Effective Date: January 1, 1998.

Estimated Charge Expiration Date: January 1, 2002.

Class of Air Carriers Not Required To Collect PFC's: Unscheduled Part 135 air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual emplanements at Santa Barbara Municipal Airport.

Brief Description of Projects Approved for Collection and Use:

Safety area grading and mitigation.
Relocate beacon and airfield lighting equipment panels.
Rehabilitate runway 7/25 and associated taxiway edge lighting systems.
Improve airfield drainage and storm water systems.
Construct helipads.
Design for taxiways A, F, and G overlay and pavement rehabilitation.
Expand general aviation ramp.
General aviation asphalt cement ramp rehabilitation.
Purchase airport sweeper.
Replace terminal area waste transfer station.
Rehabilitate precast concrete general aviation ramp.
Remodel terminal building to comply with the Americans with Disabilities Act.
Rehabilitate airfield signage and electrical system.
Construct additional square footage in aircraft rescue and firefighting (ARFF) station.
Rehabilitate taxiway B south of taxiway A.
Reconstruct concrete general aviation ramp.
Sealcoat taxiway C transition, portions of taxiway C, runway 15R/33L, and runway 15 holding area.
Install security access control system.
Design for grading and drainage system.

Overlay runway 15L/33R and connector taxiways.
Construct runway 7/25 blast pads.
Sealcoat taxiway H and J.
Reconstruct taxiway C apron transition west of runway 15R/33L.
Construct six helipads.
Reconstruct the northerly portion of taxiway B.
Overlay and construct porous friction course on runway 7/25, and stabilize shoulders on taxiways C and F.

Brief Description of Projects Approved for Collection Only:

Master plan implementation, aviation facilities plan project/extend runway safety areas.
Master plan implementation, aviation facilities plan project/extend taxiway A and safety areas.

Brief Description of Project Withdrawn: Design and construct airline terminal access road.

Determination: This project was withdrawn by the public agency prior to submittal of the application to the FAA. It was addressed in the carrier consultation meeting and included in the PFC application; however, it was marked ''Project deleted from PFC application.''

Decision Date: October 27, 1997.

For Further Information Contact: John P. Milligan, Western Pacific region Airports Division, (310) 725–3621.

Public Agency: City of Tyler, Texas.

Application Number: 97–02–C–00–TYR.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $976,449.

Earliest Charge Effective Date: March 1, 1998.

Estimated Charge Expiration Date: January 1, 2003.

Class of Air Carriers Not Required To Collect PFC'S: None.

Brief Description of Projects Approved For Collection and Use:

Decision Date: October 27, 1997.

Terminal area study.
Overlay taxiway F.
ARFF building.
Wind cones.
PFC administration costs.
Sealcoat runway 13/31 and associated taxiways A, C, and D.
Airport sanitary sewer capacity improvements.

Decisison Date: October 27, 1997.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 222–5614.

AMENDMENTS TO PFC APPROVALS

Amendment no, city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge expiration date	Amended estimated charge expiration date
93–02–I–04–BDL, Windsor Locks, CT	07/16/97	$12,257,000	$9,257,000	11/01/98	11/01/98
97–06–I–01–BDL, Windsor Locks, CT	07/16/97	12,602,000	15,602,000	11/01/98	11/01/98
94–01–C–01–BMI, Bloomington, IL	10/03/97	3,855,012	6,276,133	05/01/10	12/01/10

Issued in Washington, DC, on November 25, 1997.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 97–31508 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–97–3165]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before February 2, 1998.

FOR FURTHER INFORMATION CONTACT: William J. Aird, Division of Ports, Office of Ports and Domestic Shipping, MAR–831, Room 7201, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–1901 or fax 202–366–6988. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Port Facility Conveyance Information.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0524.

Form Number: No form is required for this collection.

Expiration Date of Approval: September 30, 1998.

Summary of Collection of Information: Pub. L. 103–160 authorizes the Department of Transportation to convey to public entities surplus Federal property needed for development or operation of a port facility. The information collection will allow the Maritime Administration to approve the conveyance of property and administer the port facility conveyance program.

Need and Use of the Information: The information collection is necessary for MARAD to determine whether (1) the community is committed to the redevelopment/reuse plan, (2) the redevelopment/reuse plan is viable and is in the best interest of the public, and (3) the property is being used in accordance with the terms of the conveyance and applicable statutes and regulations.

Description of Respondents: Eligible port entities.

Annual Responses: 20 responses.

Annual Burden: 2200 hours.

Comments: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, S.W., Washington, D.C. 20590–0001. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance quality, utility, and clarity of the information to be collected. 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. An electronic version of this document is available on the World Wide Web at http:/dms.dot.gov.

By Order of the Maritime Administrator.

Dated: November 26, 1997.

Joel C. Richard,

Secretary.

[FR Doc. 97–31561 Filed 12–1–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Sec. 5a Application No. 61]

National Classification Committee—Agreement

AGENCY: Surface Transportation Board.

ACTION: Extension of deadlines for filing comments.

SUMMARY: The Surface Transportation Board is granting a 3-week extension of the deadlines for filing opening and reply comments in this proceeding. All other dates and deadlines remain the same.

DATES: Opening comments are now due by January 29, 1998. Reply comments are now due by February 26, 1998.

ADDRESSES: Send an original and 10 copies of notices of intent to participate (still due by November 28, 1997) and comments, referring to ''Section 5a Application No. 61,'' to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423. Opening and reply comments must be served on the persons identified as ''parties of record'' on the service list.

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

SUPPLEMENTARY INFORMATION: This proceeding involves the issue of whether, under 49 U.S.C. 13703(d) and (e), it is in the public interest to renew the bureau agreement of the National Classification Committee, which administers the National Motor Freight Classification. For additional information, see the notice published in the **Federal Register** on November 13, 1997.

Decided: November 25, 1997.

By the Board, Vernon A. Williams, Secretary.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31629 Filed 12–1–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33509]

Colorado, Kansas & Pacific Railway Company—Acquisition and Operation Exemption—Union Pacific Railroad Company

Colorado, Kansas & Pacific Railway Company (Colorado), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire from Union Pacific Railroad Company and to operate approximately 121.9 miles of rail line between milepost 747.5, near Towner, and milepost 869.4, near NA Junction, in Kiowa, Crowley, and Pueblo Counties, CO (Line).[1]

The transaction was expected to be consummated on or about November 17, 1997.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33509, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., Rea, Cross & Auchincloss, 1920 N Street, N.W., Suite 420, Washington, DC 20036.

Decided: November 25, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31556 Filed 12–1–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Line was the subject of an application for abandonment in Docket No. AB–3 (Sub-No. 130), *Missouri Pacific Railroad Company—Abandonment—Towner-NA Junction Line in Kiowa, Crowley, and Pueblo Counties, CO*, and discontinuance of trackage rights operations in the embraced Docket No. AB–8 (Sub-No. 38), *The Denver and Rio Grande Western Railroad Company—Discontinuance of Trackage Rights—Towner-NA Junction Line in Kiowa, Crowley and Pueblo Counties, CO*. The abandonment and discontinuance were granted in *Union Pacific Corporation, Union Pacific Railroad Company, and Missouri Pacific Railroad Company—Control and Merger—Southern Pacific Rail Corporation, Southern Pacific Transportation Company, St. Louis Southwestern Railway Company, SPCSC Corp., and The Denver and Rio Grand Western Railroad Company*, Finance Docket No. 32760 (STB served Aug. 12, 1996). Colorado indicates that the abandonment was never consummated.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33412]

Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman, R. Lawrence McCaffrey, Jr., Harold F. Parmly, and Anacostia Rail Holdings Company—Continuance in Control Exemption—Pacific Harbor Line, Inc.

Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman, R. Lawrence McCaffrey, Jr., and Harold F. Parmly (Gilbertson, *et al.*), noncarrier individuals, and Anacostia Rail Holdings Company (ARC), a noncarrier holding company (collectively Applicants), have filed a verified notice of exemption to continue in control of Pacific Harbor Line, Inc. (PHL) upon PHL's becoming a Class III rail carrier.

The transaction was expected to be consummated on or after November 15, 1997.

This transaction is related to STB Finance Docket No. 33411, *Pacific Harbor Line, Inc.—Operation Exemption—Port of Los Angeles*, in which PHL seeks to acquire operating rights within the City of Los Angeles' Port of Los Angeles (POLA) to provide switching service on track owned by POLA.

Applicants own and control two existing Class III common carriers by rail: Louisville & Indiana Railroad Company, operating in Southern Indiana and Northern Kentucky; and the New York & Atlantic Railway Company, operating within the State of New York. With the exception of R. Lawrence McCaffrey, Jr., each of Gilbertson, *et al.* is an officer and/or director of the Chicago SouthShore & South Bend Railroad Corporation (CSS), a Class III common carrier by rail, operating in Northern Illinois and Northern Indiana. In addition, Gilbertson *et al.* are minority shareholders in CSS's corporate general partner SouthShore Corporation, a noncarrier.

Applicants state that: (i) the railroads will not connect with each other or any railroad in their corporate family; (ii) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its

employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice 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. 33412, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Mark H. Sidman, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, NW., Suite 800, Washington, DC 20005–4797.

Decided: November 24, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31559 Filed 12–1–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33411]

Pacific Harbor Line, Inc.—Operation Exemption—Port of Los Angeles

Pacific Harbor Line, Inc. (PHL), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire operating rights from the City of Los Angeles, a municipal corporation, acting through its Board of Harbor Commissioners (LA). PHL will acquire the right to operate within LA's Port of Los Angeles (POLA) to provide switching services on track owned by POLA.[1]

The transaction was expected to be consummated in phases on or after November 15, 1997.

This transaction is related to STB Finance Docket No. 33412, *Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman, R. Lawrence McCaffrey, Jr., Harold F. Parmly, and Anacostia Rail Holdings—Continuance in Control Exemption—Pacific Harbor Line, Inc.,* in which Peter A. Gilbertson, H. Terry Hearst, Bruce Lieberman, R. Lawrence McCaffrey, Jr., Harold F. Parmly and Anacostia Rail Holdings Company have filed a notice of exemption to continue in control of PHL upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33411, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Mark H. Sidman, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

Decided: November 24, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31558 Filed 12–1–97; 8:45 am]

BILLING CODE 4915–00–P

[1] Pursuant to the terms of an operating agreement, PHL's operating rights will be for a term of three years, subject to extension, modification, and earlier termination.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33525]

Sierra Railroad Company—Acquisition and Operation Exemption—Sierra Pacific Industries

Sierra Railroad Company, a Class III rail common carrier, has filed a notice of exemption under 49 CFR 1150.41 to acquire and operate approximately 12 miles of rail line in Amador County, CA, known as the Amador Branch, from Sierra Pacific Industries (Sierra Pacific). The Amador Branch extends from milepost 0.0, in Ione, to milepost 12.0, at Martell.[1]

The transaction is scheduled to be consummated on December 1, 1997.

If the notice 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 does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33525, 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 James F. Flint, Esq., Grove, Jaskiewicz and Cobert, 1730 M Street, NW., Suite 400, Washington, DC 20036.

Decided: November 24, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31560 Filed 12–1–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Amador Branch includes a yard and repair shops at Martell as well as additional spur trackage at the Sierra Pacific mill and particle board plant located at milepost 11.6.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–57 (Sub-No. 43X)]

Soo Line Railroad Company—Abandonment Exemption—in St. Louis County, MN

Soo Line Railroad Company (Soo) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon an approximately 3.0+-mile line of railroad known as the West Duluth Line, between milepost 465.43+ and milepost 468.43+ in West Duluth, in St. Louis County, MN. The line traverses United States Postal Service Zip Code 55802.

Soo has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected

employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on January 1, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by December 12, 1997. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 22, 1997, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Larry D. Starns, Esq., Leonard, Street & Deinard, 150 South Fifth Street, Suite 2300, Minneapolis, MN 55402.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Soo has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by December 5, 1997. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), Soo shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by Soo's filing of a notice of consummation by December 2, 1998, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Decided: November 25, 1997.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 97–31557 Filed 12–1–97; 8:45 am]

BILLING CODE 4915–00–P

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $900. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 74–13]

Premium-Class Travel, Authority Delegation

Dated: November 24, 1997.

1. Purpose. This Directive establishes policy and responsibilities for the approval of premium-class transportation accommodations, in accordance with Chapters 301 and 304 of the Federal Travel Regulation (FTR) (41 CFR (Code of Federal Regulations) parts 301 and 304) and White House and Office of Management and Budget (OMB) guidance on perquisites.

2. Definitions. The terms ''premium-class,'' ''first-class,'' ''reasonably available,'' and ''security reasons'' are defined in FTR 301.3 (41 CFR 301.3).

3. Scope.

a. This Directive applies to all bureaus, the Departmental Offices (DO), and the Office of Inspector General (OIG) for travel by officers and employees of the Department when they travel in support of the Department's programs, including programs funded from sources other than appropriations, e.g., fees or assessments. It also applies to travel paid for by a non-Federal source pursuant to FTR Chapter 304 (41 CFR part 304), and to travel by persons other than employees whose travel is on an invitational basis and paid for by the Department.

b. Neither this Directive nor the restrictions on premium-class travel apply to travel:

(1) for which an employee is reimbursed by certain tax exempt organizations or a State, county, or municipality, incident to attendance at meetings, pursuant to 5 U.S.C. 4111;

(2) which is accepted by an employee pursuant to 5 U.S.C. 7342, concerning foreign gifts and decorations; or

(3) for a partisan purpose in the case of an employee who is exempt from the statutory prohibitions on partisan political activity, and the travel is not paid for with Government funds.

4. Policy. It is the policy of the Department of the Treasury that:

a. prior authorization by the Assistant Secretary for Management and Chief Financial Officer is required for first-class travel in all bureaus, except for U.S. Secret Service (USSS) agents on protective missions;

b. first-class travel shall not be authorized, unless no other commercial service is reasonably available, or such travel is necessary for reasons of disability or physical impairment, or for security reasons, as these terms are defined in FTR 301–3.3 (41 CFR 301–3.3); and

c. first-class airline accommodations shall not be authorized or approved when obtained as an accommodations upgrade through the redemption of frequent traveler benefits accumulated while traveling on official business, unless the first-class accommodations are justified independently under the FTR (41 CFR part 301).

5. Responsibilities For First-Class Travel. The Deputy Assistant Secretary (Administration), Heads of Bureaus, and the Inspector General:

a. shall submit Treasury Department Form (TD F) 70–02.6, ''First-Class Travel Request and Authorization,'' by mail or facsimile (FAX) to the Assistant Secretary for Management and Chief Financial Officer at least ten working days prior to travel for review and authorization, unless extenuating circumstances or emergency situations make advance authorization impossible. If advance authorization cannot be obtained, the traveler shall obtain written authorization at the earliest possible time;

b. except as specifically permitted under paragraph 6., shall not authorize, pay for, or reimburse employees or others for the use of first-class travel accommodations without the prior authorization of the Assistant Secretary for Management and Chief Financial Officer; and

c. shall submit an annual report on all approved first-class travel that began during the fiscal year to the Deputy, Chief Financial Officer (DCFO), Office of Accounting and Internal Control, DO, (Attention: Travel Program Coordinator). The report is due to the General Services Administration by November 30 of each year. See FTR 301–3.3(e) (41 CFR 301–3.3) for data collection and submission requirements. Negative reports are required in writing.

6. Exceptions.

a. The Director, USSS, is delegated authority to approve first-class travel accommodations solely with respect to Secret Service agents' protective details when necessary for security reasons. Such approval does not require the advance or subsequent authorization by

the Assistant Secretary for Management and Chief Financial Officer. The Director may redelegate this authority, in writing, only to the Deputy Director.

b. To the extent that information is protected from disclosure by statute or Executive Order, data shall be submitted by the Director, USSS, in accordance with FTR 301–3.3(e)(4) (41 CFR 301–3.3(e)(4)), as prescribed in paragraph 5.c. herein.

7. Other Premium-Class Travel Accommodations. The Deputy Assistant Secretary (Administration), Heads of Bureaus, and the Inspector General are delegated authority to approve premium-class other than first-class transportation accommodations when such accommodations meet the criteria in FTR 301–3.3 (41 CFR 301–3.3). This authority may be redelegated, in writing, only to the principal deputy, with the exception of:

a. the USSS, who may redelegate to the Assistant Special Agent in Charge (ASAIC), Office of Administration; and

b. the U.S. Customs Service, who may redelegate to the U.S. Customs Service Assistant Commissioners, Offices of Investigations and Internal Affairs for covert investigative assignments only. Use of premium-class other than first-class accommodations shall be approved only when use of such accommodations is clearly consistent with the criteria in the FTR; the justification on the travel authorization should address any additional costs involved. Approval of business-class accommodations by a non-Federal source shall be in accordance with FTR Chapter 304 (41 CFR part 304). Further, in situations where the business-class travel accommodations are provided by a non-Federal source on a reimbursement, rather than an in-kind basis, the use of premium-class other than first-class must be justified independently and in accordance with the criteria in FTR 301–3.3 (41 CFR 301–3.3). The use of premium-class other than first-class airline accommodations for ''security purposes or exceptional circumstances'' as permitted by FTR 301–3.3(d)(5)(iv) (41 CFR 301–3.3(d)(5)(iv)) shall be strictly limited to those situations where their use is essential to the successful performance of the agency's mission.

8. Supply of Forms. TD F 70–02.6 may be obtained from the Records Management and Resources Branch, DO, or by submitting a printing requisition through the bureau forms control manager to the DCFO, Office of Accounting and Internal Control, DO.

9. Authorities.

a. President's Memorandum of February 10, 1993, ''Restricted Use of Government Aircraft.''

b. OMB Bulletin 93–11, ''Fiscal Responsibility and Reducing Perquisites,'' dated April 19, 1993.

c. FTR Chapter 301–3 (41 CFR 301.3), ''Use of Commercial Transportation,'' and Chapter 304 (41 CFR Part 304), ''Payment from a Non-Federal Source for Travel Expenses.''

d. 5 U.S.C. 4111, ''Acceptance of Contributions, Awards, and Other Payments.''

e. 5 U.S.C. 7342, ''Receipt and Disposition of Foreign Gifts and Decorations.''

10. Cancellation. Treasury Directive 74–13, ''Premium-Class Travel,'' dated October 26, 1994, is superseded.

11. Expiration Date. This Directive expires three years after the date of issuance unless superseded or canceled by that date.

12. Offices of Primary Interest. Office of Accounting and Internal Control; Office of the Deputy Chief Financial Officer; Office of the Assistant Secretary for Management and Chief Financial Officer.

Nancy Killefer,

Assistant Secretary for Management and Chief Financial Officer.

[FR Doc. 97–31526 Filed 12–1–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

[Treasury Directive Number 16–21]

Disposal of Obligations, Including Bonds, Notes or Other Securities; Authority Delegation

Dated: November 25, 1997.

1. Delegation. By virtue of the authority granted to the Fiscal Assistant Secretary by Treasury Order (TO) 101–05, the Commissioner, Bureau of the Public Debt, is delegated the authority to dispose of obligations, including bonds, notes or other securities, acquired by the Secretary of the Treasury for the United States Government or delivered by an executive agency pursuant to 31 U.S.C. 324, and to perform any functions necessary to effect such disposition. The Commissioner, Bureau of the Public Debt, shall be responsible for referring to the Fiscal Assistant Secretary any matters on which action should be appropriately taken by the Fiscal Assistant Secretary.

2. Redelegation. The Commissioner, Bureau of the Public Debt, may redelegate this authority, and it may be exercised in the individual capacity and under the individual title of each official receiving such authority.

3. Authorities.

a. TO 101–05, ''Reporting Relationships and Supervision of Officials, Offices and Bureaus, Delegation of Certain Authority, and Order of Succession in the Department of the Treasury.''

b. 31 U.S.C. 324.

4. Cancellation.

a. Treasury Directive 16–21, ''Disposal of Obligations, Including Bonds, Notes or Other Securities,'' dated May 3, 1995, is superseded, except as provided below.

b. Any matter being processed on the date of this Directive by the Commissioner, Financial Management Service, that requires the disposal of obligations, including bonds, notes or other securities, may be completed under the authority delegated to the Commissioner, Financial Management Service, in the May 3, 1995, Directive, if the Fiscal Assistant Secretary so directs.

5. Expiration Date. This Directive expires three years from the date of issuance unless cancelled or superseded by that date.

6. Office of Primary Interest. Division of Accounting Operations, Office of Public Debt Accounting, Bureau of the Public Debt.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 97–31527 Filed 12–1–97; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF VETERANS AFFAIRS

Enhanced-Use Lease of Property at the James H. Quillen Veterans Affairs Medical Center at Mountain Home, Tennessee

AGENCY: Department of Veterans Affairs.

ACTION: Notice of designation and intent to execute an Enhanced-Use Lease.

SUMMARY: The Secretary of the Department of Veterans Affairs is designating the James H. Quillen Veterans Affairs Medical Center at Mountain Home, Tennessee (the Medical Center), for an Enhanced-Use Lease development. The Department intends to enter into a long-term lease of real property at the Medical Center with the State of Tennessee (through the East Tennessee State University—ETSU) in order to transfer the long-term maintenance and development responsibilities of 31 acres of land (including 9 buildings) to the State of Tennessee. The Enhanced-Use lease will

supersede existing leases of buildings and land between VA and the State of Tennessee wherein VA is required to provide and fund all maintenance and capital improvements on behalf of ETSU. The property will continue to be used exclusively as a teaching facility by ETSU's James H. Quillen College of Medicine. As consideration for the long-term use of VA's capital assets, VA will receive a combination of benefits: the cost avoidance and/or revenue generation which will result in more operational funding being available for direct patient care. VA will also receive the benefit of an improved affiliation as the result of greatly improved medical school facilities.

FOR FURTHER INFORMATION CONTACT: Bob Eidson, Capital Assets Manager, Office of the Director (00B), James H. Quillen VA Medical Center at Mountain Home (Johnson City), Tennessee 37684, (423)–926–1171, extension 7112.

SUPPLEMENTARY INFORMATION: 38 U.S.C. Sec. 8161 *et seq.*, specifically provides that the Secretary may enter into an Enhanced-Use Lease if the Secretary determines that at least part of the use of the property will be to provide appropriate space for an activity contributing to the mission of the Department; the lease will not be inconsistent with and will not adversely affect the mission of the Department; and the lease will enhance the property. This project meets these requirements.

Dated: November 20, 1997.

Approved:

Hershel W. Gober,

Acting Secretary of Veterans Affairs.

[FR Doc. 97–31487 Filed 12–1–97; 8:45 am]

BILLING CODE 8320–01–M

federal register

Tuesday
December 2, 1997

Part II

Department of Education

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.038, 84.033, and 84.007]

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of the closing date for institutions to submit a request for a waiver of the allocation reduction for the underuse of funds under the Federal Perkins Loan, Federal Work-Study (FWS), or Federal Supplemental Educational Opportunity Grant (FSEOG) programs (known collectively as the campus-based programs).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to submit a written request for a waiver of the allocation reduction being applied to its Federal Perkins Loan, FWS, or FSEOG allocation for the 1998–99 award year (July 1, 1998 through June 30, 1999) because the institution returned more than 10 percent of its allocation for that program for the 1996–97 award year (July 1, 1996 through June 30, 1997).

DATES: *Closing Date for Submitting a Waiver Request and any Supporting Information or Documents.* For an institution that returned more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for the 1996–97 award year to be considered for a waiver of the allocation reduction for its 1998–99 award year allocation, it must mail or hand-deliver its waiver request and any supporting information or documents on or before February 13, 1998. The Department will not accept a waiver request submitted by facsimile transmission. The waiver request must be submitted to the Institutional Financial Management Division at one of the addresses indicated in the following section.

ADDRESSES: *Waiver Request and any Supporting Information or Documents Delivered by Mail.* The waiver request and any supporting information or documents delivered by mail must be addressed to Ms. Sandra K. Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) A dated shipping label, invoice, or receipt from a commercial carrier; or (4) Any other proof of mailing acceptable to the Secretary of Education.

If a waiver request is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) A mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An institution is encouraged to use certified or at least first class mail. An institution that submits a waiver request and any supporting information or documents after the closing date will not be considered for a waiver of the allocation reduction being applied to its allocation under any of the campus-based programs for award year 1998–99.

Waiver Requests and any Supporting Information or Documents Delivered by Hand. A waiver request and any supporting information or documents delivered by hand must be taken to Ms. Sandra K. Donelson, Campus-Based Financial Operations Branch, Institutional Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, Room 4714, Regional Office Building 3, 7th and D Streets, S.W., Washington, D.C. Hand-delivered waiver requests will be accepted between 8:00 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. A waiver request for the 1998–99 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under sections 413D(e)(2), 442(e)(2), and 462(j)(4) of the Higher Education Act of 1965, as amended, if an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the institution will have its allocation for the second succeeding award year for that program reduced by the dollar amount returned. The Secretary may waive this requirement for a specific institution if the Secretary finds that enforcement of the requirement would be contrary to the interest of the affected campus-based program. The institution must provide a written waiver request and any supporting information or documents by the established February 13, 1998 closing date. The waiver request must be signed by an appropriate institutional official, and above the signature the official must include the statement: ''I certify that the information the institution provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by representatives of the Secretary of Education.'' If the institution submits a waiver request and any supporting information or documents after the closing date, the request will not be considered.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) General Provisions for the Federal Perkins Loan Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 673.

(3) Federal Perkins Loan Program, 34 CFR part 674.

(4) Federal Work-Study Programs, 34 CFR part 675.

(5) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(6) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(7) New Restrictions on Lobbying, 34 CFR part 82.

(8) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(9) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the waiver request or other operational procedures of the campus-based programs, contact: Ms. Sandra K. Donelson, Institutional Financial Management Division, U.S. Department of Education, P.O. Box 23781, Washington, D.C. 20026–0781. Telephone (202) 708–9751.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m and 8 p.m., Eastern time, Monday through Friday. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the person listed in the preceding paragraph.

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of this document is the document published in the **Federal Register**.

(Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*)

Dated: November 19, 1997.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 97–31493 Filed 12–1–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
December 2, 1997

Part III

Federal Trade Commission

''Made in USA'' and Other U.S. Origin Claims; Notice

FEDERAL TRADE COMMISSION

''Made in USA'' and Other U.S. Origin Claims

AGENCY: Federal Trade Commission.

TITLE: Enforcement Policy Statement on U.S. Origin Claims.

ACTION: Notice of Issuance of Enforcement Policy Statement on U.S. Origin claims.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') has conducted a comprehensive review of ''Made in USA'' and other U.S. origin claims in product advertising and labeling. Historically, the Commission has held that a product must be *wholly domestic* or *all or virtually all* made in the United States to substantiate an unqualified ''Made in USA'' claim. As part of its review, which began in 1995, the Commission sought public comment and conducted a two-day public workshop.

On May 7, 1997, the Commission solicited public comment on Proposed Guides for the Use of U.S. Origin Claims (''Proposed Guides''). Under the Proposed Guides, a marketer making an unqualified U.S. origin claim would have been required to have a reasonable basis substantiating that the product was *substantially all* made in the United States. To give further guidance as to what constitutes a reasonable basis for making a ''Made in USA'' claim, the Proposed Guides set forth two ''safe harbors'' under which an unqualified U.S. origin claim would not be considered deceptive.

The Proposed Guides also addressed qualified claims, claims regarding specific processes and parts, multiple-item sets, and changes in cost and sourcing. They also would have authorized specific origin claims for certain products that are both sold domestically and exported.

After extensively reviewing comments received regarding the Proposed Guides, the Commission has determined not to adopt the Proposed Guides. Instead, the Commission will continue to enforce the Commission's current ''all or virtually all'' standard. The Enforcement Policy Statement on U.S. Origin Claims that appears at the end of this notice outlines the Commission's enforcement policy in this area and provides additional guidance to marketers wishing to make an unqualified ''Made in USA'' claim under the ''all or virtually all'' standard. The statement also provides guidance on the use of qualified claims.

EFFECTIVE DATE: December 1, 1997.

FOR FURTHER INFORMATION CONTACT: Beth M. Grossman, Attorney, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, telephone 202–326–3019, or Kent C. Howerton, Attorney, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, telephone 202–326–3013.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Commission regulates claims of U.S. origin, such as ''Made in USA,'' pursuant to its statutory authority under section 5 of the Federal Trade Commission Act, which prohibits ''unfair or deceptive acts or practices.'' Cases brought by the Commission beginning over 50 years ago established the principle that it was deceptive for a marketer to promote a product with an unqualified ''Made in USA'' claim unless that product was wholly of domestic origin.[1] In two 1994 cases, the Commission rearticulated this standard to require that a product advertised as ''Made in USA'' be ''all or virtually all'' made in the United States.[2] Whether the standard was called ''wholly domestic'' or ''all or virtually all,'' however, unqualified claims of domestic origin have been treated as claims that the product was in all but *de minimis* amounts made in the United States.[3]

In a July 11, 1995 press release, the Commission announced that it would undertake a comprehensive review of U.S. origin claims and examine whether the Commission's traditional standard for evaluating such claims remained consistent with consumer perceptions and continued to be appropriate in today's global economy.[4] On October 18, 1995, the Commission published a notice in the **Federal Register** soliciting public comment on various issues related to this review, and announcing that Commission staff would conduct a public workshop on this topic. 60 FR 53922 (1995).[5] Contemporaneous with the solicitation of public comment, the Commission commissioned a two-part study to examine consumer understandings of U.S. origin claims. On March 26 and 27, 1996, representatives of industry, consumer groups, unions, government agencies, and others participated in the public workshop, which focused on consumer perception of U.S. origin claims and a discussion of the costs and benefits of various alternative standards for evaluating such claims. Following the workshop, the Commission, in a notice published on April 26, 1996, extended the period for clarifying or rebuttal comments until June 30, 1996, and set forth additional questions for comment. 61 FR 18600 (1996).

After reviewing the consumer perception evidence, the public comments, and the workshop proceedings, the Commission proposed, in a notice published on May 7, 1997, to adopt Guides for the Use of U.S. Origin Claims and sought public comment on the Proposed Guides until August 11, 1997. 62 FR 25020. Under the Proposed Guides, a marketer making an unqualified claim of U.S. origin, at the time it makes the claim, would have to possess and rely upon a reasonable basis that the product is *substantially all* made in the United States. To assist manufacturers in complying with this standard, the Proposed Guides also set forth two alternative ''safe harbors'' under which an unqualified U.S. origin claim would not be considered deceptive. The first safe harbor encompassed products that were last substantially transformed in the United States and whose U.S. manufacturing costs constituted 75% of total manufacturing costs (''75% U.S. content safe harbor''). The second safe harbor applied to products that have undergone two levels of substantial transformation in the United States: *i.e.*, the product's last substantial transformation took place in the United States, and the last substantial transformation of each of it significant inputs took place in the United States (''two levels of substantial

[1] *See, e.g., Windsor Pen Corp.*, 64 F.T.C. 454 (1964); *Vulcan Lamp Works, Inc.*, 32 F.T.C. 7 (1940).

[2] This language was first used in the cases of *Hyde Athletic Industries*, File No. 922–3236 (consent agreement accepted subject to public comment Sept. 20, 1994) and *New Balance Athletic Shoes, Inc.*, Docket No. 9268 (complaint issued Sept. 20, 1994). In light of the decision to review the standard for U.S. origin claims, the Commission later modified the complaints in these cases to eliminate the allegations based on the ''all or virtually all'' standard. Consent agreements based on these revised complaints were issued on December 2, 1996 (*New Balance*) and December 4, 1996 (*Hyde*).

[3] In this notice, the Commission refers to its traditional standard as the ''all or virtually all'' standard.

[4] The Commission initiated its review in part because of comments from the public on the consent agreement the Commission had accepted (subject to final action) with Hyde, and letters from more than 40 members of Congress who wrote to the Commission or Chairman Robert Pitofsky urging that the Commission review and revise its standard.

[5] A follow-up notice published on December 19, 1995 announced that the public workshop would be held on March 26 and 27, 1996, and stated that the record would be held open for post-workshop public comments until April 30, 1996. 60 FR 65327 (1995).

transformation safe harbor'').[6] The Proposed Guides also addressed various qualified claims, claims regarding specific processes and parts, multiple-item sets, and the effects of changes in costs and sourcing. They further provided for an alternative origin claim for certain products that are both sold domestically and exported.

In response to the Proposed Guides, the Commission received 1,057 written comments.[7] After reviewing the public comments, the Commission has decided that it will not adopt the Proposed Guides, but instead will continue to enforce the Commission's current ''all or virtually all'' standard. In conjunction with this decision, the Commission is issuing an Enforcement Policy Statement on U.S. Origin Claims which provides additional guidance to marketers seeking to make ''Made in USA'' and similar claims. The Enforcement Policy Statement appears at the end of this notice.

II. Summary of Comments On Proposed Guides

A. General Information

The total of 1,057 comments represented 1,165 commenters, including 963 individual consumers, 24 members of Congress, 2 consumer organizations, 1 non-profit organization, 90 manufacturers or other corporations, 29 trade associations, 29 labor unions and union representatives, 23 state and local government representatives (including a coalition of 16 state Attorneys General), and 4 others.

B. Comments Supporting the All or Virtually All Standard

The vast majority of the individual consumers as well as 130 other commenters opposed the Proposed Guides as setting too low a standard and/or expressly supported the current ''all or virtually all'' standard. These included a coalition of 16 Attorneys General,[8] 13 members of Congress,[9] 5 state legislators,[10] 1 state General Assembly,[11] 1 City Council,[12] 6 trade associations,[13] 2 consumer groups,[14] 29 labor unions or union representatives,[15] 58 manufacturers and other corporations,[16] and 3 other

[6] ''Substantial transformation'' is a U.S. Customs Service term that refers to a manufacturing or other process that results in a new and different article of commerce, having a new name, character, and use that is different from that which existed prior to the processing. *See* 59 FR 141 (1994).

[7] This number reflects those comments received at the time this notice was prepared; additional comments on this matter continue to be submitted to the Commission. The comments have been filed on the Commission's public record as Document Nos. B21902700001, B21902700002, *etc.* The comments are cited in this notice by the name of the commenter, a shortened version of the comment number, and the relevant page(s) of the comment, *e.g.*, AGs, #462, at 2. All written comments submitted (including those received after the preparation of this notice), as well as a list of commenters (through #1057), are available for public inspection on normal business days between the hours of 8:30 a.m. to 5:00 p.m. at the Public Reference Room, Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., N.W., Washington, DC 20580. In addition, the comments received, and other materials relevant to this review, are available to the public through the Commission's World Wide Web site (*http://www.ftc.gov*).

[8] This comment was submitted by the Attorneys General of Connecticut, California, Florida, Iowa, Illinois, Michigan, Missouri, North Carolina, New Jersey, Nevada, New York, Pennsylvania, Rhode Island, Tennessee, Washington, and Wisconsin (''AGs''), #462. In addition, Jeremiah Nixon, Attorney General of Missouri (''Nixon'') submitted a separate comment, #63.

[9] U.S. Sen. Dale Bumpers (''Bumpers''), #74; U.S. Rep. Mark W. Neumann and U.S. Rep. Tom Latham (''Neumann/Latham''), #75; U.S. Rep. James A. Traficant, Jr. (''Traficant''), #231; U.S. Rep. Peter J. Visclosky (''Visclosky''), #236; U.S. Rep. Earl F. Hilliard (''Hilliard''), #242; U.S. Sen. Carl Levin (''Levin''), #254; U.S. Rep. Virgil H. Goode, Jr. (''Goode''), #24; U.S. Rep. Sherrod Brown (''Brown''), #599; U.S. Rep. Bob Franks and U.S. Rep. John D. Dingell (''Franks/Dingell''), #670, (''Dingell''), #694 (noting his past opposition to weakening the all or virtually all standard and requesting that the Commission respond to specific questions about the Proposed Guides; with attached response from the Commission's staff); U.S. Rep. John Olver (''Olver''), #671A; U.S. Rep. Bruce F. Vento (''Vento''), #735. U.S. Rep. Tom Campbell (''Campbell'') submitted a comment conveying the concerns of constituents, but did not take a position himself. Campbell, #283. A number of other members of Congress forwarded comments from their constituents.

[10] North Carolina Rep. William S. Hiatt (''Hiatt''), #196; North Carolina Sen. Fountain Odom (''Odom''), #290; Illinois Rep. Michael J. Boland (''Boland''), #468; North Carolina Rep. Wayne Goodwin (''Goodwin''), #508; Pennsylvania Rep. Richard D. Olasz (''Olasz''), #623.

[11] New Jersey General Assembly (''NJ Assembly''), #740.

[12] City of Titusville, FL (''Titusville''), #1047.

[13] American Export Ass'n (''American Export''), #201; The American Hand Tool Coalition (''American Hand Tool''), #622; American Iron & Steel Institute (''AISI''), #636; Tile Council of America, Inc. (''TCA''), #618; American Textile Manufacturers Institute (''ATMI''), #615; Crafted with Pride in USA Council, Inc. (''Crafted With Pride''), #469. Despite the exclusion of textile products from the Proposed Guides, four additional trade associations filed comments urging the Commission to maintain the existing standards under the Textile Products Identification Act, 15 U.S.C. 70, for ''Made in USA'' claims for garments and other textile products. American Apparel Manufacturers Ass'n (''AAMA''), #697; Clothing Manufacturers Ass'n of USA (''CMA''), #624; Garment Contractors Ass'n of Southern California (''GCASC''), #895; Knitted Textile Ass'n (''KTA''), #634.

[14] National Consumers League (''NCL''), #640; Wisconsin Citizen Action (''WI Citizen Action''), #991.

[15] Alabama AFL–CIO (''Alabama AFL–CIO''), #242; Connecticut Employees Union Independent, Local 511, AFL–CIO (''CEUI Local 511''), #870; East Central Ohio Building & Construction Trades Council, AFL–CIO (''Construction Trades''), #687; Food & Allied Service Trades Dept., AFL–CIO (''FAST''), #545; Hotel Employees & Restaurant Employees Local 74, AFL–CIO (''HERE Local 74''), #255; Int'l Ass'n of Firefighters, West Hartford Fire Fighters Ass'n, Local 1241 (''Firefighters Local 1241''), #742; Int'l Ass'n of Machinists & Aerospace Workers, Air Transport Lodge 1056 (''Machinists Lodge 1056''), #558; Int'l Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL–CIO (''Boilermakers''), #514; Int'l Brotherhood of Electrical Workers, Local 1040, AFL–CIO (''IBEW Local 1040''), #745; Int'l Brotherhood of Electrical Workers, Local 540, AFL–CIO (''IBEW Local 540''), #686; Int'l Union, United Automobile, Aerospace & Agriculture Implement Workers of America—UAW (''UAW''), #615; Montana State AFL–CIO (''MT AFL–CIO''), #459; Permian Basin Central Labor Union, AFL–CIO (''PBCLU''), #388, #418; Seattle Professional Engineering Employees Ass'n (''SPEEA''), #830, #944; UAW—Region 9A (''UAW Region 9A''), #682; Union Label & Service Trade Department, Plumbers & Steamfitters Local 565, AFL–CIO (''Plumbers & Steamfitters Local 565''), #209; Union Label & Service Trades Department, AFL–CIO (''AFL–CIO/ULSTD''), #608; Union of Needletrades, Industrial & Textile Employees, AFL–CIO, CLC (''UNITE''), #696; United Food & Commercial Workers, Local 26, AFL–CIO (''UFCW Local 26''), #897; United Paperworkers Int'l Union, AFL–CIO, CLC (''Paperworkers''), #255; Communications Workers of America, Local 3104, AFL–CIO (''CWA Local 3104''), #688; Hartford Federation of School Secretaries (''School Secretaries''), #843; Int'l Union of Electronic, Electrical, Salaried, Machine and Furniture Workers, Furniture Workers Division, AFL–CIO (''Furniture Workers''), #506; UAW Local 977, Buy American Committee (''UAW Local 977''), #651; UAW, Amalgamated Local 644 (''UAW Local 644''), #54; UAW, Local 145 (''UAW Local 145''), #913; United Steelworkers of America, Local 9189, AFL–CIO (''Steelworkers Local 9189''), #995; United Steelworkers of America, Rubber/Plastic Industry Conference, Local 2, District 1, AFL–CIO, CLC (''Steelworkers Local 2''), #1017; Brewery and Soft Drink Workers, Liquor Drivers, and New and Used Car Workers, Teamsters Local Union 1040 (''Teamsters Local 1040''), #1052.

[16] A&E Manufacturing Co. (''A&E''), #991; ABCO Industries, Inc. (''ABCO''), #743; American Sigma (''American Sigma''), #661; Ben Forman & Sons, Inc. (''Forman''), #159; BOYT (''BOYT''), #959; Calibre, Inc. (''Calibre''), #991; Centerville Lumber Co. (''Centerville''), #152, #734; Cheraw Yarn Mills, Inc. (''Cheraw''), #716; Danaher Tool Group (''Danaher''), #991; D.E. Williams Co. (''Williams''), #1031; Duchess Industries (''Duchess''), #512; Durand Int'l (''Durand''), #471; Dyersburg Corp. (''Dyersburg''), #720; Dynacraft Industries, Inc. (''Dynacraft''), #646; Elco Textron (''Elco''), #970; Equity Services of Connecticut, Inc. (''Equity Services''), #1001; Exidyne Instrumentation Technologies, Inc. (''Exidyne''), #731; Federal Forging Tools (''Federal''), #654; Friend Laboratory (''Friend''), #34; GBW Manufacturing, Inc. (''GBW''), #1014; Gee Kay—Knit Products (''Gee Kay''), #1034; Herker Industries (''Herker''), #991; Inman Mills (''Inman''), #981; Jackson Products (''Jackson''), #880; Joshua L. Baily & Co., Inc., (''Baily''), #53; Kenosha Leatherette & Display Co. (''Kenosha''), #991; Kern Special Tools Co., Inc. (''Kern''), #739; Madewell Machine Works Co., Inc. (''Madewell''), #958; March Instruments, Inc. (''March''), #46; Matco Tools (''Matco''), #600; Merit Abrasives (''Merit''), #628; Murphy & Co.(''Murphy''), #64; Newco Valves (''Newco''), #198; NTP-Republic (''NTP''), #699; Nucor Steel (''Nucor''), #992; Piedmont Clarklift, Inc. (''Piedmont''), #741; Protexall, Inc. (''Protexall''), #917; Regal-Beloit Corp. (''Regal-Beloit''), #614; Richland Mills (''Richland''), #626; Schofield (''Schofield''), #51; SGS Tool Co. (''SGS''), #221; Sharpe Manufacturing Co. (''Sharpe''), #630; Sheffield Steel Corp. (''Sheffield''), #935; SidaMerica LLC (''SidaMerica''), #246; Snap-on Tools (''Snap-on''), #685, #732, #733, #991; Spectronics Corp.

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commenters.[17] In addition to the individual consumer comments, 7 individual commenters or groups submitted petitions urging the Commission to retain the ''all or virtually all'' standard that were signed by a total of more than 11,000 individuals.[18] Last, the Commission received over 200 telephone calls from individual consumers who stated their opposition to the Proposed Guides.[19]

In addition, over 200 members of the House of Representatives have cosponsored House Concurrent Resolution 80 (''Resolution''), opposing the Proposed Guides and urging the Commission to retain the ''all or virtually all'' standard.[20] The Resolution states that lowering the current standard ''will be a misrepresentation to consumers in the United States who presently believe products bearing the 'Made in USA' label were all or virtually all made in the United States,'' and that American consumers are ''entitled to purchase products with the understanding that the labels on these products reflect consistent definitions.'' Accordingly, the Resolution ''urges the Federal Trade Commission to refrain from lowering this standard at the expense of consumers and jobs in the United States.'' The Made in USA Coalition, comprised of 3 consumer groups, 32 labor unions, 15 businesses, and 11 agriculture organizations, and a primary backer of the House Resolution, submitted a comment expressly supporting it.[21] In addition, members of the Senate recently introduced Senate Concurrent Resolution 52, which also supports the retention of the ''all or virtually all'' standard. Similarly, the New Jersey General Assembly and the Titusville (Florida) City Council adopted resolutions that ask the Commission to maintain the traditional standard.[22]

The consumer commenters overwhelmingly opposed the Proposed Guides and generally supported an ''all or virtually all'' standard or advocated a specific percentage, usually 90% or, more often, 100%. Many commenters stated that '' 'Made in USA' means what it says'' or expressed similar sentiments. Several commenters asserted that changing the current standard would confuse consumers who wish to buy American products, leaving them unable to determine whether a product was truly made in the United States. Individual consumers also stated that they buy American products to support fellow Americans and expressed concern that lowering the standard would lead to a loss in American jobs. The following comments exemplify the individual consumer comments:

The concept of ''Made in the USA'' has been specific and definite for the last 50 years. Please leave it as it is. If manufacturers want to say an item is ''Made in the USA''; then, make sure it is exactly that. ''Made in the USA'' should mean that an item is 100% manufactured in the United States of America and not in another country.[23]

If a product is only partially made in our Country, I want to know. I do not wish to purchase items made in other countries and falsely labeled ''Made in America.'' I want the entire truth on the label. I don't want to be tricked into buying an item I think is made here when in fact it is not.[24]

We are opposed to any change that would increase the percentage of foreign labor or materials in those goods or products bearing the ''Made in the USA'' label. The American people recognize goods or products bearing this label as being superior in workmanship and quality. These goods and products are produced by American workers * * * Any action by the FTC to modify the ''Made in USA'' label standard will lead to the loss of American jobs.[25]

Other commenters echoed the consumers' concerns and cited additional reasons for keeping the ''all or virtually all'' standard. Several opponents of the Proposed Guides expressed concern that altering the current standard would deceive, or at least confuse, consumers.[26] Some of these commenters argued that the consumer perception evidence before the Commission does not support lowering the standard.[27] Some commenters additionally asserted that consumer attitudes and preferences towards ''Made in USA'' products have not been altered by a change in the economy, or, if anything, have been made stronger.[28]

Other advocates of the ''all or virtually all'' standard warned that changing the standard in the way proposed by the Commission would harm the American manufacturing base, because companies would have less incentive to use U.S. labor and U.S. product components. These commenters concluded that American jobs would be jeopardized as companies increasingly would rely on less expensive foreign sources.[29] Many commenters also stated that weakening the standard would

(''Spectronics''), #631; Spray Cotton Mills (''Spray Cotton''), #672; Sterling Handling Equipment, Inc. (''Sterling''), #625; Taytronics Corp. (''Taytronics''), #744; Vaughn & Bushnell Manufacturing Co. (''Vaughn & Bushnell''), #151, #616; Victoria Vogue, Inc. (''Victoria''), #1045; The Warren Featherbone Co. (''Featherbone''), #1015; Waukesha Industrial Supply (''Waukesha''), #991; Weldbend Corp. (''Weldbend''), #597; Wolfe Dye & Bleach Works, Inc. (''Wolfe''), #1057. Wright Tool Co. (''Wright''), #262, #652; Yeoman's Chicago Corp. (''Yeoman's''), #216. See also Eastman Kodak Co. (''Kodak''), #619 (supporting 85% standard).

[17] Made in USA Coalition (''MUSA Coalition''), #596; Donald P. Selkirk (submitted as Executive Producer, The Donald P. Selkirk Show, WPON Radio, Bloomfield Hills, MI) (''Selkirk''), #186; Women V.I.P.s (''WVIP''), #1042.

[18] Brown, #599 (petition containing approximately 9,300 signatures submitted by U.S. Rep. Sherrod Brown); John Moore (''John Moore''), #195 (petition signed by 26 individuals); UAW Local 977, #651 (petition containing approximately 2,000 signatures submitted by a union representative); Ellen Sofranski (''Sofranski''), #703 (petition signed by 28 individuals); Employees of Danaher Tool Group (''Danaher Employees''), #829 (petition containing 181 names submitted by employees of Danaher Tool Group); David Micola (''Micola''), #966 (petition containing 151 names submitted by an individual who is a sheet metal worker); Richard Moran, Jr. (''Moran''), #1029 (petition signed by 28 individuals).

[19] These telephone calls have not been memorialized or codified on the record because many of them were phone mail messages without the name, telephone number, or address of the caller.

[20] This number includes at least 13 members of Congress who were among those who had earlier written to the Commission or submitted public comments asking the Commission to lower the ''all or virtually all'' standard. See supra note 4. The Resolution was submitted to the Commission by U.S. Representatives Bob Franks and John D. Dingell. Franks/Dingell, #670.

[21] MUSA Coalition, #596.

[22] NJ Assembly, #740 (Assembly Resolution No. 163); Titusville, #1047 (Resolution No. 39–1997).

[23] Kenneth Fletcher (''Fletcher''), #178, at 1.

[24] Margaret A. Stem (''Stem''), #203, at 1.

[25] Edwin and Beverly Emmons (''Emmons''), #288, at 1.

[26] See, e.g., Baily, #53; Nixon, #63; Traficant, #231; Crafted With Pride, #469; ATMI, #613; Vaughan & Bushnell, #616; Weldbend, #597; Exidyne, #731; UAW, #615.

[27] See, e.g., American Hand Tool, #622; UAW, #615; Dynacraft, #646; AGs, #462; Weldbend, #597; Bumpers, #74.

[28] See, e.g., Vento, #735 at 1 (''The decline of America's manufacturing base and the difficulty of ascertaining a product's origin in the global marketplace, has in fact rendered the Made in USA claim more valuable and significant to American consumers wishing to buy American.''); AISI, #636, at 1 (It is ''highly likely that the vast majority of U.S. consumers would be *unaware* of a change in the standard, and would continue to believe that items labeled 'Made in USA' were held to the current standard.''); NCL, #640, at 3 (the fact that the economy is increasingly globalized may cause consumers to place even a greater value on unqualified 'Made in USA' claims); Bumpers, #74, at 1–2 (''Even if fewer products are wholly 'Made in the USA,' it does not follow that the meaning of the phrase has changed—rather, that fewer products may meet the standard.''); UNITE, #696, at 3 (''no credible evidence * * * that American consumers expect the 'Made in USA' label to mean that products were produced somewhere else'').

[29] *E.g.*, SGS, #221, at 1 (U.S. jobs will be in jeopardy if Commission adopts proposed standard); Alabama, #242, at 1 (American workers are already badly injured by unfair exportation of jobs by their employers); Boilermakers, #514; Plumbers & Steamfitters Local 565, #209, at 1 (''purchasing products displaying the 'Made in U.S.A.' label is the first line of defense for American workers to protect their jobs''). *See also* PBCLU, #418; AFL–CIO/ULSTD, #608; Vaughan & Bushnell, #616; AISI, #636; UAW Region 9A, #682; Cheraw, #716; Bumpers, #74; Yeomans, #216; Odom, #290.

deny manufacturers whose products were, in fact, ''all or virtually all'' made in the United States the marketing advantage attributable to labeling products ''Made in USA.''[30]

A number of commenters opposed to the Proposed Guides also contended that it is not necessary to change the standard in order to permit sellers of products made with some foreign parts or labor to inform consumers of their products' U.S. content. These commenters argued that the current standard allows marketers to make qualified claims for products that are made with some foreign parts or labor as long as those claims are truthful and substantiated.[31]

In addition, some of the commenters supporting the ''all or virtually all'' standard specifically criticized the particular safe harbors proposed by the Commission, arguing that neither proposed safe harbor would ensure that a product complies with the proposed ''substantially all'' standard and with consumer expectations regarding ''Made in USA'' claims.[33]

Specifically, several commenters argued that the 75% U.S. content safe harbor (expressed as a percent of total manufacturing costs), in addition to being too low to meet consumer expectations, would allow a ''Made in USA'' claim for products with far less than even 75% U.S. content (in terms of, for example, the percentage of components). UAW, for example, contended that lower foreign labor costs would lead to underestimating the actual amount of foreign content in a product.[34] In addition, the American Hand Tool Coalition argued that, because the Proposed Guides do not necessarily require marketers to take into account materials several steps back in the manufacturing process or to take into account foreign content that is not ''significant'' (which is left undefined), marketers may fail to account for all foreign costs.[35]

A number of commenters also specifically criticized the two levels of substantial transformation safe harbor, arguing that this safe harbor does not guarantee that ''substantially all'' of the labor and value of the product is of domestic origin.[36] A few of these commenters expressed concern that, because this safe harbor does not take into account the cost of U.S. processing or inputs, products could be labeled ''Made in USA'' even though foreign content accounted for a significant percentage of their value.[37] Two commenters additionally argued that consumers would be misled by the two levels of substantial transformation safe harbor, because it is too imprecise to ensure that ''substantially all'' the value of a product is of U.S. origin. UAW stated that ''[t]he variation from product to product in the impact of the double transformation test would prevent consumers from having a real sense of the U.S. content of the product that is being presented as 'Made in USA.' ''[38] Similarly, the American Hand Tool Coalition contended that this safe harbor leads to conflicting or unpredictable results, in part, because the Proposed Guides define substantial transformation to include two tests that are not consistent for all products—the case-by-case analysis that Customs applies to products from most countries and the tariff shift regulations that Customs applies to products from NAFTA countries.[39]

Finally, some commenters supported a percentage content standard greater than the 75% safe harbor proposed by the Commission, but less than 100%. For example, a coalition of 16 state Attorneys General, as well as a few manufacturers, who were generally supportive of an ''all or virtually all'' standard, recommended that the Commission require that a product have at least 90% actual U.S. content in order to bear an unqualified ''Made in USA'' label.[40] Another commenter, Eastman Kodak, favored an 85% standard, stating that although the ''all or virtually all'' standard affords the best guarantee against consumer deception or confusion, ''legitimate disadvantages [may be placed] on businesses who are very heavily committed to maintaining manufacturing processes here but cannot ignore the economic realities of using at least some foreign components'' or who must import items which are not made, or raw materials which are not found, in the United States.[41] According

[30] *E.g.,* Weldbend, #597, at 1 (the Proposed Guides ''would force most of Weldbend's fittings and flanges—made all or virtually all of American materials by American workers—to share their hard-earned 'Made in USA' labels with competitors' products having less than 50-percent U.S. content value''). *See also* Vento, #735; Matco, #600; Duchess, #512; Merit, #628; Sharpe, #630; Spectronics, #631; Federal, #654; Exidyne, #731; NTP, #699; Forman, #159; Traficant, #231.

[31] *See, e.g.,* NCL, #640; Visclosky, #236; Traficant, #231; Boilermakers, #514; FAST, #545; UNITE, #696; Schofield, #51; AFL–CIO/ULSTD, #608. In addition, a few individual consumers also suggested that marketers can make qualified claims for their products. *See, e.g.,* Matthew Fogarty (''Fogarty''), #997 (for products with less than 100% U.S. content, should specify percentage of U.S. content, such as ''Materials 50% Made in USA, Assembled in Guam''); Anthony J. Jordan (''Jordan''), #160 (supports disclosing the specific percentages of U.S. and foreign materials and labor); Lawrence P. Kosel (''Kosel''), #207 (supports disclosing on labels the percentage of the product made in America, such as ''70% made in America''); Arthur Lazur (''Lazur''), #119 (should state percentage or exact materials made in USA; or that assembled, but not manufactured, in USA); R.W. and Susan Marchand (''Marchand''), #107 (for products partially produced in USA, should identify percentage made in USA); Debra Newman (''Debra Newman''), #123 (supports qualified claims such as ''Made in USA of imported parts'' or ''Assembled in [name of country] from US parts''); Alan D. Shrom (''Shrom''), #141 (should state on the product if it is assembled in USA of foreign materials); Robert Lebensold (''Lebensold''), #942 (''Made in U.S.A. of imported materials'' might be okay).

[33] AGs, #462; AFL–CIO/ULSTD, #608; UAW, #615; Durand, #471; Vaughan & Bushnell, #616; American Hand Tool, #622. *See also* Matco, #600, American Sigma, #611; Sharpe, #630, Federal, #654; Exidyne, #731, and NTP, #699 (all submitting comments nearly identical to the American Hand Tool Coalition's comment).

[34] For example, UAW pointed out that ''[t]he difference in rates of worker compensation between the U.S. and countries such as China allows for the possibility that 75 percent of the manufacturing costs could be U.S. value, but that the product would be 'substantially' made abroad.'' UAW, #615, at 2. *See also* Durand, #471, at 1 (stating that the percentage content safe harbor would seriously harm its business because ''[c]heap labor imports of stems and bowls to be fused in the U.S. can easily be estimated to meet the 75% manufacturing cost requirement * * *''); AFL–CIO/ULSTD, #608, at 1–2 (under the 75% content safe harbor, products can be labeled ''Made in USA,'' even though major components were produced abroad, if those components were imported from countries with lower wages); AGs, #462, at 5 (the Commission's approach of measuring foreign content by comparing the percentage of costs attributable to foreign parts and labor to those attributable to U.S. parts and labor ''fails to compensate for the disparity in costs between the United States and many developing countries'').

A related point was made by the American Hand Tool Coalition, which argued that varying labor costs in certain countries would lead to inconsistent labeling results for similar products, *e.g.,* if one manufacturer sources parts from China and a second manufacturers sources the same parts from Germany, the percentage U.S. content will differ even if the manufacturers perform the same U.S. processing at the same cost, because China is a much lower cost market than Germany. American Hand Tool, #622, at 22.

[35] American Hand Tool, #622, at 16–19.

[36] *See, e.g.,* AFL–CIO/ULSTD, #608; UAW, #615; American Hand Tool Coalition, #622; Durand, #471.

[37] AFL–CIO/ULSTD, #608, at 2 (under the second safe harbor, a product ''could be assembled in the U.S. of components put together in the U.S. of parts made overseas that account for more than 25% of the product's value''); American Hand Tool, #622, at 26; AGs, #462, at 6. *See also* UAW, #615, at 3 (citing Example 1 under the second safe harbor in the Proposed Guides as an example of when a product can be labeled ''Made in USA'' even if imported components accounted for 80% or 90% of the value of the final product); Weldbend, #597, at 1–2 (for products such as pipe fittings and flanges, the two levels of substantial transformation safe harbor would allow products with 100% foreign materials and one-half to two-thirds of their value of foreign origin to be marketed as ''Made in USA'').

[38] UAW, #615, at 3.

[39] American Hand Tool, #622, at 25.

[40] AGs, #462, at 1,7. *See also* Sterling, #625, at 1 (supporting a 90% standard); March, #46, at 1 (supporting a 90% standard).

[41] Kodak, #619, at 2–3 (consumer perception evidence justifies lowering the U.S. content requirement to 85%; this standard, along with last

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to this commenter, changing the standard might benefit consumers, because American companies would be motivated ''to offer the best quality at the best price without sacrificing the 'American' identity of their goods.''

C. Comments Supporting The Proposed Guides and/or Other Standards

A few individual consumers and 62 additional commenters favored modifying the ''all or virtually all'' standard, including 10 members of Congress,[42] 32 manufacturers and other corporations,[43] 17 trade associations,[44] 1 nonprofit organization,[45] and 1 other commenter.[46] Many of these commenters asserted that the vast changes in the international economy since the Commission first applied the ''all or virtually all'' standard necessitate that the standard be altered. Thus, several commenters asserted that the Proposed Guides ''better reflect[ed] the practical realities of U.S.-manufactured products in today's global economy''[47] and provided U.S. manufacturers with greater flexibility in making ''Made in USA'' claims in light of these realities.[48] Several of these commenters stated that consumers' expectations have kept pace with the change in the economy. According to these commenters, a lower standard is therefore consistent with consumer perception.[49]

A number of commenters disputed the claim by supporters of the all or virtually all standard that lowering the standard would lead to fewer jobs in the United States, arguing that, on the contrary, the strictness of the ''all or virtually all'' standard deprives American manufacturers of a selling tool that could help preserve American jobs.[50] These commenters contended that American manufacturers are at a competitive disadvantage compared to manufacturers in countries where labor rates and other production costs fall below U.S. standards.[51] Although being able to promote their products as ''Made in USA'' would help to even out this disadvantage, they argued, many manufacturers' products cannot meet the current standard, either because of cost reasons or because some materials and components are no longer available from domestic sources.[52] According to these commenters, if domestic manufacturers cannot claim that their products are ''Made in USA,'' American jobs would be jeopardized, because these companies would have little incentive to stay in the United States.[53] For example, New Balance Athletic Shoes, Inc. stated:

New Balance agrees with the sentiment, expressed in many of the public comments filed to date, that the FTC ought to take action to preserve the ''Made in USA'' label, support U.S. jobs, and encourage manufacturers to maintain their manufacturing facilities in this country, as well as help to level the playing field for domestic manufacturers. The ''patriotic'' response, however, is not to enforce an ''all, or virtually all'' standard that is unreachable for the vast majority of U.S. manufacturers, but to articulate a standard that those manufacturers—the companies who are providing jobs for U.S. workers—can meet so that they can compete more fairly with imports that have tremendous advantages.[54]

Other commenters asserted that, because the proposed standard would make the ''Made in USA'' claim more attainable, manufacturers would be encouraged to strive to maintain or increase domestic content in their products in order to make the ''Made in

substantial transformation in the United States, would serve consumers' interests).

[42] U.S. Rep. Susan M. Collins, U.S. Rep. John F. Kerry, U.S. Rep. Joseph I. Leiberman, and U.S. Rep. Olympia J. Snowe (''Collins/Kerry/Leiberman/Snowe''), #606; U.S. Rep. Joseph Moakley, U.S. Rep. William Delahunt; U.S. Rep. Martin Meehan; U.S. Rep. Joseph Kennedy, U.S. Rep. Barney Frank (''Moakley/Delahunt/Meehan/Kennedy/Frank''), #671; U.S. Rep. Michael G. Oxley (''Oxley''), #955. The comment from Rep. Moakley *et al.* was also signed by U.S. Rep. John Olver. In a subsequent letter, however, Rep. Olver stated that his signature was ''inadvertently attached'' to this comment and that he did not believe that the FTC's traditional standard for ''Made in USA'' labels should be altered. Olver, #671A.

[43] Franzus Co., Inc. (''Franzus''), #301; Converse, Inc. (''Converse''), #363, #470; Genfoot America, Inc. (''Genfoot''), #463; DeBon Leather (''DeBon''), #472; Carter Footwear, Inc. (''Carter''), #595; The Leather Specialty Co. (''Leather Specialty''), #598; Detroit Edge Tool Co. (''Detroit Edge''), #601; Belair Time Corp. (''Belair''), #602; Maytag Corp. (''Maytag''), #605; Oneida Ltd. (''Onedia''), #607; Jules Jurgensen Watches (''Jurgensen''), #609; Toyota Motor Sales, USA (''Toyota''), #610; Timex Corp. (''Timex''), #612; Wolverine Worldwide, Inc. (''Wolverine''), Inc., #621; Jameslee Corp. (''Jameslee''), #627; Central Tools, Inc., (''Central''), #629; Ronda Watch Corp. and Progress Watch Corp. (''Ronda/Progress''), #632; Benrus Watch Co. (''Benrus''), #633; New Balance Athletic Shoe Co., Inc. (''New Balance''), #635; The Stanley Works (''Stanley''), #647; The Timken (''Timken''), #648; The Gates Corp. (''Gates''), #649; Allegiance Healthcare Int'l, Inc. (''Allegiance''), #653; Minnesota Mining & Manufacturing (''3M''), #700; Imation Corp. (''Imation''), #643; Gary's Leather Creations (''Gary's''), #678; Sacoche Int'l, Inc. (''Sacoche''), #701; NIBCO Inc. (''NIBCO''), #738; Samsonite Corp. (''Samsonite''), #828; Whirlpool Corp. (''Whirlpool''), #957.; Hartmann Luggage & Leather Goods Group (''Hartmann''), #1013, Savannah Luggage Works (''Savannah''), #1039.

[44] Writing Instrument Manufacturers Ass'n, Inc. (''WIMA''), #187; Rubber & Plastic Footwear Manufacturers Ass'n (''RPFMA''), #264; Luggage and Leather Goods Manufacturers of America, Inc. (''LLGMA''), #464; Ass'n of Home Applicance Manufacturers (''AHAM''), #473; Int'l Mass Retail Ass'n (''IMRA''), #594; Footwear Distributors and Retailers of America (''FDRA''), #603; Int'l Electronics Manufacturers and Consumers of America (''IEMCA''), #604; Footwear Industries of America, Inc. (''FIA''), #617; National Food Processors Ass'n (''NFPA''), #620; The National Council on Int'l Trade Development (''NCITD''), #638; Joint Industry Group (''JIG''), #639; Electronics Industries Ass'n (''EIA''), #641; Japan Machinery Exporters' Ass'n (''JMEA''), #642; Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers (''Domestic Steel Wire Rope''), #644; The Specialty Cable Manufacturers Subcommittee (''Specialty Cable Subcommittee''), #645; Ass'n of Int'l Automobile Manufacturers (''AIAM''), #650; Consumer Electronics Manufacturers Association (''CEMA''), #1041 (attaching a letter to members of Congress signed by officers of EIA, LLGMA, IMRA, FIA, the Automotive Parts and Accessories Association, and the American Association of Exporters and Importers urging the members not to cosponsor H. Con. Res. 80 and supporting the FTC's proposed guidelines as offering a ''realistic approach'' to ''Made in USA'' labeling).

[45] Made in the USA Foundation (''MUSA Foundation''), #730.

[46] JBC International (a consulting firm) (''JBC''), #637.

[47] *See, e.g.,* Carter, #595, at 1; *see also* Stanley, #647; Jurgensen, #609; AIAM, #650; Wolverine, #621; AHAM, #473; AIAM, #650; JBC, #637; EIA, #641; Belair, #602; FIA, #617.

[48] *See, e.g.,* NCITD, #638; Carter, #595; New Balance, #635; LLGMA, #464; FIA, #617.

[49] *See e.g.,* AHAM, #473, at 2 (although consumer perception studies indicate that consumers are still interested in whether a product is ''Made in USA,'' this ''rarely signifies to the consumer that the product is 100 percent or 'all or virtually all' composed of U.S. made parts and assembled in the U.S.''); Timken, #648, at 1 (''Global sourcing of components is by now so well-known that consumers recognize the fact that 'USA' merchandise may contain a small foreign content''); AIAM, #650, at 3 (''Given the fact that consumer perception data is consistent with the global marketplace, it would seem arbitrary to ignore it in fashioning Guides to prevent consumer deception.'') *See also* Maytag, #605; FIA, #617; Converse, #363; WIMA, #187; Allegiance, #653.

[50] See, e.g., Belair, #602; AHAM, #473; Jules Jurgensen, #609; New Balance, #635.

[51] See, e.g., LLGMA #464, at 2–3 (''Foreign goods dominate the market and thousands of U.S. jobs have been lost to imports. This is because the cost structure of major foreign suppliers of luggage and leather goods is far below our own * * * Foreign suppliers in these countries utilize very cheap labor and have minimal environmental and workplace standards * * * It is crucial that the remaining luggage and leather goods manufacturers be able to market the unique 'Made in USA' label to have any hope of competing with low labor cost countries.''); New Balance, #635, at 4–6 (it has become increasingly difficult to keep and expand U.S. manufacturing facilities in the face of competition from cheap imports, and the impossibility of obtaining needed components within the United States); Converse, #470; DeBon, #472; Leather Specialty, #598. Belair, #602; Jules Jurgensen. #609; Ronda/Progress, #632; Sacoche, #701.

[52] See, e.g., AHAM, #473 at 1; New Balance, #635, at 2.

[53] See, e.g., Collins/Kerry/Leiberman/Snowe, #606, at 1 (''To impose a standard which [numerous manufacturers] cannot meet is one more encouragement for businesses to abandon U.S. manufacturing for cheap overseas labor.''); LLGMA, #464, at 3 (''If the FTC continues to impose unrealistic country of origin marking requirements, the decline of the U.S. luggage and leather goods industry and its migration off shore will be hastened.''); Moakley/Delahunt/Meehan/Kennedy/Frank/Olver, #671, at 2 (''If the standard is so high that it cannot be met, manufacturers will have no incentive even to try.'')

[54] New Balance, #635, at 2–3.

USA'' claim.[55] Several commenters noted that the proposed standard would allow them to make unqualified ''Made in USA'' claims for their products, although they cannot make such claims under the current standard. According to Wolverine, for example: ''As currently proposed, the FTC's guides would, for the first time, afford the opportunity for hundreds of thousands of American workers to see their contributions in factories throughout the United States create products which will appropriately carry the unqualified designation as having been 'Made in America.' ''[56]

Some of the commenters favoring a change in the standard expressed their support for the safe harbors for unqualified U.S. origin claims set forth in the Proposed Guides.[57] Other commenters, however, while expressing general support for the Proposed Guides, asked the Commission to revise one or both of the proposed safe harbors and offered specific advice as to how this should be done.[58] For example, a few commenters expressly supported one proposed safe harbor, but urged the Commission to eliminate the other.[59] Several other commenters stated that, although the Commission's 75% U.S. content safe harbor is an improvement over the current ''all or virtually all'' standard, the Commission should lower the U.S. content percentage even further. The Luggage & Leather Goods Manufacturers of America, for example, asked the Commission to lower the standard to 50%, because the luggage and leather goods industry ''has been forced to increase its reliance on foreign materials and components. As domestic industry has grown smaller, so has its supplier base. Therefore, domestic producers often have no choice but to source certain components off shore * * *.[60] In addition, a few commenters suggested alternative ways to calculate domestic content.[61]

A number of commenters argued that the Commission's proposed second safe harbor, which would have allowed an unqualified U.S. origin claim where a product undergoes two levels of substantial transformation in the United States (the product's last substantial transformation took place in the United States, and the last substantial transformation of each of its significant inputs took place in the United States), is too burdensome. Several, for example, urged the Commission to apply only one level of substantial transformation (*i.e.*, requiring that only the final substantial transformation of the product be performed in the United States) rather than two, or suggested other modifications to this safe harbor.[62]

In addition, a number of commenters urged the Commission to replace the Proposed Guides altogether with a lower standard. As was the case during the Commission's earlier public comment period on this issue, many commenters, for example, asked the Commission to replace the ''all or virtually all'' standard with a substantial transformation standard or with the NAFTA Preference Rules.[63] One commenter recommended that the Commission apply a case-by-case, reasonable basis approach to all country-of-origin claims.[64]

Finally, several commenters asked the Commission to modify the Proposed Guides to specifically address certain situations not expressly discussed in the Proposed Guides[65] or to exempt certain types of products.[66]

[55] See, e.g., Allegiance, #653, at 1 (the ability to capitalize on consumer preference for ''Made in USA'' products favorably influences a company's decision to continue producing in the United States); Maytag, #605; NIBCO, #738.

[56] Wolverine, #621, at 2. See also Detroit, #601; Imation, #643; Benrus, #633; Ronda/Progress, #632; NIBCO, #738.

[57] Collins/Kerry/Leiberman/Snowe, #606; Moakley/Delahunt/Meehan/Kennedy/Frank/Olver, #671, Oxley, #955; Allegiance, #653, Belair, #602; Benrus, #633; Carter, #595; Detroit, #601; Gary's, #678; Gates, #649; Genfoot, #463; Hartman, #1013; Imation, #643; Jurgensen, #609; Maytag, #605; New Balance, #635; NIBCO, #738; Oneida, #607; Timex, #612; Timken, #648; IMRA, #594; WIMA, #187.

[58] Converse, #363, #470; DeBon, #472; Jameslee, #627; Rhonda/Progress, #632; Sacoche, #701; Samsonite, #823; Whirlpool, #957; Wolverine, #621; JBC, #637; AHAM, #473; AIAM, #650; FDRA, #603; LLGMA, #464; RPFMA, #264; IEMCA, #604; JIG, #639; NCITD, #638; EIA, #641.

[59] Some commenters objected to the percentage content safe harbor and argued that the Commission should only apply to two levels of substantial transformation safe harbor. See, e.g., JBC, #637, at 1 (percentage content rules can be ''consciously manipulated, affected by exchange rates, and otherwise made administratively impossible to enforce.''); JIG, #639; AIAM, #650. In contract, two commenters supported the percentage content safe harbor, but not the two levels of substantial transformation safe harbor. MUSA Foundation, #730, at 2 (the two levels of substantial transformation safe harbor ''opens up a very wide loophole''); Central Tools, #629.

[60] LLGMA, #464, at 2. See also FIA, #617, at 3 (a product that contains more than 50% U.S. content clearly qaualifies as ''substantially all'' made in the United States); RPFMA, #264; at 2 (70% justified by consumer perception evidence); Converse, #363, at 1 (preferring a 70% standard); Leather Specialty, #598, at 2 (supporting a 50% standard); Wolverine, #621, at 5 (supporting a majority U.S. content safe harbor or, at least no higher than 70%); AIAM, #650, at 1 (favoring substantial transformation standard or lowering U.S. content safe harbor at least to 70%); Savannah, #1039 (supporting a 50% standard). Cf. DeBon, #472, at 1, Jameslee, #627, at 1, and Sacoche, #701, at 1 (all three asserting that the 75% standard would be relatively difficult for many U.S. manufacturers to meet, but not recommending a specific percentage).

[61] See, e.g., LLGMA #464, at 3–4 (the NAFTA regional content net cost formula should be used to calculate domestic content); Stanley, #647, at 6–9 (the Commission should not adopt ''arbitrary'' percentage for U.S. content, but if it does, it should make clear that the percentage of total manufacturing costs relates to cost of fabrication only); Dynacraft, #646, at 7–8 (opposes lowering the standard, but if the Commission adopts the Proposed Guides, the Commission should base the percentage content standard on actual manufacturing costs); EIA, #641, at 2 (the percentage cost safe harbor should only look one step back in the manufacturing process); AHAM, #473, at 2 (the Commission should provide the option of using Generally Accepted Accounting Principles of cost accounting as an alternative method for calculating percentage content).

[62] *See, e.g.*, NCITD, #638, at 2 (favoring the use of the NAFTA marking rules for single substantial transformation as the second safe harbor, rather than requiring two levels of substantial transformation); Stanley, #647, at 9–11 (favoring only one level of substantial transformation for products involving processes other than assembly); 3M, #700, at 1–2 (arguing that two levels of substantial transformation creates too great an administrative cost for U.S. corporations); EIA, #641, at 7 (this safe harbor may be unduly restrictive, depending upon the meaning of term ''significant;'' Commission should modify the concept of ''all significant components'' with a requirement that the final components transformed in the United States constitute most of the total component value). *But see* Timex, #612, at 4 (the Commission may want to consider adding a cost threshold, such as 51% U.S. costs, to the two levels of substantial transformation safe harbor, to guard against consumer deception).

[63] *See, e.g.*, AHAM, #473 (NAFTA Preference Rules); IEMCA, #604 (substantial transformation); Maytag, #605 (NAFTA Preference Rules); NFPA, #620 (substantial transformation); Ronda/Progress, #632 (substantial transformation); Domestic Steel Wire Rope, #644 (substantial transformation); Speciality Cable Subcommittee, #645 (substantial transformation); National Electrical Manufacturers Ass'n (''NEA''), #702 (substantial transformation); NFPA, #620, at 2 (substantial transformation); JMEA, #662, at 2–3 (standards of the World Trade Organization and U.S. Customs); *see also* JIG, #639 and NCITD, #638 (supporting the Proposed Guides, but preferring a substantial transformation standard); NEMA, #702 (urging substantial transformation standard for industrial products).

[64] Toyota, #610.

[65] For example, one commenter requested that the Commission amend the Guides to specifically permit manufacturers rebuilding or remanufacturing automotive parts in the United States to designate their products ''Made in USA'' if the products originally were used in the United States, regardless of where the products originally were manufactured. Automotive Parts Rebuilders Ass'n (''APRA''), #698, at 1–3. *See also* NFPA, #620, at 2 (if Proposed Guides apply to processed foods, Proposed Guides should include references to raw agricultural products and processed or manufactured food products in cost and other definitions and include processed food product examples); Wolverine, #621, at 6–8 (Commission should authorize ''Made in USA'' claims for products assembled or processed in accordance with subheading 9802.00.8040, HTSUS); Carter, #595, at 1–2 (asking the Commission to explain how it will treat certain qualified claims under the Proposed Guides, *e.g.*, when a qualified claim indicates that some or all of the parts are of U.S. origin, do those parts have to meet the standard for an unqualified ''Made in USA'' claim?).

[66] Two commenters asked the Commission to apply the Proposed Guides only to consumer goods, not to industrial products, arguing that industrial products are produced to the specifications (including country of origin) of a sophisticated

Continued

D. Commenters' Discussion of Other Issues

Several commenters discussed additional issues raised in the **Federal Register** notice soliciting comments on the Proposed Guides. These issues included whether the Commission should treat unqualified ''Assembled in USA'' claims the same as unqualified ''Made in USA'' claims, whether the Commission should recognize a separate ''Origin: USA'' claim in limited instances for domestically-sold products that also are exported for sale, and whether the Commission should eliminate its traditional presumption that products that do not bear any country-of-origin marking are understood by consumers to be made in the United States. These comments are discussed below.

1. ''Assembled in USA'' Claims

In the **Federal Register** notice announcing the Proposed Guides, the Commission solicited comment on whether a product that does not meet the standard for unqualified U.S. origin claims should nonetheless be permitted to be labeled or advertised as ''Assembled in USA'' without further qualification; and if so, under what circumstances, i.e., what processing should it undergo in the United States to support the unqualified claim. Five commenters contended that the claim should be interpreted similarly to an unqualified ''Made in USA'' claim, and must therefore be qualified (e.g., ''Assembled in USA from imported parts'') if it does not meet the standard for unqualified ''Made in USA'' claims. According to these commenters, consumers understand ''Assembled in USA'' to mean the same thing as ''Made in USA.''[67] Two commenters, on the other hand, contended that consumers perceive the two claims differently. The coalition of state Attorneys General, for example, suggested that ''while the term 'make' connotes a process of creation the term 'assemble' is generally understood to mean the final process of fitting or joining together pre-existing parts.''[68] These commenters favored permitting an unqualified ''Assembled in USA'' claim where a ''Made in USA'' claim would be inappropriate.[69]

In addition, three of these commenters addressed the circumstances under which they believed an ''Assembled in USA'' claim should be permitted. Two commenters favored authorizing the use of unqualified ''Assembled in USA'' claims for products that have been last substantially transformed in the United States.[70] Another commenter supported requiring at least 50% U.S. content to ensure more than minimal or simple assembly operations; even at that level, however, the commenter recommended requiring that the claim be qualified to disclose whether foreign components were used.[71]

2. ''Origin: USA'' Claims

In the Proposed Guides, the Commission proposed allowing marketers to use a ''lesser mark''—''Origin: USA''—in certain, limited circumstances. Such a mark would have allowed manufacturers to uniformly label products for sale in both the United States and abroad, when a foreign country may require that a product exported from the United States be marked with an indication of U.S. origin, while that same product would not be permitted to bear an unqualified U.S. origin claim when sold in the United States. Use of the lesser mark would have been subject to certain restrictions, including that consumer products sold in the United States would have to include, in some manner, an additional disclosure of the existence of any substantial foreign content. The commenters addressing this issue were evenly divided as to whether marketers should be allowed to use a ''lesser mark'' or specific claim such as ''Origin: USA.''[72]

A number of commenters supporting the option of using an ''Origin: USA'' label argued that such a claim would benefit manufacturers who export U.S. products, as well as consumers, for example, by eliminating the need to separately label domestic and exported products and to maintain packaging plants in foreign countries for the sole purpose of meeting conflicting country-of-origin labeling standards;[73] by encouraging U.S. manufacturers to manufacture and sell more U.S. products if they can export the products for sale in foreign markets without the added costs associated with the Commission's historic restrictions on U.S. origin statements;[74] and by reducing the price of consumer goods sold in the United States, because of the cost savings to U.S. manufacturers.[75] At least one commenter who supported the use of the lesser mark asserted that additional disclosure requirements for consumer goods sold in the United States would not be necessary to prevent consumer deception.[76] Another commenter suggested alternative lesser marks to avoid the burden and expense of additional labeling for U.S. sales while providing additional information to U.S. consumers.[77]

On the other hand, other commenters argued that whatever benefits an ''Origin: USA'' mark would provide would not justify the potential confusion caused by the lesser mark, as consumers were likely to confuse ''Origin: USA'' labels with ''Made in USA'' labels.[78] Even the additional disclosures required on consumer goods sold in the United States, some of these commenters stated, would not be sufficient to prevent consumer deception or might even increase

customer. JIG, #639; NEMA, #702. *But see* Kern, #739, at 2 (the ''creative' use of the 'Made in the USA' designation has caused considerable confusion in my [tool] company's local and national marketplace of normally well informed industrial customers and has had a negative financial impact on my company and its employees'').

[67] *See* Gates, #649, at 2–3 (''Assembled in USA'' claim should identify country of origin of major component parts); Timken, #648, at 3–4 (because of similarity between ''Made'' and ''Assembled'' and the importance of assembly to respondents in Commission's survey, unqualified ''Assembled in USA'' mark is inappropriate); IMRA, #594; FDRA, #603; Timex, #612.

[68] AGs, #462, at 5.

[69] Id., #462, at 4–5 (treating terms differently would allow manufacturers to market their products effectively, using easily understood unqualified claims that would not sacrifice truth in advertising); AIAM, #650, at 1–2, 5–6. *See also* Toyota, #610, at 6–7 (if Commission concludes that a bright line test is necessary for ''Made in USA'' claims, it should allow ''assembled in'' or ''built in'' claims based only on substantial transformation).

[70] AGs, #462, at 6; Toyota, #610, at 6–7.

[71] Gates, #649, at 2–3.

[72] Seven commenters supported use of a ''lesser mark.'' LLGMA, #464, at 4; IMRA, #594, at 4–5 (strongly supports as a short-term solution until WTO adopts origin-marking requirements; the Commission should prohibit use of the ''Origin: USA'' claim in advertising, because the issue faced by exporters is purely a labeling issue, and could be abused in advertising); FIA, #617, at 8–9; Wolverine, #621, at 8; JBC, #637, at 3–4; JIG, #639, at 4; NEMA, #702, at 1–3. Seven commenters opposed the use of such a mark. FDRA, #603, at 2–4; Timex, #612, at 1, 5–6; NFPA, #620, at 3–4; American Hand Tool, #622, at 29–31; Timken, #648, at 4–5; Gates, #649, at 3–4; Wright, #262, at 2.

[73] JBC, #637, at 3–4; JIG, #639, at 4 (cost of maintaining separate packaging facilities in foreign markets for sole purpose of complying with conflicting country-of-origin markings and Commission's ''all or virtually all'' standard for U.S. origin claims adds 10% to 30% per product; cost of special labels and/or relabeling U.S. product in United States for export adds 10% to 15% per product); NEMA, #702, at 2–3.

[74] JIG, #639, at 4.

[75] Id., #639, at 6.

[76] JBC, #637, at 3–4.

[77] FIA, #617, at 8–9 (suggesting lesser mark ''Origin: USA (for export)'' to allow manufacturers to avoid burden and expense of additional labeling while alerting consumers that the article is labeled for export; alternatively, lesser mark ''Origin: USA (with non-U.S. content)'' to provide U.S. consumers with relevant information while eliminating additional labeling requirements).

[78] *See, e.g.,* Timken, #648; American Hand Tool, #622; Gates. #649; Timex, #612.

consumer confusion.[79] Some commenters also asserted that a lesser mark is unnecessary,[80] arguing that if a foreign country's marking rules require the origin of a product to be ''USA,'' then the manufacturer can identify the United States as the assembly point and further qualify the origin, *e.g.*, ''Assembled in USA from Components of U.S. and Foreign Origin,'' or apply separate labels or marks, depending upon the destination of the goods.[81] In addition, one commenter who supported a substantial transformation standard for unqualified ''Made in USA'' claims found the alternative of using an ''Origin: USA'' claim to be inadequate. This commenter contended that the lesser mark would provide little or no benefit because the additional disclosure requirements for U.S. sales of consumer products would create a dual marking requirement.[82] Last, even some commenters supporting use of a lesser mark were unsure whether the lesser mark ''Origin: USA'' would be an acceptable marking to foreign customs officials.[83]

3. Rebuttable Presumption for Unmarked Products

As explained in the prior **Federal Register** notice, the Commission has historically employed a rebuttable presumption that goods not labeled with any country of origin are understood by consumers to be made in the United States. As a result, the Commission required that foreign origin be disclosed if unmarked goods contained a significant amount of foreign content. Based on the facts that manufacturing and the sourcing of components have become increasingly global in nature and that consumers appear to be increasingly aware that goods they buy are produced throughout the world, the Commission announced in the **Federal Register** notice that it no longer was appropriate to presume that reasonable consumers will interpret the absence of a foreign country-of-origin mark, by itself, as a representation that the product was made in the United States. The Commission, therefore, determined to cease using this presumption, but instead explained that it would require disclosure of foreign origin on unmarked goods only if there is some evidence that, with respect to the particular type of product at issue, a significant minority of consumers views country of origin as material and believes that the goods in question, when unlabeled, are domestic.[84]

Although the Commission did not specifically solicit comments on this determination,[85] four commenters submitted their views concerning the current need for the presumption. Three commenters urged the Commission not to eliminate the presumption, arguing, among other reasons, that it was appropriate for the producer of an unmarked product to have the burden of proving that the lack of a country-of-origin indication was not deceptive.[86] The other commenter agreed with the Commission that the presumption should be eliminated, and, indeed, urged the Commission to go further and clearly indicate that an unmarked good, in and of itself, would not be considered deceptive simply for the fact of being unmarked.[87]

III. Analysis

Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, proscribes ''unfair or deceptive acts or practices'' in or affecting commerce. An advertisement, label or other promotional material will be found to be deceptive if it contains a representation or omission that is likely to mislead consumers acting reasonably and that representation or omission is material. In applying the principles of Section 5 and the Commission's traditional deception analysis to U.S. origin claims, the Commission has, throughout its review, focused first and foremost on consumers' understanding of such claims.[88]

The considerable evidence available to the Commission concerning consumer understanding of ''Made in USA'' claims was discussed at length in the Commission's May 7, 1997 **Federal Register** notice. As explained in that notice, the Commission itself, as part of its overall review of U.S. origin claims, commissioned a two-part study in 1995 (referred to as the ''1995 Copy Test'' and ''1995 Attitude Survey,'' respectively) to look at consumer perception of such claims.[89] In addition, the Commission had previously conducted a more limited study of these issues in 1991 as part of a subsequently closed investigation (''1991 Copy Test'').[90] The results of these studies indicated that many consumers expected that a product advertised or labeled as ''Made in USA'' had a high amount of U.S. content, but that a significant number of these were willing to accept a product with at least some foreign content and that, as a result, there was a range of values at which most consumers would find a ''Made in USA'' claim appropriate. In addition, the studies suggested that many consumers appeared to have only a general sense of what ''Made in USA'' means and did not necessarily have in mind a highly

[79] FDRA, #603, at 2–3 (''Origin: USA'' label likely would prove deceptive even if appropriate qualifying language appears on a hangtag or packaging because consumers would not locate or read the qualifying language); Timex, #612, at 5 (consumer likely would decide to purchase a watch without seeing package containing additional disclosures because watches are frequently displayed without packaging, and packaging products are pulled from a cabinet or shelf once the consumer has made purchasing decision); American Hand Tool, #622, at 29 (strongly opposed the ''Origin: USA'' label); Gates, #649, at 4 (the meaning of a lesser mark, even where qualified by the phrase ''substantial foreign content,'' would be uncertain to consumers).

[80] Wright, #262, at 2 (marking is the last or near to last operation performed; it is practical to run large lots and carry most inventory in an unmarked condition, involving only a relatively small cost penalty); American Hand Tool, #622, at 29–31 (little need for lesser mark; Commission found little evidence that companies routinely face conflicting labeling requirements or that ''Made in USA'' claim causes such conflicts); Gates, #649.

[81] Gates, #649, at 3–4. *See also* Timex, #612, at 5 (a qualified marking such as ''Assembled in USA; Philippines movement'' for watches would satisfy the marking requirements of almost every other country—most of which identify the place of origin of a watch as the place of final assembly; this qualified claim would therefore resolve—for watches—the concerns that prompted the Commission to consider an ''Origin: USA'' marking).

[82] NFPA, #620, at 4 (economic burden of sticker labeling or hangtags similar to creation of additional labeling inventory, and handling requirements might be even more burdensome).

[83] *See, e.g.*, NEMA, #702, at 2 (a number of countries have indicated either that they would not accept an ''Origin: USA'' mark or that they are not sure); JIG, #639, at 5 (''Origin: USA'' likely would not be acceptable to customs officials in at least Australia, New Zealand, and Canada).

[84] 62 FR at 25047.

[85] The Commission's determination on this point was not part of the Proposed Guides, but was included in the **Federal Register** notice accompanying the Guides because it addressed a related topic that had been raised at the public workshop.

[86] Timken, #648, at 5–6; Gates, #649, at 4 (also asserting that the presumption is a valuable remedy to counter the incentive for foreign producers to import unmarked products, *e.g.*, the producers of automotive belts, who may have the incentive to import unmarked belts contrary to antidumping duty orders and U.S. Customs marking regulations). *See also* Oneida, #607, at 1–2 (arguing that the presumption is particular necessary in catalog sales where the consumer cannot inspect the item prior to purchase, and expressing its concern that without the presumption, attempting to show that a significant minority of consumers believes an unmarked product is domestic would be unworkable).

[87] IMRA, #594, at 5–6.

[88] To the extent they are not inconsistent with consumer understanding, other considerations, such as the compliance burdens placed on businesses, have been considered by the Commission as part of its general obligation to act in the public interest.

[89] This study is available as Document No. B212883 on the Commission's public record.

[90] Document No. B213001 on the Commission's public record.

detailed conception of what it meant for a product to be ''Made in USA.''

In the 1995 Attitude Survey, participants were presented with a series of scenarios and asked whether they agreed or disagreed with a ''Made in USA'' label on a product in those circumstances. In the scenarios, the percentage of the product's cost that was U.S. in origin varied from 10% to 90%; in addition, participants were either told that the product was assembled in the United States, told that it was assembled abroad, or not told the site of assembly. The Attitude Survey indicated that a ''Made in USA'' label would likely be misleading to most consumers when a product contained 50% or less U.S. content or was assembled abroad. However, where a product was assembled in the United States, a significant majority of consumers agreed that a ''Made in USA'' claim would be appropriate if the product contained either 70% U.S. content (67% of respondents) or 90% U.S. content (75% of respondents), suggesting that there is a range of standards likely to be considered acceptable and nonmisleading by most consumers.

As in the 1995 Attitude Survey, in the 1991 Copy Test, the Commission had also found evidence that many consumers expected a product called ''Made in USA'' to have a high amount of U.S. content. In that study, of the participants who were asked ''when you see the phrase 'Made in USA' on a product or in an ad, how much of the product was made in the United States?'' approximately 77% said that all or almost all of the product so labeled was made in the United States. Nonetheless, the answers to a follow-up question attenuated this result somewhat. When asked whether they meant parts or labor or both parts and labor, only 77% of the respondents (82% of those who answered ''all or almost all'') said both parts and labor, while 14% said labor only, and 9% said only parts.[91]

The 1995 Copy Test attempted to explore further issues of what consumers included in their definitions of Made in USA, but the results were less than definitive. For example, in the 1995 FTC Copy Test, when respondents were shown a ''Made in USA'' claim and asked an open-ended question about what the claim meant, 63.5% said simply that the claim meant ''Made in USA.''[92] Moreover, when asked specifically whether the claim suggested or implied anything about where the product was assembled, only 49% said that it did (almost all of whom said it meant the product was assembled in the United States); only 28% of those asked about an unqualified ''Made in USA'' claim said it suggested or implied anything about where the parts were made; and only 11% said it implied anything about how much of the parts were made in the United States. Indeed, a total of 34% of respondents stated that a ''Made in USA'' claim did not suggest or imply anything about any of these factors—assembly, parts, or how much of the total cost of the product was incurred in the United States. This suggests that many consumers may not have in mind a highly developed definition of ''Made in USA''; in any event, the data are not definitive. In addition, the available consumer perception evidence suggests that, to the extent that consumers do define Made in USA, they may do so in a variety of different ways. For example, in each of the Commission-sponsored surveys, there is evidence, albeit inconclusive, of a minority of consumers who, rather than expecting a high amount of both U.S. parts and labor, view ''Made in USA'' claims as referring only to where a product was put together. Thus, 28.5% of respondents to the 1995 Copy Test answered that ''Made in USA'' implied that a product was assembled in the United States but that it did not imply that a product's parts were necessarily U.S. made; 20% of respondents in the 1995 Attitude Survey agreed that a ''Made in USA'' label would be appropriate for a product that was assembled in the United States but whose costs were only 10% U.S.; and 14% of those asked in the 1991 copy test indicated that ''Made in USA'' referred only to labor, not parts.

The Commission has thus been presented with evidence that suggests that many consumers expect that ''Made in USA'' labels connote a high amount of U.S. content, as well as that many of these consumers do not have a detailed conception of what it means for a product to be ''Made in USA.'' Moreover, the evidence suggests that no single standard is likely to correspond to the views of all consumers, and that there is a range of points along the spectrum that would likely satisfy a significant majority of consumers. Based on this evidence, the Commission initially proposed a ''substantially all'' standard. Although this was not the only possible standard consistent with the data, it was, the Commission believed, a high threshold for ''Made in USA'' claims that would at the same time provide some flexibility to U.S. manufacturers operating in an increasingly global economy. Moreover, although nominally less stringent than the existing standard, the proposed ''substantially all'' standard and the associated guides provided strict constraints with respect to the sort of details that the consumer perception studies were unable to address but that can have a great deal of practical effect in determining whether a product can meet the standard for ''Made in USA'' claims (however that standard is denominated)—*e.g.*, how far back in the manufacturing process marketers were required to look, or what sorts of costs should be included in the calculation of U.S. content.

Nonetheless, the record currently before the Commission does not support adoption of the ''substantially all'' standard and the accompanying guides proposed in May. The vast majority of those commenting, including, significantly, a large number of individual consumers as well as a number of U.S. manufacturers, opposed the proposed standard, perceiving it, contrary to the Commission's intent, as significantly weakening the standard for ''Made in USA'' claims. The submissions of these commenters suggest that the Commission may have underestimated the benefits such individuals or corporations derive from the current standard and the costs they believe they will incur if the standard is changed. An overwhelming number of consumers told the Commission, through written comments, telephone calls, and petitions, that they prefer buying U.S.-made goods; they want to be able to rely on a simple and clear standard; and, they feel very strongly that the current standard should be retained. The comments also underscore the fact, noted as well in the Commission's May **Federal Register** notice, that consumer awareness of the

[91] There was no attempt in this survey to breakdown these categories further—i.e., to look at whether the respondents who said that ''Made in USA'' referred to parts also thought that it referred to the materials that went into those parts; or whether those who said ''Made in USA'' referred to labor meant only final assembly labor or also any labor that went into making the parts.

[92] During the Commission's earlier comment period on this matter, a number of commenters suggested that the fact that many consumers said that ''Made in USA'' means ''Made in USA'' showed that consumers understood ''Made in USA'' claims as referring only to where a product ''came into being,'' i.e., where it underwent its final assembly or processing. See 62 FR at 25037. By contrast, in response to the Commission's May notice, some commenters suggested that the response that ''Made in USA'' means ''Made in USA'' showed that consumers expected a product labeled ''Made in USA'' to be 100% ''Made in USA.'' The Commission continues to believe, however, that there is inadequate evidence upon which to infer either meaning from this tautological definition.

globalization of the economy has not necessarily changed consumers' beliefs about those products actually labeled ''Made in USA.'' Thus, the Commission concludes that the better course, and one equally consistent with the consumer perception evidence, is to retain and continue to enforce the Commission's traditional all or virtually all standard.

IV. Enforcement Policy Statement

The ''all or virtually all'' standard—and its earlier equivalent, the ''wholly domestic'' standard—was developed through case law and advisory opinions that were largely limited to discussions of single products, and the standard has never been more generally defined. Indeed, throughout this review process, commenters, particularly those businesses that must comply with the requirements for ''Made in USA'' claims, have entreated the Commission to provide more guidance on what this standard (or any other standard the Commission were to adopt) requires. For that reason, the Commission in retaining the ''all or virtually all'' standard, is at the same time issuing an Enforcement Policy Statement on U.S. Origin Claims. The Enforcement Policy Statement sets forth the general principles to which the Commission will adhere in enforcing the requirement that goods promoted as ''Made in USA'' must be all or virtually all made in the United States. The Enforcement Policy Statement is intended to give general guidance on making and substantiating U.S. origin claims. It is not designed, however, to answer all questions that may arise on this topic. Given the complex and varied factual scenarios that present themselves in this area, and the wide range of products for which U.S. origin claims may be made, there are necessarily issues that will continue to be more appropriately resolved on a case-by-case basis.

The Enforcement Policy Statement addresses a range of basic issues related to U.S. origin claims. It includes introductory information on the scope of the products and claims to which the Statement applies and of the respective responsibilities of the FTC and the U.S. Customs Service in regulating country-of-origin claims; an explanation of the Commission's authority to act against deceptive practices and how the Commission is likely to interpret express and implied U.S. origin claims; a discussion of unqualified U.S. origin claims and the factors that the Commission will consider in determining whether such a claim is substantiated, *i.e.*, whether a product is ''all or virtually all'' made in the United States; and guidance on using qualified claims where a product does not meet the ''all or virtually all'' standard. The Enforcement Policy Statement is intended to be self-explanatory; nonetheless, a few matters that may be of particular interest are highlighted below.

Substantiating U.S. Origin Claims: The All or Virtually All Standard. The Enforcement Policy Statement sets forth the requirement that where a product is labeled or advertised as ''Made in USA,'' the marketer should possess and rely upon a reasonable basis that the product is all, or virtually all, made in the United States. A product that is ''all or virtually all'' made in the United States is described typically as one in which all significant parts and processing that go into the product are of U.S. origin, *i.e.*, where there is only a *de minimis*, or negligible, amount of foreign content. In order to provide further guidance, the Enforcement Policy Statement discusses three factors that the Commission will likely consider in evaluating whether a product is all or virtually all made in the United States: whether the final assembly or processing of the product took place in the United States; the portion of the total manufacturing cost of the product that is attributable to U.S. parts and processing; and how far removed from the finished product any foreign content is.

There was widespread agreement among commenters who addressed the issue (both in response to the May 7, 1997 **Federal Register** notice and to the Commission's earlier requests for public comment), whatever standard they otherwise supported, that a product should have to undergo its final processing in the United States in order to be called ''Made in USA.'' This view is confirmed by the consumer perception evidence, which indicates that the country of final assembly is highly significant to consumers in evaluating where a product is ''made.'' Accordingly, the Enforcement Policy Statement indicates that a product promoted as ''Made in USA'' must have undergone its final assembly or processing in the United States; in particular, the product must, at minimum, have been last substantially transformed in the United States (this also ensures that no product required to be labeled with a foreign country-of-origin under the Customs Service's rules would be permitted to make a ''Made in USA'' claim).

The Enforcement Policy Statement also indicates that, in determining whether a product is appropriately represented to be ''Made in USA,'' the Commission will consider what portion of the total cost of manufacturing the product is attributable to U.S. parts and processing. Obviously, the greater the percentage of U.S. costs, the more likely the product will be considered all or virtually all made in the United States. As discussed above, there were a great many commenters who criticized the 75% safe harbor put forth as part of the Commission's earlier proposal as overly lax and likely to deceive many consumers, and the Commission agrees that the record as a whole does not support adoption of such a safe harbor. The Commission, however, believes that, as a matter of enforcement policy, it is appropriate to allow for some small but reasonable amount of tolerance in enforcing the ''all or virtually all'' standard. Some commenters have called for the Commission to define this tolerance level with a bright line percentage standard so as to provide greater certainty to marketers. Nonetheless, the Commission has concluded that any such certainty is likely to be illusory and no single percentage standard will be appropriate for all products in all circumstances.[93] Instead, the Commission will look at U.S. manufacturing costs in the context of the other factors outlined here and in light of the nature of the product and consumers' expectations. In general, the Commission concludes that it will not be in the public interest to bring a law enforcement action where the proportion of U.S. costs of the product is extremely high.

Finally, the Enforcement Policy Statement indicates that, in evaluating whether any foreign content is significant enough to prevent a product from being considered all or virtually all made in the United States, the Commission will also examine how far removed the foreign content is from the finished product. In other words, foreign parts or materials that are incorporated several steps back in the manufacturing process are generally less

[93] For example, in some cases, the percentage of manufacturing costs attributable to foreign parts and process may not reflect the true extent of foreign content. Where only a small amount of domestic processing takes place and the bulk of the work on the product is performed abroad, or a significant component is manufactured abroad, it may be possible that, because of lower costs for foreign parts and labor, foreign costs may be disproportionately low relative to the amount of foreign production. Similarly, as the American Hand Tool Coalition noted, a product made with inputs from a high-cost country (such as Germany) will reflect a higher degree of foreign content (in terms of cost) than would a product made with identical inputs supplied from a low-cost country (such as China). In such circumstances, it may be preferable to look more generally at the significance of the foreign inputs rather than evaluate their extent entirely in terms of cost.

likely to be significant than are parts or materials that are immediate inputs into the final product.

Many commenters implicitly recognized this point. The Attorneys General, for example, suggested that raw materials be excluded from the calculation of foreign content, suggesting that ''a company that designs and manufacturers a plastic product entirely within the U.S.A. but uses petroleum from a foreign county, could fairly claim that the product was made in the U.S.A. with no foreign component parts.'' [94] Some other supporters of the ''all or virtually all'' standard, even those who supported including all basic materials in the analysis, also appeared to acknowledge that there should be limits as to how far back a manufacturer must go in accounting for foreign materials. For example, a number of commenters, arguing that steel must be included in the evaluation of a product's origin, did not also suggest that a manufacturer should be required to go as far back as the iron ore used in the steel.[95] On the other hand, commenters also recognized that raw materials can sometimes be relevant to the determination as to whether a product is all or virtually all made in the United States, especially when the raw materials are only one step back from the finished product and are integral components of that article. For example, the Tile Council of America, arguing that the Commission must include raw materials in the evaluation of whether a product is made in the United States, stated that ''the quality and reliability benefits of tile 'Made in the USA' are the result of both the domestic sourcing of raw materials and the domestic manufacturing process. Tile manufactured in the United States of clay dug in Mexico * * * clearly [does] not meet the 'Made in USA' expectations of U.S. consumers.'' [96]

Thus, the Enforcement Policy Statement indicates that raw materials, per se, will be neither automatically included nor excluded from the Commission's evaluation of whether a product is all or virtually all made in the United States. Instead, here, too, the Commission's analysis will depend on the percentage of the cost of the product the raw materials constitute and how far removed from the finished product the raw materials are, and, because, some raw materials are naturally nonoccurring in this country, whether the raw material is indigenous (and available in commercial quantities) in the United States.

Qualified U.S. Origin Claims and ''Assembled in USA''. Few commenters directly addressed the use of qualified U.S. origin claims, although those that did commented favorably, suggesting that qualified claims can provide valuable information to consumers.[97] The Commission has always permitted marketers to use appropriately qualified claims where their products would not meet the standard for an unqualified ''Made in USA'' claim, and that continues to be the case. The Enforcement Policy Statement addresses various types of qualified claims, including claims about the U.S. origin of specific processes or parts and comparative U.S. origin claims, and indicates that all such claims must be truthful and substantiated and that qualifications and disclosures should be clear, prominent and understandable. Comparative U.S. origin claims may be a particularly useful vehicle for those manufacturers who wish to draw a distinction between the domestic content of their products and those of competitors who engage in less domestic manufacturing or use fewer U.S. made parts.

As discussed above, the Commission specifically solicited comment in its May 7, 1997 **Federal Register** notice on one particular alternative claim, ''Assembled in USA.'' The Commission asked for comment on whether a product that does not meet the standard for an unqualified U.S. origin claims should nonetheless be permitted to be promoted as ''Assembled in USA,'' and, if so, under what circumstances. Upon review of the responses and further reflection, the Commission has concluded that ''assembled'' has a common meaning sufficiently distinct from ''made'' so that in many instances it will be appropriate for marketers to promote a product as ''Assembled in USA'' without further qualification.[98] Specifically, the Enforcement Policy Statement states that such a claim may be used where a product has undergone its principal assembly in the United States and that assembly is substantial; it also indicates that a product should have been last substantially transformed in the United States if it is to be labeled or advertised as ''Assembled in USA.''

V. Issues Not Addressed by the Enforcement Policy Statement

A. Origin: USA

As explained above, in the Proposed Guides, the Commission sought comment on the use of a separate ''lesser mark'' for products that faced conflicting marking requirements when sold domestically and exported. Several commenters praised the proposal as likely to save U.S. businesses, and consumers, money while others contended that such a mark was unnecessary and likely to confuse consumers. Upon reviewing the record, the Commission finds that, at the present time, there is inadequate evidence of the extent of both the problems purportedly caused by conflicting labeling requirements (*e.g.*, to what extent conflicting marking requirements actually occur, how frequently multiple labeling is actually required) as well as of the degree to which a lesser mark such as ''Origin: USA'' is likely to alleviate these problems (*e.g.*, whether relabeling would have been required in any event because of language differences, whether foreign customs services will accept this mark). As a result, the Commission has concluded that the benefits to be gained through establishment of this mark are as yet too speculative to outweigh the more obvious costs in potential confusion between such a mark and ''Made in USA.'' Accordingly, the Commission has not adopted ''Origin: USA'' (or any other lesser mark) in the Enforcement Policy Statement.

B. Goods With No Country-of-Origin Marking

In the May 7, 1997 **Federal Register**, the Commission indicated that it would no longer employ its historical rebuttal presumption that unmarked goods will be understood by reasonable consumers to have been made in the United States, but instead would look at an array of factors on a case-by-case basis. Although a few commenters disagreed with this change in policy, the Commission continues to believe that this course is appropriate and more in keeping with the Commission's traditional deception analysis that is widely applied to other representations and omissions.

ENFORCEMENT POLICY STATEMENT ON U.S. ORIGIN CLAIMS

I. Introduction

The Federal Trade Commission (''FTC'' or ''Commission'') is issuing this statement to provide guidance regarding its enforcement policy with respect to

[94] AGs, #462, Attachment at 10.

[95] *See, e.g.*, Weldbend, #597; Vaughan & Bushnell, #616; American Iron & Steel Institute, #636.

[96] TCA, #618, p. 3.

[97] *See, e.g.*, American Hand Tool, #622; Traficant, #231 Visclosky, #236; NCL, #640; Matco, #600.

[98] AGs, #462, at 4–5.

the use of ''Made in USA'' and other U.S. origin claims in advertising and labeling. The Commission has determined, as explained below, that unqualified U.S. origin claims should be substantiated by evidence that the product is all or virtually all made in the United States. This statement is intended to elaborate on principles set out in individual cases and advisory opinions previously issued over the course of many years by the Commission. This statement, furthermore, is the culmination of a comprehensive process in which the Commission has reviewed its standard for evaluating U.S. origin claims. Throughout this process, the Commission has solicited, and received, substantial public input on relevant issues. The Commission anticipates that from time to time, it may be in the public interest to solicit further public comment on these issues and to assess whether the views expressed in this statement continue to be appropriate and reflect consumer perception and opinion, and to determine whether there are areas on which the Commission could provide additional guidance.

The principles set forth in this enforcement policy statement apply to U.S. origin claims included in labeling, advertising, other promotional materials, and all other forms of marketing, including marketing through digital or electronic means such as the Internet or electronic mail. The statement, moreover, articulates the Commission's enforcement policy with respect to U.S. origin claims for all products advertised or sold in the United States, with the exception of those products specifically subject to the country-of-origin labeling requirements of the Textile Fiber Products Identification Act,[99] the Wool Products Labeling Act,[100] or the Fur Products Labeling Act.[101] With respect to automobiles or other passenger motor vehicles, nothing in this enforcement policy statement is intended to affect or alter a marketer's obligation to comply with the requirements of the American Automobile Labeling Act [102] or regulations issued pursuant thereto, and any representation required by that Act to appear on automobile labeling will not be considered a deceptive act or practice for purposes of this enforcement policy statement, regardless of whether the representation appears in labeling, advertising or in other promotional material. Claims about the U.S. origin of passenger motor vehicles other than those representations required by the American Automobile Labeling Act, however, will be governed by the principles set forth in this statement.

II. Background

Both the FTC and the U.S. Customs Service have responsibilities related to the use of country-of-origin claims. While the FTC regulates claims of U.S. origin under its general authority to act against deceptive acts and practices, foreign-origin markings on products (*e.g.*, ''Made in Japan'') are regulated primarily by the U.S. Customs Service (''Customs'' or ''the Customs Service'') under the Tariff Act of 1930. Specifically, Section 304 of the Tariff Act, 19 U.S.C. 1304, administered by the Secretary of the Treasury and the Customs Service, requires that all products of foreign origin imported into the United States be marked with the name of a foreign country of origin. Where an imported product incorporates materials and/or processing from more than one country, Customs considers the country of origin to be the last country in which a ''substantial transformation'' took place. A substantial transformation is a manufacturing or other process that results in a new and different article of commerce, having a new name, character and use that is different from that which existed prior to the processing. Country-of-origin determinations using the substantial transformation test are made on a case-by-case basis through administrative determinations by the Customs Service.[103]

The FTC also has jurisdiction over foreign origin claims in packaging insofar as they go beyond the disclosures required by the Customs Service (*e.g.*, claims that supplement a required foreign origin marking, so as to represent where additional processing or finishing of a product occurred). In addition, the Commission has jurisdiction over foreign-origin claims in advertising, which the U.S. Customs Service does not regulate.

Where Customs determines that a good is not of foreign origin (i.e., the good undergoes its last substantial transformation in the United States), there is generally no requirement that it be marked with any country of origin. For most goods, neither the Customs Service nor the FTC requires that goods made partially or wholly in the United States be labeled with ''Made in USA'' or any other indication of U.S. origin.[104] The fact that a product is not required to be marked with a foreign country of origin does not mean that it is permissible to promote that product as ''Made in USA.'' The FTC will consider additional factors, beyond those considered by the Customs Service in determining whether a product is of foreign origin, in determining whether a product may properly be represented as ''Made in USA.''

This statement is intended to address only those issues related to U.S. origin claims. In developing appropriate country-of-origin labeling for their products, marketers are urged also to consult the U.S. Customs Service's marking regulations.

III. Interpreting U.S. Origin Claims: The FTC's Deception Analysis

The Commission's authority to regulate U.S. origin claims derives from Section 5 of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 45, which prohibits ''unfair or deceptive acts or practices.'' The Commission has set forth its interpretations of its Section 5 authority in its Deception Policy Statement,[105] and its Policy Statement Regarding Advertising Substantiation Doctrine.[106] As set out in the Deception Policy Statement, the Commission will find an advertisement or label deceptive under Section 5, and therefore unlawful, if it contains a representation or omission of fact that is likely to mislead consumers acting reasonably under the circumstances, and that representation or omission is material. In addition, objective claims carry with them the implication that they are supported by valid evidence. It is deceptive, therefore, to make a claim unless, at the time the claim is made, the marketer possesses and relies upon a reasonable basis substantiating the claim. Thus, a ''Made in USA'' claim, like any other objective advertising claim, must be truthful and substantiated.

A representation may be made by either express or implied claims. ''Made in USA'' and ''Our products are American made'' would be examples of express U.S. origin claims. In

[99] 15 U.S.C. 70.

[100] 15 U.S.C. 68.

[101] 15 U.S.C. 69.

[102] 49 U.S.C. 32304.

[103] For goods from NAFTA countries, determinations are codified in ''tariff shift'' regulations. 19 CFR 102.

[104] For a limited number of goods, such as textile, wool, and fur products, there are, however, statutory requirements that the U.S. processing or manufacturing that occurred be disclosed. *See, e.g.*, Textile Fiber Products Identification Act, 15 U.S.C. 70(b).

[105] Letter from the Commission to the Honorable John D. Dingell, Chairman, Committee on Energy and Commerce, U.S. House of Representatives (Oct. 14, 1983); reprinted in Cliffdale Associates, Inc., 103 F.T.C. 110, appendix (1984).

[106] 49 FR 30,999 (1984); reprinted in Thompson Medical Co., 104 F.T.C. 648, appendix (1984).

identifying implied claims, the Commission focuses on the overall net impression of an advertisement, label, or other promotional material. This requires an examination of both the representation and the overall context, including the juxtaposition of phrases and images, and the nature of the transaction. Depending on the context, U.S. symbols or geographic references, such as U.S. flags, outlines of U.S. maps, or references to U.S. locations of headquarters or factories, may, by themselves or in conjunction with other phrases or images, convey a claim of U.S. origin. For example, assume that a company advertises its product in an advertisement that features pictures of employees at work at what is identified as the company's U.S. factory, these pictures are superimposed on an image of a U.S. flag, and the advertisement bears the headline ''American Quality.'' Although there is no express representation that the company's product is ''Made in USA,'' the net impression of the advertisement is likely to convey to consumers a claim that the product is of U.S. origin.

Whether any particular symbol or phrase, including an American flag, conveys an implied U.S. origin claim, will depend upon the circumstances in which the symbol or phrase is used. Ordinarily, however, the Commission will not consider a marketer's use of an American brand name [107] or trademark,[108] without more, to constitute a U.S. origin claim, even though some consumers may believe, in some cases mistakenly, that a product made by a U.S.-based manufacturer is made in the United States. Similarly, the mere listing of a company's U.S. address on a package label, in a nonprominent manner, such as would be required under the Fair Packaging and Labeling Act,[109] is unlikely, without more, to constitute a ''Made in USA'' claim.

IV. Substantiating U.S. Origin Claims: The ''All or Virtually All'' Standard

Based on its review of the traditional use of the term ''Made in USA,'' and the record as a whole, the Commission concludes that consumers are likely to understand an unqualified U.S. origin claim to mean that the advertised product is ''all or virtually all'' made in the United States. Therefore, when a marketer makes an unqualified claim that a product is ''Made in USA,'' it should, at the time the representation is made, possess and rely upon a reasonable basis that the product is in fact all or virtually all made in the United States.[110], [111]

A product that is all or virtually all made in the United States will ordinarily be one in which all significant parts [112] and processing that go into the product are of U.S. origin. In other words, where a product is labeled or otherwise advertised with an unqualified ''Made in USA'' claim, it should contain only a de minimis, or negligible, amount of foreign content. Although there is no single ''bright line'' to establish when a product is or is not ''all or virtually all'' made in the United States, there are a number of factors that the Commission will look to in making this determination. To begin with, in order for a product to be considered ''all or virtually all'' made in the United States, the final assembly or processing of the product must take place in the United States. Beyond this minimum threshold, the Commission will consider other factors, including but not limited to the portion of the product's total manufacturing costs that are attributable to U.S. parts and processing; and how far removed from the finished product any foreign content is.

A. Site of Final Assembly or Processing

The consumer perception evidence available to the Commission indicates that the country in which a product is put together or completed is highly significant to consumers in evaluating where the product is ''made.'' Thus, regardless of the extent of a product's other U.S. parts or processing, in order to be considered all or virtually all made in the United States, it is a prerequisite that the product have been last ''substantially transformed'' in the United States, as that term is used by the U.S. Customs Service '' i.e., the product should not be required to be marked ''made in [foreign country]'' under 19 U.S.C. 1304.[113] Furthermore, even where a product is last substantially transformed in the United States, if the product is thereafter assembled or processed (beyond de minimis finishing processes) outside the United States, the Commission is unlikely to consider that product to be all or virtually all made in the United States. For example, were a product to be manufactured primarily in the United States (and last substantially transformed there) but sent to Canada or Mexico for final assembly, any U.S. origin claim should be qualified to disclose the assembly that took place outside the United States.

B. Proportion of U.S. Manufacturing Costs

Assuming the product is put together or otherwise completed in the United States, the Commission will also examine the percentage of the total cost of manufacturing the product that is attributable to U.S. costs (i.e., U.S. parts and processing) and to foreign costs.[114] Where the percentage of foreign content is very low, of course, it is more likely that the Commission will consider the

[107] This assumes that the brand name does not specifically denote U.S. origin, *e.g.*, the brand name is not ''Made in America, Inc.''

[108] For example, a legal trademark consisting of, or incorporating, a stylized mark suggestive of a U.S. flag will not, by itself, be considered to constitute a U.S. origin claim.

[109] 15 U.S.C. 1451 *et seq.*

[110] For purposes of this Enforcement Policy Statement, ''United States'' refers to the several states, the District of Columbia, and the territories and possessions of the United States. In other words, an unqualified ''Made in USA'' claim may be made for a product that is all or virtually all manufactured in U.S. territories or possessions as well as in the 50 states.

[111] In addition, marketers should not represent, either expressly or by implication, that a whole product line is of U.S. origin (e.g., ''Our products are Made in USA'') when only some products in the product line are, in fact, made in the United States. Although not the focus of this Enforcement Policy Statement, this is a principle that has been addressed in Commission cases both within and outside the U.S. origin context. See, e.g., Hyde Athletic Industries, FTC Docket No. C–3695 (consent order December 4, 1996) (complaint alleged that respondent represented that all of its footwear was made in the United States, when a substantial amount of its footwear was made wholly in foreign countries); New Balance Athletic Shoes, Inc., FTC Docket No. 9268 (consent order December 2, 1996) (same); Uno Restaurant Corp., FTC Docket No. C–3730 (consent order April 4, 1997) (complaint alleged that restaurant chain represented that its whole line of thin crust pizzas were low fat, when only two of eight pizzas met acceptable limits for low fat claims); Häagen-Dazs Company, Inc., FTC Docket No. C–3582 (consent order June 7, 1995) (complaint alleged that respondent represented that its entire line of frozen yogurt was 98% fat free when only certain flavors were 98% fat free).

[112] The word ''parts'' is used in its general sense throughout this enforcement policy statement to refer to all physical inputs into a product, including but not limited to subassemblies, components, parts, or materials.

[113] It is conceivable, for example, that occasionally a product imported into the United States could have a very high proportion of its manufacturing costs be U.S. costs, but is nonetheless not considered by the U.S. Customs Service to have been last substantially transformed in the United States. In such cases, the product would be required to be marked with a foreign country of origin and an unqualified U.S. origin claim could not appropriately be made for the product.

[114] In calculating manufacturing costs, manufacturers should ordinarily use as their measure the cost of goods sold or finished goods inventory cost, as those terms are used in accordance with generally accepted accounting principles. Such costs will generally include (and be limited to) the cost of manufacturing materials, direct manufacturing labor, and manufacturing overhead. Marketers should also note the admonishment below that, in determining the percentage of U.S. content, they should look far enough back in the manufacturing process that a reasonable marketer would expect that it had accounted for any significant foreign content.

product all or virtually all made in the United States. Nonetheless, there is not a fixed point for all products at which they suddenly become ''all or virtually all'' made in the United States. Rather, the Commission will conduct this inquiry on a case-by-case basis, balancing the proportion of U.S. manufacturing costs along with the other factors discussed herein, and taking into account the nature of the product and consumers' expectations in determining whether an enforcement action is warranted. Where, for example, a product has an extremely high amount of U.S. content, any potential deception resulting from an unqualified ''Made in USA'' claim is likely to be very limited, and therefore the costs of bringing an enforcement action challenging such a claim are likely to substantially outweigh any benefit that might accrue to consumers and competition.

C. Remoteness of Foreign Content

Finally, in evaluating whether any foreign content is significant enough to prevent a product from being considered all or virtually all made in the United States, the Commission will look not only to the percentage of the cost of the product that the foreign content represents, but will also consider how far removed from the finished product the foreign content is. As a general rule, in determining the percentage of U.S. content in its product, a marketer should look far enough back in the manufacturing process that a reasonable marketer would expect that it had accounted for any significant foreign content. In other words, a manufacturer who buys a component from a U.S. supplier, which component is in turn made up of other parts or materials, may not simply assume that the component is 100% U.S. made, but should inquire of the supplier as to the percentage of U.S. content in the component.[115] Foreign content that is incorporated further back in the manufacturing process, however, will often be less significant to consumers than that which constitutes a direct input into the finished product. For example, in the context of a complex product, such as a computer, it is likely to be insignificant that imported steel is used in making one part of a single component (e.g., the frame of the floppy drive). This is because the steel in such a case is likely to constitute a very small portion of the total cost of the computer, and because consumers purchasing a computer are likely, if they are concerned about the origin of the product, to be concerned with the origin of the more immediate inputs (floppy drive, hard drive, CPU, keyboard, etc.) and perhaps the parts that, in turn, make up those inputs. Consumers are less likely to have in mind materials, such as the steel, that are several steps back in the manufacturing process. By contrast, in the context of a product such as a pipe or a wrench for which steel constitutes a more direct and significant input, the fact that the steel is imported is likely to be a significant factor in evaluating whether the finished product is all or virtually all made in the United States. Thus, in some circumstances, there may be inputs one or two steps back in the manufacturing process that are foreign and there may be other foreign inputs that are much further back in the manufacturing process. Those foreign inputs far removed from the finished product, if not significant, are unlikely to be as important to consumers and change the nature of what otherwise would be considered a domestic product.

In this analysis, raw materials[116] are neither automatically included nor automatically excluded in the evaluation of whether a product is all or virtually all made in the United States. Instead, whether a product whose other parts and processing are of U.S. origin would not be considered all or virtually all made in the United States because the product incorporated imported raw materials depends (as would be the case with any other input) on what percentage of the cost of the product the raw materials constitute and how far removed from the finished product the raw materials are.[117] Thus, were the gold in a gold ring, or the clay used to make a ceramic tile, imported, an unqualified ''Made in USA'' claim for the ring or tile would likely be inappropriate.[118] This is both because of the significant value the gold and the clay are likely to represent relative to the finished product and because the gold and the clay are only one step back from the finished articles and are integral components of those articles. By contrast were the plastic in the plastic case of a clock radio that was otherwise all or virtually all made in the United States found to have been made from imported petroleum, the petroleum is far enough removed from, and an insignificant enough input into, the finished product that it would nonetheless likely be appropriate to label the clock radio with an unqualified U.S. origin claim.

V. Qualifying U.S. Origin Claims

A. Qualified U.S. Origin Claims Generally

Where a product is not all or virtually all made in the United States, any claim of U.S. origin should be adequately qualified to avoid consumer deception about the presence or amount of foreign content. In order to be effective, any qualifications or disclosures should be sufficiently clear, prominent, and understandable to prevent deception. Clarity of language, prominence of type size and style, proximity to the claim being qualified, and an absence of contrary claims that could undercut the effectiveness of the qualification will maximize the likelihood that the qualifications and disclosures are appropriately clear and prominent.

[115] For example, assume that a company manufactures lawn mowers in its U.S. plant, making most of the parts (housing, blade, handle, etc.) itself from U.S. materials. The engine, which constitutes 50% of the total cost of manufacturing the lawn mower, is bought from a U.S. supplier, which, the lawn mower manufacturer knows, assembles the engine in a U.S. factory. Although most of the parts and the final assembly of the lawn mower are of U.S. origin and the engine is assembled in the United States, the lawn mower will not necessarily be considered all or virtually all made in the United States. This is because the engine itself is made up of various parts that may be imported and that may constitute a significant percentage of the total cost of manufacturing the lawn mower. Thus, before labeling its lawn mower ''Made in USA,'' the manufacturer should look to its engine supplier for more specific information as to the engine's origin. For instance, were foreign parts to constitute 60% of the cost of producing the engine, then the lawn mower would contain a total of at least 30% foreign content, and an unqualified ''Made in USA'' label would be inappropriate.

[116] For purposes of this Enforcement Policy Statement, the Commission considers raw materials to be products such as minerals, plants or animals that are processed no more than necessary for ordinary transportation.

[117] In addition, because raw materials, unlike manufactured inputs, may be inherently unavailable in the United States, the Commission will also look at whether or not the raw material is indigenous to the United States, or available in commercially significant quantities. In cases where the material is not found or grown in the United States, consumers are likely to understand that a ''Made in USA'' claim on a product that incorporates such materials (e.g., vanilla ice cream that uses vanilla beans, which, the Commission understands, are not grown in the United States) means that all or virtually all of the product, except for those materials not available here, originated in the United States. Nonetheless, even where a raw material is nonindigenous to the United States, if that imported material constitutes the whole or essence of the finished product (e.g., the rubber in a rubber ball or the coffee beans in ground coffee), it would likely mislead consumers to label the final product with an unqualified ''Made in USA'' claim.

[118] Nonetheless, in these examples, other, qualified claims could be used to identify truthfully the domestic processing that took place. For example, if the gold ring was designed and fabricated in the United States, the manufacturer could say that (e.g., ''designed and fabricated in U.S. with 14K imported gold''). Similarly, if the ceramic tile were manufactured in the United States from imported clay, the manufacturer could indicate that as well.

Within these guidelines, the form the qualified claim takes is up to the marketer. A marketer may make any qualified claim about the U.S. content of its products as long as the claim is truthful and substantiated. Qualified claims, for example, may be general, indicating simply the existence of unspecified foreign content (e.g., ''Made in USA of U.S. and imported parts'') or they may be specific, indicating the amount of U.S. content (e.g., ''60% U.S. content''), the parts or materials that are imported (e.g., ''Made in USA from imported leather''), or the particular foreign country from which the parts come (''Made in USA from French components'').[119]

Where a qualified claim takes the form of a general U.S. origin claim accompanied by qualifying information about foreign content (e.g., ''Made in USA of U.S. and imported parts'' or ''Manufactured in U.S. with Indonesian materials''), the Commission believes that consumers are likely to understand such a claim to mean that, whatever foreign materials or parts the product contains, the last assembly, processing, or finishing of the product occurred in the United States. Marketers therefore should avoid using such claims unless they can substantiate that this is the case for their products. In particular, such claims should only be made where the product was last substantially transformed in the United States. Where a product was last substantially transformed abroad, and is therefore required by the U.S. Customs Service to be labeled ''Made in [foreign country],'' it would be inappropriate, and confusing, to use a claim such as ''Made in USA of U.S. and imported parts.''[120]

B. Claims About Specific Processes or Parts

Regardless of whether a product as a whole is all or virtually all made in the United States, a marketer may make a claim that a particular manufacturing or other process was performed in the United States, or that a particular part was manufactured in the United States, provided that the claim is truthful and substantiated and that reasonable consumers would understand the claim to refer to a specific process or part and not to the general manufacture of the product. This category would include claims such as that a product is ''designed'' or ''painted'' or ''written'' in the United States or that a specific part, e.g., the picture tube in a television, is made in the United States (even if the other parts of the television are not). Although such claims do not expressly disclose that the products contain foreign content, the Commission believes that they are normally likely to be specific enough so as not to convey a general claim of U.S. origin. More general terms, however, such as that a product is, for example, ''produced,'' or ''manufactured'' in the United States, are likely to require further qualification where they are used to describe a product that is not all or virtually all made in the United States. Such terms are unlikely to convey to consumers a message limited to a particular process performed, or part manufactured, in the United States. Rather, they are likely to be understood by consumers as synonymous with ''Made in USA'' and therefore as unqualified U.S. origin claims.

The Commission further concludes that, in many instances, it will be appropriate for marketers to label or advertise a product as ''Assembled in the United States'' without further qualification. Because ''assembly'' potentially describes a wide range of processes, however, from simple ''screwdriver'' operations at the very end of the manufacturing process to the construction of a complex, finished item from basic materials, the use of this term may, in some circumstances, be confusing or misleading to consumers. To avoid possible deception, ''Assembled in USA'' claims should be limited to those instances where the product has undergone its principal assembly in the United States and that assembly is substantial. In addition, a product should be last substantially transformed in the United States to properly use an ''Assembled in USA'' claim. This requirement ensures against potentially contradictory claims, i.e., a product claiming to be ''Assembled in USA'' while simultaneously being marked as ''Made in [foreign country].'' In many instances, this requirement will also be a minimum guarantee that the U.S. assembly operations are substantial.

C. Comparative Claims

U.S. origin claims that contain a comparative statement (e.g., ''More U.S. content than our competitor'') may be made as long as the claims are truthful and substantiated. Where this is so, the Commission believes that comparative U.S. origin claims are unlikely to be deceptive even where an unqualified U.S. origin claim would be inappropriate. Comparative claims, however, should be presented in a manner that makes the basis for the comparison clear (e.g., whether the comparison is being made to another leading brand or to a previous version of the same product). Moreover, comparative claims should not be used in a manner that, directly or by implication, exaggerates the amount of U.S. content in the product, and should be based on a meaningful difference in U.S. content between the compared products. Thus, a comparative U.S. origin claim is likely to be deceptive if it is made for a product that does not have a significant amount of U.S. content or does not have significantly more U.S. content than the product to which it is being compared.

D. U.S. Customs Rules and Qualified and Comparative U.S. Origin Claims

It is possible, in some circumstances, for marketers to make certain qualified or comparative U.S. origin claims (including claims such as that the product contains a particular amount of U.S. content, certain claims about the U.S. origin of specific processes or parts, and certain comparative claims) even for products that are last substantially transformed abroad and which therefore must be marked with a foreign country of origin. In making such claims, however, marketers are advised to take care to follow the requirements set forth by the U.S. Customs Service and to ensure, for purposes of section 5 of the FTC Act, that the claim does not deceptively suggest that the product is made with a greater amount of U.S. parts or processing than is in fact the case.

In looking at the interaction between the requirements for qualified and

[119] These examples are intended to be illustrative, not exhaustive; they do not represent the only claims or disclosures that would be permissible under Section 5 of the FTC Act. As indicated, however, qualified claims, like any claim, should be truthful and substantiated and should not overstate the U.S. content of a product. For example, it would be inappropriate for a marketer to represent that a product was ''Made in U.S. of U.S. and imported parts'' if the overwhelming majority of the parts were imported and only a single, insignificant part was manufactured in the United States; a more appropriate claim would be ''Made in U.S. of imported parts.''

[120] On the other hand, that the last substantial transformation of the product takes place in the United States may not alone be sufficient to substantiate such a claim. For example, under the rulings of the U.S. Customs Service, a disposable razor is considered to have been last substantially transformed where its blade is made, even if it is thereafter assembled in another country. Thus, a disposable razor that is assembled in Mexico with a U.S.-made blade and other parts of various origins would be considered to have been last substantially transformed in the United States and would not have to bear a foreign country-of-origin marking. Nonetheless, because the final assembly of the razor occurs abroad, it would be inappropriate to label the razor ''Made in U.S. of U.S. and imported parts.'' It would, however, likely be appropriate to label the razor ''Assembled in Mexico with U.S.-made blade,'' ''Blade made in United States, razor assembled in Mexico'' or ''Assembled in Mexico with U.S. and imported parts.''

comparative U.S. origin claims and those for foreign origin marking, the analysis is slightly different for advertising and for labeling. This is a result of the fact that the Tariff Act requires foreign origin markings on articles or their containers, but does not govern claims in advertising or other promotional materials.

Thus, on a product label, where the Tariff Act requires that the product be marked with a foreign country of origin, Customs regulations permit indications of U.S. origin only when the foreign country of origin appears in close proximity and is at least of comparable size.[121] As a result, under Customs regulations, a product may, for example, be properly marked ''Made in Switzerland, finished in U.S.'' or ''Made in France with U.S. parts,'' but it may not simply be labeled ''Finished in U.S.'' or ''Made with U.S. parts'' if it is deemed to be of foreign origin.

In advertising or other promotional materials, the Tariff Act does not require that foreign origin be indicated. The Commission recognizes that it may be possible to make a U.S. origin claim in advertising or promotional materials that is sufficiently specific or limited that it does not require an accompanying statement of foreign manufacture in order to avoid conveying a broader and unsubstantiated meaning to consumers. Whether a nominally specific or limited claim will in fact be interpreted by consumers in a limited matter is likely to depend on the connotations of the particular representation being made (e.g., ''finished'' may be perceived as having a more general meaning than ''painted'') and the context in which it appears. Marketers who wish to make U.S. origin claims in advertising or other promotional materials without an express disclosure of foreign manufacture for products that are required by Customs to be marked with a foreign country of origin should be aware that consumers may believe the literal U.S. origin statement is implying a broader meaning and a larger amount of U.S. content than expressly represented. Marketers are required to substantiate implied, as well express, material claims that consumers acting reasonably in the circumstances take from the representations. Therefore, the Commission encourages marketers, where a foreign-origin marking is required by Customs on the product itself, to include in any qualified or comparative U.S. origin claim a clear, conspicuous, and understandable disclosure of foreign manufacture.

By direction of the Commission.

Donald S. Clark,

Secretary.

[121] 19 CFR 134.46. Specifically, this provision provides that:

''In any case in which the words 'United States,' or 'American,' the letters U.S.A., any variation of such words or letters, or the name of any city or locality in the United States, or the name of any foreign country or locality other than the country or locality in which the article was manufactured or produced appear on an imported article or its container, and those words, letters or names may mislead or deceive the ultimate purchaser as to the actual country of origin of the article, there shall appear, legibly and permanently, in close proximity to such words, letters or name, and in at least a comparable size, the name of the country of origin preceded by 'Made in,' 'Product of,' or other words of similar meaning.''

In a **Federal Register** notice announcing amendments to this provision, the Customs Service indicated that, where a product has a foreign origin, any references to the United States made in the context of a statement relating to any aspect of the production or distribution of the product (e.g., ''Designed in USA,'' ''Made for XYZ Corporation, California, U.S.A.,'' or ''Distributed by ABC, Inc., Colorado, USA'') would be considered misleading to the ultimate purchaser and would require foreign country-of-origin marking in accordance with the above provision. 62 FR 44211, 442213 (Aug. 20, 1997).

Concurring Statement of Commissioner Roscoe B. Starek, III, Regarding Enforcement Policy Statement on U.S. Origin Claims

File No. P89–4219

Today the Commission restores the ''Made in USA'' standard to the highly demanding level that we affirmed in 1994. The Commission's action reinstates the longstanding principle that an unqualified U.S. origin claim is a claim that the product is made entirely in the United States except for a *de minimis* or negligible amount of foreign content. By explaining the factors that the Commission will consider in assessing whether an unqualified ''Made in USA'' claim is deceptive, and whether the public interest warrants enforcement action, the Policy Statement provides guidance that should reduce the costs of making ''Made in USA'' claims that comply with Section 5 of the FTC Act. The current state of consumer perception and the benefits and costs of various ''Made in USA'' standards have been exhaustively investigated. With the issuance of this Policy Statement, I expect to see the traditional ''Made in USA'' standard enforced, now that we no longer labor under the self-imposed moratorium that consumed several years while we explored various policy options.

The broad review initiated by a majority of the Commission in 1995 produced a reasonable alternative approach based on copy test evidence showing that significant minorities of consumers took contradictory meanings from unqualified ''Made in USA'' claims. As I stated when we proposed the Guides for comment, the ''substantially all'' standard created by the Guides appeared to strike the correct balance between contradictory consumer understandings of ''Made in USA'' so as to minimize overall consumer injury from deception. Today's action illustrates the value of seeking public comment when the Commission elects to fashion a compromise through an expansive review similar to a rulemaking, rather than base its findings of deception on evidence and interpretations tested during litigation and the pursuit of negotiated orders.

Intense public interest in ''Made in USA'' claims inspired more individual consumer comments than we have received in almost any other comment period during my tenure at the Commission. These comments—which demonstrate that consumers who believe that ''Made in USA'' means all or virtually all made in the United States are highly motivated to act on their belief—justify redrawing the balance that the proposed Guides attempted to strike. These consumers want to be able to rely on a simple and clear standard, and their awareness of the globalization of the economy evidently has not changed their beliefs about domestic origin claims. The Policy Statement also wisely confines the Commission's guidance to general principles and, as I clearly prefer, leaves for case-by-case resolution more complex issues that may turn on variations in claims and products.

[FR Doc. 97–31531 Filed 12–1–97; 8:45 am]

BILLING CODE 6750–01–P

federal register

Tuesday
December 2, 1997

Part IV

Department of Education

21st Century Community Learning Centers Program; Notices

DEPARTMENT OF EDUCATION

RIN 1850–ZA01

21st Century Community Learning Centers Program

AGENCY: Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Secretary announces priorities for the 21st Century Community Learning Centers Program, administered by the Office of Educational Research and Improvement (OERI). The Secretary may use these priorities in fiscal year 1998 and subsequent years. The Secretary takes this action to focus Federal assistance on stimulating and expanding significant learning programs available to children and youth beyond regular school hours. The absolute priority is also designed to ensure wide and effective use of program funds to support centers that provide expanded learning opportunities for children and youth in a safe and drug-free environment, and to engage the support of citizens in those efforts. Two competitive priorities concern serving early adolescents and middle school students and services related to core academic subjects.

DATES: These priorities take effect January 2, 1998.

FOR FURTHER INFORMATION CONTACT: Carol J. Mitchell or Amanda Clyburn, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW, Room 504, Washington, DC 20208–5644. E-mail addresses are: carol__j.__mitchell@ed.gov or amanda__clyburn@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday. Individuals with disabilities may obtain this document in alternate formats (e.g., Braille, large print, audiotape, or computer diskette) on request to either contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The 21st Century Community Learning Centers Act authorizes the Secretary to award grants to rural and inner-city public elementary or secondary schools, or consortia of those schools, to enable them to plan, implement, or expand projects that benefit the educational, health, social service, cultural and recreational needs of a rural or inner-city community.

A Community Learning Center established in a local public school can, among other things, be a stimulating, safe, supervised and cost-effective after-school, weekend or summer haven for children and youth—and their families. As reported in the recent Department of Education (ED) publication ''Keeping Schools Open as Community Learning Centers: Extending Learning in a Safe, Drug-free Environment Before and After School,'' recent research shows that a stimulating environment of this type can improve thinking and language performance of participating children and youth. Research also indicates that these programs reduce crime, delinquency, and victimization of children and youth. However, although the number of after-school child care programs has grown over the last 20 years, there are still far too few communities that offer effective, organized and extended opportunities for learning outside the regular school day. Of the 49,000 before- and after-school programs available in the United States in 1991, only about a third were housed in public schools. And, for in-school and out-of-school care programs, only a tiny percent served older children and youth. In 1995, there were 23.5 million school-age children with parents in the workforce. But as recently as the 1993–94 school year, only 3.4 percent of children in public elementary and combined schools were enrolled in any of the estimated 18,000 before- or after-school programs at public schools. Seventy percent of all public elementary and combined schools did not have before- or after-school programs.

The needs and demands are clear: a 1994 survey of parents found that 56 percent think that many parents leave their children alone too much after school, and a 1989 survey of school principals found that 84 percent agreed that there is a need for before- and after-school programs. But even though the number of after-school programs is growing, the demand is growing faster, as thousands of parents who currently care for their children during the day are encouraged to enter the workforce.

After-school programs are well positioned to reduce the incidence of drug use and violence and their detrimental effects on learning. Research by the Federal Bureau of Investigation indicates that the hours between 3 and 6 p.m. are when youth aged 12 to 17 are most at risk of committing or of being victims of violent acts. After-school programs located at Community Learning Centers will give youth a safe and supervised place to go during these hours.

The absolute priority supports centers that have a goal of providing learning opportunities for students in a safe and drug-free environment. For example, before- and after-school programs can be a place in which tutors provide reading help to younger children or in which mentors guide older children to take challenging mathematics and science courses that pave the way to college, and help them succeed in those courses. However, programs applying for assistance are required to carry out at least four of the activities listed in section 10905 of the Elementary and Secondary Education Act (20 U.S.C. 8245), and should propose an array of inclusive and supervised services that include extended learning opportunities (such as enriched instruction, tutoring or homework help) but may also include safety and drug-abuse prevention programs, recreational, musical and artistic activities; and opportunities to use advanced technology, particularly for those children who do not have access to computers or telecommunications at home. Although the absolute priority requires that children and youth be served, applicants may propose projects that also serve and involve other members of the community.

The competitive priorities authorize ED to give a preference to applicants that propose to serve the academic needs of participating children and youth. These can include services that will assist students who need additional support to master reading and literacy skills, both by directly providing reading services as well as tutoring and mentoring programs in supervised locations. For younger children who are not reading as well as they should, Community Learning Centers can provide extended time in which to overcome the obstacles that have in the past prevented them from becoming good readers. The competitive priorities will also encourage schools to develop strategies to address the needs of students who can benefit from additional enrichment or challenge in mathematics or science, or who are not performing as well as they should. Community learning centers can provide extended hours for students to learn and review basic concepts they may have missed during class, to delve deeper into a more challenging curriculum, or to participate in enjoyable hands-on activities and experiments.

Funding of particular projects depends on the availability of funds, the priorities, the quality of the applications received, and the requirements in the law for equitable representation nationally and within States of rural and inner-city programs. The first cycle of awards will be made from fiscal year

1998 funds. If applications of high quality remain unfunded, additional awards may be made in fiscal year 1999 or future fiscal years, pending availability of funds. The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

On September 30, 1997, the Assistant Secretary published a notice of proposed priorities (NPP) for this program in the **Federal Register** (62 FR 51089–51091). There are no differences between the NPP and this notice of final priorities.

Analysis of Comments

In response to the Assistant Secretary's invitation to comment on the proposed priorities, eighteen parties representing concerned individuals and members of organizations submitted comments. An analysis of the comments follows. Major issues are grouped according to subject or proposed priority. Minor editorial changes—and comments recommending changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Population to be Served

Comments: One commenter believed that only ''at-risk'' students were to be served by this program and suggested that ED explain more clearly that all children are eligible to participate. However, another commenter believed two new priorities were needed to ensure that the needs are met for (1) students from low-income families and (2) students considered ''at-risk.''

Discussion: The 21st Century Community Learning Centers Act authorizes the Secretary to make grants to rural and inner-city public elementary and secondary schools, or consortia of those schools. The term ''at-risk'' is not mentioned in the legislation or in the proposed priorities, but it is implied, by limiting eligibility to ''rural'' or ''inner-city'' communities, that the program will provide services to high-needs neighborhoods. The legislation is also clear that Centers must be open to all the members of the community. The Secretary does not believe that additional priorities need to be established to assist students in either of these categories.

Changes: None.

Eligible Applicants and Collaboration

Comments: One commenter believed that only public schools and public school systems were eligible to carry out programs under this legislation and desired more emphasis on non-traditional service providers who are not part of the public school system. Another commenter believed that existing community-based organizations that have played a leading role in providing after-school programs should be made eligible for grants under this program. Another commenter felt that priority should be given to projects with a set category of community partners and a built-in governance system that allows for family and community decision making and involvement in partnership with the schools. Several other commenters recommended specific language either requiring or giving priority to community collaboration projects.

Discussion: While the authorizing legislation specifically states that only rural or inner-city public elementary and secondary schools, or consortia of those schools, are eligible to receive a grant under this program, it also states that these entities ''should collaborate with other public and nonprofit agencies and organizations, local businesses, educational entities (such as vocational and adult education programs, community colleges, and universities), recreational, cultural, and other community and human service entities, for the purpose of meeting the needs of, and expanding the opportunities available to, the residents of the communities served by such schools.'' By statute, applications must include ''a description of the collaborative efforts to be undertaken by community-based organizations, related public agencies, businesses, or other appropriate organizations.'' The notice of proposed priorities stated that ''although the proposed absolute priority requires that children and youth be served, applicants may propose projects that also serve and involve other members of the community.'' For instance, community-based organizations can, under this statute, provide youth development services within the public schools.

Changes: None.

Proposed Competitive Priority 1: Serving Early Adolescents and Middle-School Students

Comments: One commenter thought this priority's focus would come too late for at-risk children between the ages of 7 and 11 and fail to block their downward spiral. Another thought that lowering the priority age-range to at least fourth grade was necessary for insuring continuity between elementary and middle-school. A third commenter felt lowering the range to pre-kindergarten to grade 3 would be more preferable.

Discussion: The authorizing statute provides that 21st Century Community Learning Centers must be open to all children in inner-city and rural neighborhoods where Centers have been established. While the program may serve all children, statistics show that children between the ages of 12–17 are at-risk of committing or being victims of violent acts between the hours of 3 p.m. and 6 p.m., and that available after-school programs tend to serve younger rather than older children. Therefore, the Secretary has given a competitive priority to serving the early adolescent population.

Changes: None.

Proposed Competitive Priority 2: Assisting in Meeting or Exceeding State and Local Standards in Core Academic Subjects Such as Reading, Mathematics or Science

Comments: Two commenters thought this priority too narrow in its focus on cognitive competencies and should be broadened to include social, physical, emotional and moral competencies as well.

Discussion: The Secretary recognizes the importance of well-rounded programs for after-school enrichment. The authorizing legislation requires programs to offer a range of services to benefit members of the community; these services can include social, physical, nutritional and other activities. Because the statute does not specifically require activities that focus on academic subjects, the Secretary believes a competitive priority is necessary to encourage applications for after-school programs that will offer enhanced learning opportunities, help children reach or exceed State and local academic standards, and provide some continuity between the school day and after-school activities.

Changes: None.

Duration of Services

One commenter encouraged ED to give priority to applications that propose year-round programming.

Discussion: The Secretary believes the quantity and scheduling of extended time proposed by an applicant are matters for local decision.

Changes: None.

Measurable Goals

Comments: One commenter believed that an application's proposed measurable goals and objectives be made a priority for funding. However, another commenter urged ED not to hold programs to an expectation of

showing measurable change. The latter commenter noted that ''effecting such change requires complex, comprehensive, intense and long term interventions.''

Discussion: Two of the selection criteria that will be used by reviewers to rate applications will address the issue of program impact. These are (under *Quality of Project Services*) the ''likely impact of the services to be provided by the proposed project on the intended recipients of those services,'' and (under *Quality of Project Evaluation*) the ''extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.'' In addition to locally designed evaluations of program effects, the Government Performance and Results Act requires ED to develop performance indicators for the 21st Century Community Learning Centers program at the national level.

Changes: None.

PRIORITIES

Absolute Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the absolute priority in the next paragraph. The Secretary funds under this competition only applications that meet this absolute priority.

Activities to Expand Learning Opportunities

The Secretary funds *only* those applications for 21st Century Community Learning Centers grants that include, among the array of services required and authorized by the statute, activities that offer significant expanded learning opportunities for children and youth in the community and that contribute to reduced drug use and violence.

Competitive Priorities: Under 34 CFR 75.105(c)(2)(i), the Secretary gives preference to applications that meet one or both of the two competitive priorities in the next two paragraphs. The Secretary awards up to five (5) points for each competitive priority addressed in an application (for a maximum of 10 points if an application addresses both competitive priorities). These points are in addition to the 100 points an application may earn under the selection criteria which will be published in the application package.

Competitive Priority 1—Projects that propose to serve early adolescents and middle-school students.

Competitive Priority 2—Projects designed to assist students to meet or exceed State and local standards in core academic subjects such as reading, mathematics or science, as appropriate to the needs of the participating children.

Note: This notice of final priorities does *not* solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Executive Order 12866: This notice of final priorities has been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the notice of final priorities are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of this notice of final priorities, the Secretary has determined that the benefits of the priorities justify the costs.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these final priorities without impeding the effective and efficient administration of the program.

Summary of potential costs and benefits: There are no identified costs associated with this notice of final priorities. Announcement of these priorities will not result in costs to State and local governments or to recipients of grant funds.

Intergovernmental Review: This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program. Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (pdf) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

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Anyone may also view these documents in text copy only on an electronic bulletin board of the Department. Telephone: (202) 219–1511 or, toll free, 1–800–222–4922. The documents are located under Option G—Files/Announcements, Bulletins and Press Releases.

Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8241–8247.

Dated: November 25, 1997.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

(Catalog of Federal Domestic Assistance Number 84.287, 21st Century Community Learning Centers Program)

[FR Doc. 97–31567 Filed 12–1–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No. 84.287]

21st Century Community Learning Centers; Notice inviting applications for new awards for fiscal year 1998

Purpose of Program: The 21st Century Community Learning Centers Program was established by Congress to award grants to rural and inner-city public schools, or consortia of such schools, to enable them to plan, implement, or expand projects that benefit the educational, health, social services, cultural and recreational needs of the community. School-based community learning centers can provide a safe, drug-free, supervised and cost-effective after-school, weekend or summer haven for children, youth and their families.

Eligible Applicants: Only rural or inner-city public elementary or secondary schools, consortia of those schools, or LEAs applying on their behalf, are eligible to receive a grant under the 21st Century Community Learning Centers Program. An LEA with many interested schools is encouraged to submit a consortium application on their behalf. Applicants must

demonstrate that they meet the statutory program purpose as being either a ''rural'' or ''inner-city'' school or a consortium of those schools.

Deadline for Transmittal of Applications: March 9, 1998

Deadline for Intergovernmental Review: May 8, 1998

Applications Available: December 16, 1997

Available Funds: $40 million

Estimated Range of Awards: $35,000—$200,000 per Center. Awards to consortia or LEAs involving multiple Centers will be adjusted to reflect the number of Centers included.

Estimated Average Size of Awards: $100,000 (per Center)

Estimated Number of Awards: 200–300, depending on how many awards will assist multiple Centers.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total grant period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the grant award.

Applicable Regulations: (a) The Education Department General Administration Regulations (EDGAR) in 34 CFR Parts 75, 77, 79, 80, 81, 82, 85, and 86, and (b) 34 CFR part 299, General Provisions, Elementary and Secondary Education Act, published on May 22, 1997, in the **Federal Register** (62 FR 28247).

Priorities: The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to this competition. In addition, the Secretary gives preference to applications that meet the following competitive priority. (34 CFR 75.105(c)(2)(ii) and 34 CFR 299.3(a)). The Secretary selects an application that meets this competitive priority over an application of comparable merit that does not meet this competitive priority.

Competitive Priority—Projects that will use a significant portion of the program funds to address substantial problems in an Empowerment Zone, including a Supplemental Empowerment Zone, or an Enterprise Community designated by the United States Department of Housing and Urban Development or the United States Department of Agriculture.

Note: A list of areas that have been designated as Empowerment Zones and Enterprise Communities is published as an appendix to this notice.

SUPPLEMENTARY INFORMATION: The 21st Century Community Learning Centers Program is authorized under Title X, Part I (20 USC 8241) of the Elementary and Secondary Education Act. Grantees under this program are required to carry out at least four of the activities listed in section 10905 of the Elementary and Secondary Education Act (20 USC 8245), as listed below:

(1) Literacy education programs;

(2) Senior citizen programs;

(3) Children's day care services;

(4) Integrated education, health, social service, recreational, or cultural programs;

(5) Summer and weekend school programs in conjunction with recreation programs;

(6) Nutrition and health programs;

(7) Expanded library service hours to serve community needs;

(8) Telecommunications and technology education programs for individuals of all ages;

(9) Parenting skills education programs;

(10) Support and training for child day care providers;

(11) Employment counseling, training, and placement;

(12) Services for individuals who leave school before graduating from secondary school, regardless of the age of such individual; and

(13) Services for individuals with disabilities.

Applicants should propose an array of inclusive and supervised services that include extended learning opportunities (such as instructional enrichment programs, tutoring, or homework assistance) but may also include recreational, musical and artistic activities; opportunities to use advanced technology, particularly for those children who do not have access to computers or telecommunications at home, or safety and substance-abuse prevention programs. Grants awarded under this program may be used to plan, implement, or expand community learning centers.

GEOGRAPHIC DISTRIBUTION: In awarding grants, the Secretary assures an equitable distribution of assistance among the States, among urban and rural areas of a State, and among urban and rural areas of the United States.

FOR APPLICATIONS OR INFORMATION CONTACT:

To Obtain an Application Package: Written requests should be mailed to: Amanda Clyburn, U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Ave., NW, Washington, DC 20208–5644, Attn: 21st Century Center Learning Centers. Requests may also be e-mailed to Amanda Clyburn (amanda__clyburn@ed.gov) or faxed to (202) 219–2198.

FOR FURTHER INFORMATION CONTACT: Carol J. Mitchell or Amanda Clyburn, U. S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue, NW, Washington DC 20208–5644. E-mail addresses are: carol__j.__mitchell@ed.gov or amanda__clyburn@ed.gov respectively. Fax number is (202) 219–2198.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact persons identified in this notice.

Individuals with disabilities may obtain a copy of the application package in an alternate format, also, by contacting that person. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access to This Document

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Note: The official version of a document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 8241–8246.

Dated: November 25, 1997.

Ricky T. Takai,

Acting Assistant Secretary for Educational Research and Improvement.

Appendix—Empowerment Zones and Enterprise Communities

Empowerment Zones (Listed Alphabetically by State)

California: Oakland
Georgia: Atlanta
Illinois: Chicago
Kansas: Kansas City
Kentucky: Kentucky Highlands Area (Clinton, Jackson, and Wayne Counties)
Maryland: Baltimore
Massachusetts: Boston
Michigan: Detroit
Mississippi: Mid-Delta Area (Bolivar, Holmes, Humphreys, and LeFlore Counties)
Missouri: Kansas City
New Jersey: Camden
New York: Harlem, Bronx
Pennsylvania: Philadelphia
Texas: Houston, Rio Grande Valley Area (Cameron, Hidalgo, Starr, and Willacy Counties)

Supplemental Empowerment Zones (Listed Alphabetically by State)

California: Los Angeles
Ohio: Cleveland

Enterprise Communities (Listed Alphabetically by State)

Alabama: Birmingham, Chambers County, Greene County, Sumter County
Arizona: Arizona Border Area, (Cochise, Santa Cruz and Yuma Counties), Phoenix
Arkansas: East Central Area (Cross, Lee, Monroe, and St. Francis Counties), Mississippi County, Pulaski County
California: Imperial County, Los Angeles (Huntington Park), San Diego, San Francisco (Hayview, Hunter's Pointer), Watsonville
Colorado: Denver
Connecticut: Bridgeport, New Haven
Delaware: Wilmington
District of Columbia: Washington
Florida: Jackson County
Georgia: Central Savannah River Area (Burke, Hancock, Jefferson, McDuffie, Tallaferro, and Warrent Counties), Crisp County, Dooley County
Illinois: East St. Louis, Springfield
Indiana: Indianapolis
Iowa: Des Moines
Kentucky: Louisville, McCreary County
Louisiana: Macon Ridge Area (Catahouis, Concordia, Franklin, Morehouse, and Tensas Parishes), New Orleans, Northeast Delta Area (Madison Parish), Quachita Parish
Massachusetts: Lowell, Springfield
Michigan: Five Cap, Flint, Muskegon
Minnesota: Minneapolis, St. Paul
Mississippi: Jackson, North Delta Area (Panola, Quitman, and Tallahatchie Counties)
Missouri: East Prairie, St. Louis
Nebraska: Omaha
Nevada: Clarke County, Las Vegas
New Hampshire: Manchester
New Jersey: Newark
New Mexico: Albuquerque, Moro County, Rio Arriba County, Taos County
New York: Albany, Buffalo, Kingston, Newburgh, Rochester, Schenectady, Troy
North Carolina: Charlotte, Edgecombe County, Halifax County, Robeson County, Wilson County
Ohio: Akron, Columbus, Greater Portsmouth Area (Scioto County)
Oklahoma: Choctaw County, McCurtain County, Oklahoma City
Pennsylvania: Harrisburg, Lock Haven, Pittsburgh
Rhode Island: Providence
South Carolina: Charleston, Williamsburg County
South Dakota: Beadle County, Spink County
Tennessee: Fayette County, Haywood County, Memphis Nashville, Scott County
Texas: Dallas, El Paso, San Antonio, Waco
Utah: Ogden
Vermont: Accomack County, Norfolk
Washington: Lower Yakima County, Seattle, Tacoma
West Virginia: Huntington, McDowell County, West Central Areas (Braxton, Clay, Fayette, Nichols, and Roane Counties)
Wisconsin: Milwaukee

[FR Doc. 97–31568 Filed 12–1–97; 8:45 am]

BILLING CODE 4000–01–P

federal register

Tuesday
December 2, 1997

Part V

Department of Education

Bilingual Education; State Grant Program; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.194Q]

Bilingual Education: State Grant Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1998

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for an award under this program. The statutory authorization for this program and the application requirements that apply to this competition are contained in section 7134 of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994 (the Act) (20 U.S.C. 7454)).

Purpose of Program: This program provides grants to State educational agencies to—(1) assist local educational agencies in the State with program design, capacity building, assessment of student performance, and program evaluation; and (2) collect data on the State's limited English proficient (LEP) population and the educational programs and services available to that population. However, a State is exempt from the requirements to collect data if it did not, as of October 20, 1994, have a system in place for collecting the data.

Eligible Applicants: State Educational Agencies.

Deadline for Transmittal of Applications: January 9, 1998.

Deadline for Intergovernmental Review: March 10, 1998.

Available Funds: $5,720,000.

Estimated Range of Awards: $100,000–$550,000.

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 81, 82, 85, and 86; and (b) 34 CFR Part 299, General Provisions, Elementary and Secondary Education Act, published on May 22, 1997, in the **Federal Register** (62 FR 28248).

Description of Program

Funds under this program are to be used to assist local educational agencies in the State with program design, capacity building, assessment of student performance, and program evaluation. In addition, grantees are required to collect data on the State's LEP population and the educational programs and services available to that population unless a grantee's State did not, as of October 20, 1994, have a system for collecting data in place. However, a State that develops a system for collecting data on the educational programs and services available to all LEP students in the State subsequent to October 20, 1994 must meet this requirement. A grantee may also use funds provided under this program for the training of State educational agency personnel in educational issues affecting limited English proficient children and youth.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria in 34 CFR 75.209 and 75.210 and section 7134 of the Act to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Providing for the education of children and youth with limited English proficiency.* (20 points) The Secretary reviews each application to determine how well the applicant effectively provides, through its own programs and other Federal education programs, for the education of limited English proficient children within its State.

(2) *Need for project.* (15 points) The Secretary considers the need for the proposed project. In determining the need for the proposed project, the Secretary considers the magnitude of the need for the services to be provided or the activities to be carried out by the proposed project.

(3) *Quality of the project design.* (25 points) (i) The Secretary considers the quality of the design of the proposed project.

(ii) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(A) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(B) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(C) The extent to which the proposed project will be coordinated with similar or related efforts, and with other appropriate community, State, and Federal resources.

(4) *Quality of project services.* (15 points) (i) The Secretary considers the quality of the services to be provided by the proposed project.

(ii) In determining the quality of the services to be provided by the proposed project, the Secretary considers the quality and sufficiency of strategies for ensuring equal access and treatment for eligible project participants who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The extent to which the services to be provided by the proposed project are appropriate to the needs of the intended recipients or beneficiaries of those services.

(B) The extent to which entities that are to be served by the proposed technical assistance project demonstrate support for the project.

(C) The extent to which the technical assistance services to be provided by the proposed project involve the use of efficient strategies, including the use of technology, as appropriate, and the leveraging of non-project resources.

(5) *Quality of project personnel.* (10 points) (i) The Secretary considers the quality of the personnel who will carry out the proposed project.

(ii) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age or disability.

(iii) In addition, the Secretary considers the following factors:

(A) The qualifications, including relevant training and experience, of the project director or principal investigator.

(B) The qualifications, including relevant training and experience, of key project personnel.

(6) *Adequacy of resources.* (5 points) (i) The Secretary considers the adequacy of resources for the proposed project.

(ii) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(A) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization.

(B) The extent to which the budget is adequate to support the proposed project.

(C) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(7) *Quality of the project evaluation.* (10 points) (i) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(ii) In determining the quality of the evaluation, the Secretary considers the following factors:

(A) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(B) The extent to which the methods of evaluation are appropriate to the context within which the project operates.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on October 7, 1997 (62 FR 52448 through 52450).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.194Q, U.S. Department of Education, Room 6213, 600 Independence Avenue, SW., Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and one copy of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.194Q), Washington, DC 20202–4725, or

(2) Hand-deliver the original and one copy of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.194Q), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA Number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, various assurances and certifications, checklist for applicants, and required documentation:

a. Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

b. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

c. Instructions for the Application Narrative.

d. Estimated Public Reporting Burden Statement.

e. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

f. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

g. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions. (NOTE: This form is intended for the use of grantees and should not be transmitted to the Department.)

h. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

i. Notice to All Applicants.

j. Checklist for Applicants.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit *one original* signed application, including ink signatures on all forms and assurances, and *one* copy of the application. Please mark each application as ''original'' or ''copy.'' No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT: Luis A. Catarineau, U.S. Department of Education, 600 Independence Avenue, SW., room 5623, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9907. Individuals

who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

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Note: The official version of this document is the document published in the **Federal Register**.

Program Authority: 20 U.S.C. 7454.

Dated: November 24, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

Estimated Public Reporting Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0528 (Expiration date: April 30, 1998). The time required to complete this information collection is estimated to average 60 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 600 Independence Avenue, SW., Room 5623, Mary E. Switzer Building, Washington, DC 20202–6510.

Instructions for the Application Narrative

Abstract

The narrative section should begin with an abstract that includes a short description of the LEP population in the State, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria.

Table of Contents

The application should include a table of contents listing the sections in the order required.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Notice to All Applicants

Thank you for your interest in this program. The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is section 427 of GEPA, enacted as part of the Improving American's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new discretionary grant awards under this program. *All applicants for new awards must include information in their applications to address this new provision in order to receive funding under this program.*

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its federally assisted program for students, teachers, and other program beneficiaries with special needs.

This section allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation that you may address: gender, race, national origin, color, disability, or age. Based on local circumstances, you can determine whether these or other barriers may prevent your students, teachers, etc. from equitable access or participation. Your description need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What Are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct ''outreach'' efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective

steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1801–0004 (Exp. 8/31/98). The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U. S. Department of Education, Washington, DC 20202–4651.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Assistance Form (SF 424).
2. Budget Information Form (ED Form No. 524).
3. Itemized budget for each year.
4. Assurances—Non-Construction Programs Form (SF 424B).
5. Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
6. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
7. Disclosure of Lobbying Activities Form (SF–LLL).
8. Information that addresses section 427 of the General Education Provisions Act. (See the above section entitled ''Notice to all Applicants'' (OMB No. 1801–0004).)
9. Table of Contents.
10. Application narrative, including abstract.
11. One original and one copy of the application for transmittal to the Education Department's Application Control Center.

BILLING CODE 4000–01–P

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:

Application	*Preapplication*
☐ Construction	☐ Construction
☒ Non-Construction	☐ Non-Construction

5. APPLICANT INFORMATION

Legal Name:

Organizational Unit:

Address *(give city, county, state, and zip code)*:

Name and telephone number of the person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ — ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☒ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify)*:

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84.190

TITLE: Bilingual Education: State Grant Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(cities, counties, states, etc.)*:

13. PROPOSED PROJECT:

Start Date	Ending Date

14. CONGRESSIONAL DISTRICTS OF:

a. Applicant

b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE_____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1875-0102

Expiration Date: 9/30/98

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington, D.C. 20503.

INSTRUCTIONS FOR ED FORM NO. 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of

receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, Department of Education, 600 Independence Avenue, S.W. (Room 3600, GSA Regional Office Building No. 3), Washington, DC 20202-4130. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APP LICANT NAME	PR/AWARD NUMBER AND / OR PROJECT
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant,' " person," "primary covered transaction," " principal," proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change

For Material Change Only:
year _____ quarter ____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No.4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable*:

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*

$

10. a. Name and Address of Lobbying ~~Entity~~ Registrant *(if individual, last name, first name, MI):*

b. Individuals Performing Services *(including address if different from No. 10a) (last name, first name, MI):*

~~**11. Amount of Payment** *(check all that apply):*~~

~~$ _____ ☐ actual ☐ planned~~

~~**12. Form of Payment** *(check all that apply):*~~

~~☐ a. cash~~
~~☐ b. in-kind, specify: nature _____~~
~~value _____~~

~~**13. Type of Payment** *(Check all that apply):*~~

~~☐ a. retainer~~
~~☐ b. one-time fee~~
~~☐ c. commission~~
~~☐ d. contingent fee~~
~~○ e. deferred~~
~~☐ f. other, specify: _____~~

~~**14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:**~~

~~*(attach Continuation Sheet(s) SF-LLL-A, if necessary)*~~

~~**15. Continuation Sheet(s) SF-LLL attached:** ☐ Yes ☐ No~~

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ **Date:** _____

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. ~~Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate~~. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a follow up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and conract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee" then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number, grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state, and zip code of the ~~lobbying entity~~ registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

~~11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this a material change report, enter the cumulative amount of payment made or planned to be made.~~

~~12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of in-kind payment.~~

~~13. Check the appropriate box(es). Check all boxes that apply. If other specify nature.~~

~~14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.~~

~~15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.~~

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions

[FR Doc. 97–31566 Filed 12–1–97; 8:45 am]
BILLING CODE 4000–01–C

federal register

Tuesday
December 2, 1997

Part VI

General Services Administration

41 CFR Chapter 301

Federal Travel Regulation; Maximum Per Diem Rates; Rule

GENERAL SERVICES ADMINISTRATION

41 CFR Chapter 301

[FTR Amendment 68]

RIN 3090–AG43

Federal Travel Regulation; Maximum Per Diem Rates

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule.

SUMMARY: An analysis of lodging and meal cost survey data reveals that the listing of maximum per diem rates for locations within the continental United States (CONUS) should be updated to provide for the reimbursement of Federal employees' expenses covered by per diem. This final rule increases/decreases the maximum lodging amounts in certain existing per diem localities, adds new per diem localities, deletes a number of previously designated per diem localities, and adds information to encourage employees to stay in a fire-safe approved accommodation. The meals and incidental expenses (M&IE) amounts remain the same.

DATES: This final rule is effective on January 1, 1998, and applies for travel performed on or after January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Joddy P. Garner, Office of Governmentwide Policy (MTT), Washington, DC 20405, telephone 202–501–1538.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a significant regulatory action for the purposes of Executive Order 12866 of September 30, 1993. This final rule is not required to be published in the **FEDERAL REGISTER** for notice and comment. Therefore, the Regulatory Flexibility Act does not apply. This rule also is exempt from Congressional review prescribed under 5 U.S.C. 801 since it relates solely to agency management and personnel.

List of Subjects in 41 CFR Chapter 301

Government employees, Travel and transportation expenses.

For the reasons set out in the preamble 41 CFR chapter 301 is revised to read as follows:

PART 301–7—PER DIEM ALLOWANCES

1. The authority citation for Part 301–7 continues to read as follows:

Authority: 5 U.S.C. 5701–5709.

2. Appendix A to chapter 301 is revised to read as follows:

APPENDIX A TO CHAPTER 301—PRESCRIBED MAXIMUM PER DIEM RATES FOR CONUS

The maximum rates listed below are prescribed under § 301–7.3(a) of this chapter for reimbursement of per diem expenses incurred during official travel within CONUS (the continental United States). The amount shown in column (a) is the maximum that will be reimbursed for lodging expenses including applicable taxes. The M&IE rate shown in column (b) is a fixed amount allowed for meals and incidental expenses covered by per diem. The per diem payment calculated in accordance with part 301–7 of this chapter for lodging expenses plus the M&IE rate may not exceed the maximum per diem rate shown in column (c). Seasonal rates apply during the periods indicated.

It is the policy of the Government, as reflected in the Hotel Motel Fire Safety Act of 1990 (Pub. L. No. 101–391, September 25, 1990), referred to as ''the Act'' in this paragraph, to save lives and protect property by promoting fire safety in hotels, motels, and all places of public accommodation affecting commerce. In furtherance of the Act's goals, employees are encouraged to stay in a facility which is fire-safe, i.e., an approved accommodation, when commercial lodging is required. Lodgings that have met the Government requirements are listed on the U. S. Fire Administration's Internet site at http://www.usfa.fema.gov/hotel/index.htm.

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2], [3]					
CONUS, Standard rate		$50		$30		$80
(Applies to all locations within CONUS not specifically listed below or encompassed by the boundary definition of a listed point. However, the standard CONUS rate applies to all locations within CONUS, including those defined below, for certain relocation subsistence allowances. See parts 302–2, 302–4, and 302–5 of this subtitle.)						
ALABAMA						
Birmingham	Jefferson	64		38		102
Gulf Shores	Baldwin.					
(May 1–September 30)		104		34		138
(October 1–April 30)		60		34		94
Huntsville	Madison	64		34		98
Mobile	Mobile	62		38		100
Montgomery	Montgomery	67		30		97
ARIZONA						
Casa Grande	Pinal.					
(January 1–April 30)		61		30		91
(May 1–December 31)		54		30		84
Chinle	Apache.					
(April 1–October 31)		93		30		123
(November 1–March 31)		60		30		90
Flagstaff	All points in Coconino County not covered under Grand Canyon per diem area..					

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2], [3]					
(April 1–October 31)		79		34		113
(November 1–March 31)		59		34		93
Grand Canyon	All points in the Grand Canyon National Park and Kaibab National Forest within Coconino County.	111		38		149
Kayenta	Navajo.					
(April 1–October 31)		105		30		135
(November 1–March 31)		68		30		98
Phoenix/Scottsdale	Maricopa.					
(October 1–May 14)		106		38		144
(May 15–September 30)		72		38		110
Prescott	Yavapai	59		34		93
Sierra Vista	Cochise	56		30		86
Tucson	Pima County; Davis-Monthan AFB.					
(November 1–May 31)		85		34		119
(June 1–October 31)		67		34		101
Yuma	Yuma	64		30		94
ARKANSAS						
Little Rock	Pulaski	61		30		91
CALIFORNIA						
Clearlake	Lake	65		34		99
Death Valley	Inyo	93		42		135
Eureka	Humboldt	76		34		110
Fresno	Fresno	70		34		104
Los Angeles	Los Angeles, Kern, Orange and Ventura Counties; Edwards AFB; Naval Weapons Center and Ordnance Test Station, China Lake.	109		42		151
Mammoth Lakes/Bridgeport	Mono	83		42		125
Merced	Merced	54		34		88
Modesto	Stanislaus	63		34		97
Monterey	Monterey	94		38		132
Napa	Napa.					
(April 1–October 31)		116		42		158
(November 1–March 31)		103		42		145
Oakhurst/Madera	Madera	61		30		91
Oakland	Alameda, Contra Costa and Marin	111		34		145
Ontario	San Bernardino	66		38		104
Palm Springs	Riverside.					
(November 1–May 31)		81		38		119
(April 1–October 31)		50		38		88
Palo Alto/San Jose	Santa Clara	116		42		158
Point Arena/Gualala	Mendicino	120		42		162
Redding	Shasta	53		34		87
Redwood City/San Mateo	San Mateo	87		38		125
Sacramento	Sacramento	81		38		119
San Diego	San Diego	93		38		131
San Francisco	San Francisco	120		42		162
San Luis Obispo	San Luis Obispo	66		38		104
Santa Barbara	Santa Barbara	98		34		132
Santa Cruz	Santa Cruz.					
(June 1–September 30)		87		38		125
(October 1–May 31)		51		38		89
Santa Rosa	Sonoma	64		38		102
South Lake Tahoe	El Dorado (See also Stateline, NV.)	96		38		134
Stockton	San Joaquin	55		34		89
Tahoe City	Placer	94		38		132
Visalia	Tulare	55		38		93
West Sacramento	Yolo	88		30		118
Yosemite Nat'l Park	Mariposa.					
(April 1–October 31)		87		42		129
(November 1–April 30)		59		42		101
COLORADO						
Aspen	Pitkin	145		42		187
Boulder	Boulder.					
(May 1–October 31)		92		38		130
(November 1–April 30)		70		38		108
Colorado Springs	El Paso.					

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2], [3]					
(April 1–October 31)		76		30		106
(November 1–March 31)		63		30		93
Cortez	Montezuma.					
May 1–September 30)		57		30		87
October 1–April 30)		50		30		80
Denver	Denver, Adams, Arapahoe and Jefferson	92		34		126
Durango	La Plata.					
(June 1–October 31)		100		34		134
(November 1–May 31)		50		34		84
Fort Collins/Loveland	Larimer	55		30		85
Glenwood Springs	Garfield	69		34		103
Grand Junction	Mesa	56		30		86
Gunnison	Gunnison.					
(June 1–September 30)		62		30		92
(October 1–May 31)		50		30		80
Keystone/Silverthorne	Summit	170		42		212
Montrose	Montrose	60		30		90
Pueblo	Pueblo.					
(June 1–September 30)		67		30		97
(October 1–May 31)		57		30		87
Steamboat Springs	Routt.					
(December 1–March 31)		97		34		131
(April 1–November 30)		50		34		84
Telluride	San Miguel.					
(November 1–March 31)		129		38		167
(April 1–October 31)		110		38		148
Trinidad	Las Animas.					
(June 1–September 30)		67		30		97
(October 1–May 31)		50		30		80
Vail	Eagle.					
(November 1–March 31)		226		42		268
(April 1–October 31)		99		42		141
CONNECTICUT						
Bridgeport/Danbury	Fairfield	96		38		134
Hartford	Hartford and Middlesex	91		30		121
New Haven	New Haven	87		30		117
New London/Groton	New London.					
(June 1–October 31)		87		34		121
(November 1–May 31)		50		34		84
Putnam/Danielson	Windham	84		30		114
Salisbury/Lakeville	Litchfield	69		34		103
Vernon	Tolland	54		30		84
DELAWARE						
Dover	Kent.					
(May 1–September 30)		60		34		94
(October 31–April 30)		54		34		88
Lewes	Sussex.					
(June 1–September 14)		123		38		161
(September 15–May 31)		92		38		130
Wilmington	New Castle	93		38		131
DISTRICT OF COLUMBIA						
Washington, DC (also the cities of Alexandria, Falls Church, and Fairfax, and the counties of Arlington, Loudoun, and Fairfax in Virginia; and the counties of Montgomery and Prince George's in Maryland) (See also Maryland and Virginia.)		126		42		168
FLORIDA						
Altamonte Springs	Seminole	81		34		115
Bradenton	Manatee.					
(January 1–May 14)		76		30		106
(May 15–December 31)		50		30		80
Cocoa Beach	Brevard	84		34		118
Daytona Beach	Volusia.					
(February 1–August 31)		90		34		124
(September 1–January 31)		54		34		88
Fort Lauderdale	Broward.					
(December 15–April 30)		104		34		138
(May 1–December 14)		72		34		106

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2, 3]					
Fort Myers	Lee.					
(January 1–April 30)		98		34		132
(May 1–December 31)		53		34		87
Fort Pierce	Saint Lucie.					
(December 1–April 30)		61		30		91
(May 1–November 30)		50		30		80
Fort Walton Beach	Okaloosa	80		30		110
Gainesville	Alachua	64		34		98
Gulf Breeze	Santa Rosa	65		34		99
Jacksonville	Duval County; Naval Station Mayport	73		30		103
Key West	Monroe.					
(December 15–April 30)		147		42		189
(May 1–December 14)		94		42		136
Kissimmee	Osceola	74		30		104
Lakeland	Polk	63		30		93
Miami	Dade.					
(December 15–April 30)		89		42		131
(May 1–December 14)		71		42		113
Naples	Collier.					
(December 15–April 30)		126		38		164
(May 1–December 14)		65		38		103
Orlando	Orange	77		34		111
Panama City	Bay.					
(March 1–September 14)		77		30		107
(September 15–February 29)		59		30		89
Pensacola	Escambia	59		34		93
Punta Gorda	Charlotte.					
(December 15–April 14)		76		34		110
(April 15–December 14)		54		34		88
Saint Augustine	Saint Johns	65		34		99
Sarasota	Sarasota.					
(December 15–April 30)		89		34		123
(May 1–December 14)		52		34		86
Stuart	Martin.					
(January 1–April 30)		69		34		103
(May 1–December 14)		63		34		97
Tallahassee	Leon	66		34		100
Tampa/St. Petersburg	Hillsborough and Pinellas.					
(January 1–April 30)		103		38		141
(May 1–December 14)		81		38		119
Vero Beach	Indian River.					
(January 15–April 30)		63		30		93
(May 1–January 14)		50		30		80
West Palm Beach	Palm Beach.					
(January 1–April 30)		94		38		132
(May 1–December 31)		67		38		105
GEORGIA						
Albany	Dougherty	58		30		88
Athens	Clarke	58		34		92
Atlanta	Clayton, De Kalb, Fulton, Cobb and Gwinnett	97		38		135
Augusta	Richmond	70		30		100
Columbus	Muscogee	63		30		93
Conyers	Rockdale	65		30		95
Macon	Bibb	86		30		116
Savannah	Chatham	71		34		105
IDAHO						
Boise	Ada	68		34		102
Coeur d'Alene	Kootenai.					
(May 1–September 30)		56		34		90
(October 1–April 30)		50		34		84
Idaho Falls	Bonneville	56		34		90
Ketchum/Sun Valley	Blaine	87		38		125
McCall	Valley	59		34		93
Stanley	Custer.					
(June 1–September 30)		57		34		91
(October 1–May 31)		50		34		84

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2], [3]					
ILLINOIS						
Aurora	Kane	56		30		86
Champaign/Urbana	Champaign	56		34		90
Chicago	Du Page, Cook and Lake	120		42		162
Elgin	King	59		30		89
Joliet	Will	52		30		82
Peoria	Peoria	54		34		88
Rock Island	Rock Island	85		30		115
Rockford	Winnebago	65		38		103
Springfield	Sangamon	55		30		85
INDIANA						
Bloomington/Crane	Monroe and Martin	56		34		90
Carmel	Hamilton.					
(June 1–September 30)		82		38		120
(October 1–May 31)		73		38		111
Fort Wayne	Allen	52		30		82
Indianapolis	Marion County; Fort Benjamin Harrison	79		38		117
Lafayette	Tippecanoe	54		34		88
Michigan City	La Porte	57		30		87
Muncie	Delaware	52		30		82
Nashville	Brown.					
(June 1–October 31)		117		30		147
(November 1–May 31)		65		30		95
South Bend	St. Joseph	61		30		91
Valparaiso/Burlington Beach	Porter	65		30		95
IOWA						
Bettendorf/Davenport	Scott	60		30		90
Cedar Rapids	Linn	52		34		86
Des Moines	Polk	68		30		98
KANSAS						
Kansas City	Johnson and Wyandotte (See also Kansas City, MO.).	88		42		130
Wichita	Sedgwick	62		34		96
KENTUCKY						
Covington	Kenton	64		34		98
Florence	Boone	59		30		89
Lexington	Fayette	62		34		96
Louisville	Jefferson	71		38		109
LOUISIANA						
Baton Rouge	East Baton Rouge Parish	67		34		101
Bossier City	Bossier Parish	60		30		90
Gonzales	Ascension Parish	57		30		87
Lake Charles	Calcasieu Parish	83		30		113
New Orleans	Parishes of Jefferson, Orleans, Plaquemines and St. Bernard.	88		42		130
Opelouses	St. Landry	62		30		92
Shreveport	Caddo Parish	60		34		94
St. Francisville	West Feliciana	88		30		118
MAINE						
Bangor	Penobscot.					
(July 1–October 31)		59		30		89
(November 1–June 30)		50		30		80
Bar Harbor	Hancock.					
(July 1–September 14)		138		34		172
(September 15–June 30)		63		34		97
Bath	Sagadahoc.					
(June 1–September 30)		61		30		91
(October 1–June 30)		52		30		82
Calais	Washington.					
(July 1–September 30)		59		30		89
(October 1–June 30)		50		30		80
Kennebunk/Sanford	York.					
(May 1–September 30)		91		34		125
(October 1–April 30)		59		34		93
Kittery	Portsmouth Naval Shipyard (See also Portsmouth, NH.).					

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2, 3]					
(June 1–October 31)		81		34		115
(Novenber 1–May 31)		57		34		91
Portland	Cumberland.					
(July 1–October 31)		86		38		124
(November 1–June 30)		63		38		101
Rockport	Knox.					
(June 15–October 31)		102		34		136
(November 1–June 14)		58		34		92
Wiscasset	Lincoln.					
(July 1–September 14)		100		30		130
(September 15–June 30)		64		30		94
MARYLAND						
(For the counties of Montgomery and Prince George's, see District of Columbia.)						
Annapolis	Anne Arundel	96		38		134
Baltimore	Baltimore and Harford	110		38		148
Columbia	Howard	92		42		134
Frederick	Frederick	56		38		94
Grasonville	Queen Annes	59		34		93
Hagerstown	Washington	54		30		84
Lexington Park/St. Inigoes/ Leonardtown.	Saint Mary's	59		34		93
Lusby	Calvert	59		34		93
Ocean City	Worcester.					
(May 1–September 30)		145		42		187
(October 1–April 30)		50		42		92
Salisbury	Wicomico	58		34		92
St. Michaels	Talbot.					
(April 1–November 30)		130		38		168
(December 1–March 31)		103		38		141
MASSACHUSETTS						
Andover	Essex	78		38		116
Boston	Suffolk	116		42		158
Cambridge/Lowell	Middlesex.					
(April 1–November 30)		127		34		161
(September 15–May 31)		116		34		150
Greenfield/South Deerfield	Franklin	55		30		85
Hyannis	Barnstable.					
(July 1–September 30)		104		38		142
(October 1–June 30)		55		38		93
Martha's Vineyard	Dukes.					
(June 1–October 31)		159		42		201
(November 1–May 31)		92		42		134
Nantucket	Nantucket.					
(June 1–October 31)		149		42		191
(November 1–May 31)		92		42		134
Northampton	Hampshire	68		30		98
Pittsfield	Berkshire	52		34		86
Plymouth	Plymouth.					
(June 15–October 31)		92		30		122
(November 1–June 14)		70		30		100
Quincy	Norfolk	77		34		111
Springfield	Hampden	67		30		97
Taunton/New Bedford	Bristol	64		30		94
Worcester	Worcester	61		30		91
MICHIGAN						
Ann Arbor	Washtenaw	75		30		105
Charlevoix	Charlevoix.					
(June 1–September 30)		70		30		100
(October 1–May 31)		50		30		80
Detroit	Wayne	89		38		127
East Lansing/Lansing	Ingham	72		30		102
Flint	Genesee	57		30		87
Frankfort	Benzie	76		30		106
Gaylord	Otsego	59		34		93
Grand Rapids	Kent	62		34		96
Holland	Ottawa	64		30		94
Kalamazoo	Kalamazoo	54		30		84

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2, 3]					
Leland	Leelanau.					
(May 1–September 30)		100		30		130
(October 1–April 30)		53		30		83
Mackinac Island	Mackinac.					
(June 1–September 30)		94		38		132
(October 1–May 31)		61		38		99
Manistee	Manistee.					
(June 1–September 30)		63		30		93
(October 1–May 31)		50		30		80
Midland	Midland	58		30		88
Mount Pleasant	Isabella	56		30		86
Muskegon	Muskegon	61		30		91
Ontonagon	Ontonagon	55		30		85
Petoskey	Emmet.					
(June 1–October 31)		56		34		90
(November 1–May 31)		50		34		84
Pontiac/Troy	Oakland	93		38		131
Sault Ste Marie	Chippewa.					
(June 1–October 31)		77		34		111
(November 1–May 31)		60		34		94
South Haven	Van Buren.					
(May 1–September 30)		85		30		115
(October 1–April 30)		54		30		84
Traverse City	Grand Traverse.					
(May 1–September 30)		97		34		131
(October 1–April 30)		58		34		92
Warren	Macomb	61		30		91
MINNESOTA						
Duluth	St. Louis.					
(June 1–September 30)		66		38		104
(October 1–May 31)		57		38		95
Minneapolis/St. Paul	Anoka, Hennepin, and Ramsey Counties; Fort Snelling Military Reservation and Navy Astronautics Group (Detachment BRAVO), Rosemount.	91		38		129
Rochester	Olmsted	68		30		98
MISSISSIPPI						
Biloxi/Gulfport/Pascagoula/Bay St. Louis.	Harrison, Jackson, and Hancock	79		34		113
Jackson	Hinds	65		34		99
Ridgeland	Madison	55		34		89
Robinsonville	Tunica	51		30		81
Vicksburg	Warren	56		30		86
MISSOURI						
Branson	Taney.					
(May 1–October 31)		68		30		98
(November 1–April 30)		54		30		84
Cape Girardeau	Cape Girardeau	54		30		84
Hannibal	Marion	55		30		85
Jefferson City	Cole	52		30		82
Kansas City	Clay, Jackson and Platte (See also Kansas City, KS.).	88		42		130
Lake Ozark	Miller	55		34		89
Osage Beach	Camden	55		34		89
Springfield	Greene	53		34		87
St. Louis	St. Charles and St. Louis	75		42		117
MONTANA						
Great Falls	Cascade	52		30		82
Polson/Kalispell	Lake	54		30		84
West Yellowstone Park	Gallatin	52		30		82
NEBRASKA						
Lincoln	Lancaster	51		30		81
Omaha	Douglas	67		34		101
NEVADA						
Elko	All points in Elko County excluding Wendover	57		30		87
Incline Village	All points in the Northern Lake Tahoe area within Washoe County.					

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2, 3]					
(June 1–September 30)		119		38		157
(October 1–May 31)		76		38		114
Las Vegas	Clark County; Nellis AFB	80		38		118
Reno	All points in Washoe County not covered under Incline Village per diem locality.	57		34		91
Stateline	Douglas (See also South Lake Tahoe, CA.)	96		38		134
Winnemucca	Humboldt	51		30		81
NEW HAMPSHIRE						
Concord	Merrimack.					
(June 1–October 31)		68		30		98
(November 1–May 31)		50		30		80
Conway	Carroll.					
(June 1–October 31)		81		34		115
(November 1–May 31)		54		34		88
Durham	Strafford.					
(May 1–October 31)		71		30		101
(November 1–April 30)		63		30		93
Hanover	Grafton and Sullivan.					
(June 1–October 31)		113		38		151
(November 1–May 31)		86		38		124
Laconia	Belknap	70		30		100
Manchester	Hillsborough	73		30		103
Portsmouth/Newington	Rockingham County; Pease AFB (See also Kittery, ME.).					
(June 1–October 31)		81		34		115
(November 1–May 31)		57		34		91
NEW JERSEY						
Atlantic City	Atlantic	84		38		122
Cherry Hill/Camden/Moorestown	Camden	74		38		112
Flemington	Hunterdon	80		34		114
Freehold/Eatontown	Monmouth County; Fort Monmouth	89		34		123
Millville	Cumberland	54		34		88
Newark	Bergen, Essex, Hudson, Passaic and Union	94		42		136
Ocean City/Cape May	Cape May.					
(May 15–September 30)		165		30		195
(October 1–May 14)		95		30		125
Parsippany/Dover	Morris County; Picatinny Arsenal	118		38		156
Piscataway/Edison	Middlesex	105		38		143
Princeton/Trenton	Mercer	87		38		125
Tom's River	Ocean.					
(June 1–September 30)		69		34		103
(October 1–May 31)		63		34		97
NEW MEXICO						
Albuquerque	Bernalillo	70		34		104
Farmington	San Juan	53		34		87
Gallup	McKinley	58		30		88
Los Alamos	Los Alamos	81		34		115
Santa Fe	Santa Fe.					
(May 1–October 31)		122		42		164
(November 1–April 30)		83		42		125
Taos	Taos	66		34		100
NEW YORK						
Albany	Albany	68		38		116
Batavia	Genesee.					
(May 1–September 30)		67		34		101
(October 1–April 30)		50		34		84
Binghamton	Broome	54		34		88
Buffalo	Erie	78		38		116
Corning	Steuben	59		30		89
Elmira	Chemung	53		30		83
Glens Falls	Warren.					
(June 1–October 31)		74		38		112
(November 1–May 31)		63		38		101
Ithaca	Tompkins	56		30		86
Kingston	Ulster	52		34		86
Lake Placid	Essex.					
(June 1–November 14)		75		34		109

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2, 3]					
(November 15–May 31)		59		34		93
New York City	The boroughs of the Bronx, Brooklyn, Manhattan, Queens and Staten Island; Nassau and Suffolk Counties.	198		42		240
Niagara Falls	Niagara.					
(May 15–October 31)		65		34		99
(November 1–May 14)		50		34		84
Nyack/Palisades	Rockland	53		34		87
Owego	Tioga	63		30		93
Palisades/Nyack	Rockland	61		30		91
Plattsburgh	Clinton	58		34		92
Poughkeepsie	Dutchess	74		30		104
Rochester	Monroe	65		42		107
Saratoga Springs	Saratoga.					
(May 1–October 31)		104		38		142
(November 1–April 30)		56		38		94
Schenectady	Schenectady	52		34		86
Syracuse	Onondaga	71		34		105
Tarrytown/White Plains	Westchester	114		42		156
Utica	Oneida	66		34		100
Waterloo/Romulus	Seneca	69		30		99
Watertown	Jefferson	59		30		89
Watkins Glen	Schuyler	60		30		90
West Point	Orange	57		30		87
NORTH CAROLINA						
Asheville	Buncombe	52		34		86
Charlotte	Mecklenburg	71		38		109
Fayetteville	Cumberland	82		30		112
Greensboro/High Point	Guilford	67		34		101
Kill Devil/Duck/Outerbanks	Dare.					
(May 1–September 30)		118		34		152
(October 1–April 30)		50		34		84
Morehead City	Carteret.					
(April 1–August 31)		64		30		94
(September 1–March 31)		50		30		80
New Bern/Havelock	Craven	84		30		114
Research Park/Raleigh/Durham/Chapel Hill.	Wake, Durham and Orange	96		38		134
Wilmington	New Hanover.					
(March 1–September 30)		65		30		95
(October 1–February 29)		55		30		85
Winston–Salem	Forsyth	80		34		114
NORTH DAKOTA (See footnote 5)						
OHIO						
Akron	Summit	72		34		106
Cambridge	Guernsey.					
(June 1–October 31)		61		30		91
(November 1–May 31)		50		30		80
Canton	Stark	58		30		88
Cincinnati/Evendale	Hamilton and Warren	76		34		110
Cleveland	Cuyahoga	83		38		121
Columbus	Franklin	81		34		115
Dayton/Fairborn	Montgomery and Greene; Wright-Patterson AFB	74		30		104
Elyria	Lorain.					
(May 1–September 30)		89		30		119
(October 1–April 30)		54		30		84
Fairfield/Hamilton	Butler	58		30		88
Geneva	Ashtabula	75		30		105
Jackson	Jackson and Pike	54		30		84
Lancaster	Fairfield	53		30		83
Norwalk/Bellevue	Huron.					
(May 1–September 30)		73		30		103
(October 1–April 30)		50		30		80
Port Clinton/Oakharbor	Ottawa.					
(June 1–September 30)		89		30		119
(October 1–May 31)		50		30		80
Sandusky	Erie.					

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2], [3]					
(May 1–September 30)		109		30		139
(October 1–April 30)		50		30		80
Springfield	Clark	56		34		90
Toledo	Lucas	57		34		91
OKLAHOMA						
Norman	Cleveland	59		30		89
Oklahoma City	Oklahoma	65		30		95
Tulsa/Bartlesville	Osage, Tulsa and Washington	54		30		84
OREGON						
Ashland/Medford	Jackson.					
(June 1–October 31)		83		38		121
(November 1–May 31)		50		38		88
Beaverton	Washington	68		38		106
Bend	Deschutes	70		30		100
Clackamas/Milwaukie	Clackamas	65		30		95
Coos Bay	Coos	60		30		90
Florence/Eugene	Lane.					
(July 1–September 30)		72		34		106
(October 1–June 30)		52		34		86
Gold Beach	Curry.					
(May 15–October 31)		69		30		99
(November 1–May 14)		50		30		80
Klamath Falls	Klamath	69		38		107
Lincoln City/Newport	Lincoln.					
(June 1–October 31)		85		38		123
(November 1–May 31)		58		38		96
Portland	Multnomah	89		38		127
Salem	Marion	56		30		86
Seaside	Clatsop	59		30		89
PENNSYLVANIA						
Allentown	Lehigh	66		34		100
Beaver Falls	Beaver	54		30		84
Chester/Radnor	Delaware	99		42		141
Gettysburg	Adams.					
(May 1–October 31)		72		34		106
(November 1–April 30)		53		34		87
King of Prussia/Ft. Washington	Montgomery County, except Bala Cynwyd (See also Philadelphia, PA.).	84		38		122
Lancaster	Lancaster	63		34		97
Mechanicsburg	Cumberland	65		30		95
Mercer	Mercer	52		30		82
Philadelphia	Philadelphia County; city of Bala Cynwyd in Montgomery County.	113		38		151
Pittsburgh	Allegheny	90		38		128
Reading	Berks	57		30		87
Scranton	Lackawanna	61		34		95
Warminster	Bucks County; Naval Air Development Center	54		34		88
Valley Forge/Malvern	Chester	95		38		133
RHODE ISLAND						
East Greenwich	Kent County; Naval Construction Battalion Center, Davisville.	59		34		93
Newport/Block Island	Newport and Washington.					
(May 1–October 14)		111		42		153
(October 15–April 30)		81		42		123
Providence	Providence	83		42		125
SOUTH CAROLINA						
Aiken	Aiken	70		30		100
Charleston	Charleston and Berkeley	100		34		134
Columbia	Richland	55		30		85
Greenville	Greenville	74		38		112
Hilton Head	Beaufort.					
(March 1–September 30)		128		34		162
(October 1–February 29)		69		34		103
Myrtle Beach	Horry County; Myrtle Beach AFB.					
(May 1–September 30)		141		34		175
(October 1–April 30)		60		34		94

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2, 3]					
Spartanburg	Spartanburg	54		30		84
SOUTH DAKOTA						
Custer	Custer.					
(June 1–September 30)		64		30		94
(October 1–May 31)		50		30		80
Hot Springs	Fall River.					
(May 1–September 30)		70		30		100
(October 1–April 30)		50		30		80
Rapid City	Pennington.					
(June 1–August 31)		84		30		114
(September 1–May 31)		50		30		80
Sioux Falls	Minnehaha	56		30		86
Sturgis	Meadeence.					
(June 15–August 31)		86		30		116
(September 15–April 30)		50		30		80
TENNESSEE						
Chattanooga	Hamilton	62		30		92
Gatlinburg	Sevier.					
(May 1–November 30)		85		34		119
(December 1–April 30)		61		34		95
Knoxville	Knox County; city of Oak Ridge	59		34		93
Memphis	Shelby	79		30		109
Murfreesboro	Rutherford	52		30		82
Nashville	Davidson	91		38		129
Townsend	Blount.					
(May 1–October 31)		77		30		107
(November 1–April 30)		50		30		80
TEXAS						
Abilene	Taylor	55		30		85
Amarillo	Potter	59		30		89
Austin	Travis	85		34		119
College Station/Bryan	Brazos	61		30		91
Corpus Christi/Ingelside	Nueces and San Patricio	62		30		92
Dallas/Fort Worth	Dallas and Tarrant	94		42		136
Eagle Pass	Maverick	57		34		91
El Paso	El Paso	56		30		86
Fort Davis	Jeff Davis	62		30		92
Galveston	Galveston	68		42		110
Granbury	Hood	53		30		83
Houston	Harris County; L.B. Johnson Space Center and Ellington AFB.	79		38		117
Killeen/Temple	Bell	59		30		89
Lajitas	Brewster.					
(September 1–May 31)		64		30		94
(June 1–August 31)		51		30		81
Lubbock	Lubbock	60		34		94
McAllen	Hidalgo	69		30		99
Midland/Odessa	Ector and Midland	52		30		82
Plano	Collin	58		34		92
San Antonio	Bexar	91		34		125
Tyler	Smith	60		30		90
Victoria	Victoria	54		30		84
Waco	McLennan	64		30		94
UTAH						
Bullfrog	Garfield	85		34		119
Cedar City	Iron.					
(June 1–September 30)		67		30		97
(October 1–May 31)		50		30		80
Moab	Grand	77		30		107
Park City	Summit.					
(December 1–March 31)		145		42		187
(April 1–November 30)		92		42		134
Provo	Utah	60		34		94
Salt Lake City/Ogden	Salt Lake, Weber, and Davis Counties; Dugway Proving Ground and Tooele Army Depot.	83		38		121
VERMONT						
Burlington/St. Albans	Chittenden and Franklin	68		34		102

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2, 3]					
Manchester	Bennington	75		34		109
Middlebury	Addison	83		34		117
Montpelier	Washington	86		30		116
Rutland	Rutland.					
(December 15–March 31)		62		30		92
(April 1–December 14)		52		30		82
White River Junction	Windsor.					
(June 1–October 31)		113		30		143
(November 1–May 31)		86		30		116
VIRGINIA						
(For the cities of Alexandria, Fairfax, and Falls Church, and the counties of Arlington, Fairfax, and Loudoun, see District of Columbia.)						
Blacksburg	Montgomery	52		30		82
Charlottesville*		55		42		97
Harrisonburg	Harrisburg	54		30		84
Lexington*		52		30		82
Lynchburg*		65		34		99
Richmond*	Chesterfield and Henrico Counties; also Defense Supply Center.	77		38		115
Roanoke*	Roanoke	51		34		85
Virginia Beach*	Virginia Beach (also Norfolk, Portsmouth and Chesapeake)*.					
(May 1–September 30)		107		38		145
(October 1–April 30)		64		38		102
Wallops Island	Accomack.					
(June 1–October 14)		61		30		91
(October 15–May 31)		50		30		80
Williamsburg*	Williamsburg (also Hampton, Newport News, York County, Naval Weapons Station, Yorktown)*.					
(April 1–October 31)		99		34		133
(November 1–March 31)		59		34		93
Wintergreen	Nelson	101		42		143
*Denotes independent cities.						
WASHINGTON						
Anacortes/Mt. Vernon/Whidbey Island	Skagit and Island	54		34		88
Bellingham	Whatcom	54		34		88
Bremerton	Kitsap	66		30		96
Friday Harbor	San Juan.					
(June1–October 31)		129		38		167
(November 1–May 31)		74		38		112
Lynnwood/Everett	Snohomish	77		34		111
Ocean Shores	Grays Harbor.					
(April 1–September 30)		73		34		107
(October 1–March 31)		50		34		84
Olympia/Tumwater	Thurston	64		30		94
Port Angeles	Clallam.					
(May 15–September 30)		71		34		105
(October 1–May 14)		50		34		84
Port Townsend	Jefferson.					
(April 15–October 31)		63		30		93
(November 1–April 14)		53		30		83
Seattle	King	116		38		154
Spokane	Spokane	74		38		112
Tacoma	Pierce	83		30		113
Vancouver	Clark	62		34		96
WEST VIRGINIA						
Berkeley Springs	Morgan	89		30		119
Charleston	Kanawha	52		30		82
Martinsburg	Berkeley	62		30		92
Morgantown	Monongalia	71		30		101
Parkersburg	Wood	57		30		87
Wheeling	Ohio	59		34		93
WISCONSIN						
Appleton	Outagamie	57		30		87
Brookfield	Waukesha	74		38		112
Eau Claire	Eau Claire	54		34		88
Green Bay	Brown	61		30		91

Per diem locality		Maximum lodging amount (includes applicable taxes) (a)	+	M&IE rate (b)	=	Maximum per diem rate [4] (c)
Key city [1]	County and/or other defined location [2], [3]					
La Crosse	La Crosse	52		34		86
Lake Geneva	Walworth.					
(May 1–October 31)		69		34		103
(November 1–April 30)		51		34		85
Madison	Dane	72		34		106
Milwaukee	Milwaukee	77		34		111
Oshkosh	Winnebago	57		34		91
Plymouth/Sheboygan	Sheboygan	52		30		82
Racine/Kenosha	Racine and Kenosha.					
(June 1–September 30)		57		34		91
(October 1–May 31)		50		34		84
Rhinelander/Minocqua	Oneida	57		30		87
Sturgeon Bay	Door.					
(June 1–September 14)		77		30		107
(September 15–May 31)		50		30		80
Wisconsin Dells	Columbia.					
(June 1–September 14)		77		38		115
(September 15–May 31)		57		38		95
WYOMING						
Cody	Park.					
(May 1–September 30)		86		30		116
(October 1–April 30)		50		30		80
Jackson	Teton.					
(June 1–October 14)		105		42		147
(October 15–May 31)		76		42		118
Thermopolis	Hot Springs	54		30		84

[1] Unless otherwise specified, the per diem locality is defined as ''all locations within, or entirely surrounded by, the corporate limits of the key city, including independent entities located within those boundaries.''

[2] Per diem localities with county definitions shall include ''all locations within, or entirely surrounded by, the corporate limits of the key city as well as the boundaries of the listed counties, including independent entities located within the boundaries of the key city and the listed counties.''

[3] When a military installation or Government-related facility (whether or not specifically named) is located partially within more than one city or county boundary, the applicable per diem rate for the entire installation or facility is the higher of the two rates which apply to the cities and/or counties, even though part(s) of such activities may be located outside the defined per diem locality.

[4] Federal agencies may submit a request to GSA for review of the costs covered by per diem in a particular city or area where the standard CONUS rate applies when travel to that location is repetitive or on a continuing basis and travelers' experiences indicate that the prescribed rate is inadequate. Other per diem localities listed in this appendix will be reviewed on an annual basis by GSA to determine whether rates are adequate. Requests for per diem rate adjustments shall be submitted by the agency headquarters office to the General Services Administration, Office of Governmentwide Policy, Attn: Travel and Transportation Management Policy Division (MTT), Washington, DC 20405. Agencies should designate an individual responsible for reviewing, coordinating, and submitting to GSA any requests from bureaus or subagencies. Requests for rate adjustments shall include a city designation, a description of the surrounding location involved (county or other defined area), and a recommended rate supported by a statement explaining the circumstances that cause the existing rate to be inadequate. The request also must contain an estimate of the annual number of trips to the location, the average duration of such trips, and the primary purpose of travel to the locations. Agencies should submit their requests to GSA no later than May 1 in order for a city to be included in the annual review.

[5] The standard CONUS rate of $80 ($50 for lodging and $30 for M&IE) applies to all per diem localities in the State of North Dakota.

Dated: November 26, 1997.

David J. Barram,

Administrator of General Services

[FR Doc. 31590 Filed 12–1–97; 8:45 am]

Billing Code 6820–34–F

federal register

Tuesday
December 2, 1997

Part VII

Environmental Protection Agency

40 CFR Part 112

Oil Pollution Prevention and Response; Non-Transportation Related Onshore and Offshore Facilities; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[FRL–5930–1]

RIN 2050–AC62

Oil Pollution Prevention and Response; Non-Transportation Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) proposes to revise the Spill Prevention, Control, and Countermeasure (SPCC) Plan requirements, found at 40 CFR part 112, to reduce its information collection burden. Proposed revisions would: give facility owners or operators flexibility to use alternative formats for SPCC Plans; allow the use of certain records maintained pursuant to usual and customary business practices, or pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to be used in lieu of records mandated by the SPCC requirements; reduce the information required to be submitted after certain spill events; and extend the period in which SPCC Plans must be reviewed and evaluated. EPA also proposes to amend the Facility Response Plan (FRP) requirements, found at 40 CFR 112.20, for two purposes. First, EPA proposes to provide a method to calculate storage capacity when certain facilities have tanks which contain mixtures of process water/waste water with 10% or less of oil. This calculation is for the sole purpose of determining whether a facility has sufficient capacity to subject it to the requirement in § 112.20 to prepare an FRP. Second, EPA proposes to amend the FRP requirements to clarify that the Integrated Contingency Plan format may be acceptable for an FRP. EPA believes that none of the proposed changes will have an adverse impact on public health or the environment. This is so because the proposal would maintain the same standards of environmental protection that the rule now affords while reducing its information collection burden.

DATES: Comments must be submitted on or before February 2, 1998.

ADDRESSES: Written comments on the proposed rule should be submitted in triplicate, by U.S. mail, to the Superfund Docket, at 401 M St., S.W., Washington, D.C. 20460 (mail code 5203G). The docket is physically located at 1235 Jefferson Davis Highway, Crystal Gateway 1, Arlington, Virginia 22202, Suite 105. Comments physically delivered to EPA by any means other than U.S. mail should go to the Arlington address. The docket number for the proposed rule is #SPCC–7. Comments may also be sent electronically to EPA at ''superfund.docket@epamail.epa.gov.'' Files should be sent in ascii format. The record supporting this rulemaking is contained in the Superfund Docket and is available for inspection, by appointment only, between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. Appointments to review the docket can be made by calling 703–603–9232. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, Oil Program Center, U.S. Environmental Protection Agency, at 703–603–8769; or the RCRA/Superfund Hotline at 800–424–9346 (in the Washington, D.C. metropolitan area, 703–412–9810). The Telecommunications Device for the Deaf (TDD) Hotline number is 800–553–7672 (in the Washington, D.C. metropolitan area, 703–412–3323).

SUPPLEMENTARY INFORMATION: The contents of this preamble are as follows:

I. Introduction
II. Request for Comment and Discussion of Proposed Revisions
III. Summary of Supporting Analyses

I. Introduction

A. Regulated Entities

Entities Potentially Regulated by this Proposal Include:

Category	NAICS codes
Petroleum and Coal Products Manufacturing	NAICS 324.
Petroleum Bulk Stations and Terminals	NAICS 42271.
Crude Petroleum and Natural Gas Extraction	NAICS 2111111.
Transportation (including Pipelines), Warehousing, and Marinas	NAICS 482–486/488112–48819/4883/48849/492–493/71393.
Electric Power Generation, Transmission, and Distribution	NAICS 2211.
Other Manufacturing	NAICS 31–33.
Gasoline Stations/Automotive Rental and Leasing	NAICS 4471/5321.
Heating Oil Dealers	NAICS 454311.
Coal Mining, Non-Metallic Mineral Mining and Quarrying	NAICS 2121/2123/213114/213116.
Heavy Construction	NAICS 234.
Elementary and Secondary Schools, Colleges	NAICS 6111–6113.
Hospitals/Nursing and Residential Care Facilities	NAICS 622–623.
Crop and Animal Production	NAICS 111–112.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. It lists the types of entities of which EPA is now aware that could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility could be regulated by this action, you should carefully examine the criteria in §§ 112.1 and 112.20 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. Statutory Authority

Section 311(j)(1)(C) of the Clean Water Act (CWA or the Act) requires the President to issue regulations establishing procedures, methods, equipment, and other requirements to prevent discharges of oil from vessels and facilities and to contain such discharges. 33 U.S.C. 1321(j)(1)(C). The President has delegated the authority to regulate non-transportation-related onshore facilities under section 311(j)(1)(C) of the Act to the U.S. Environmental Protection Agency (EPA or the Agency). Executive Order (E.O.) 12777, section 2(b)(1), 56 FR 54757 (October 22, 1991), superseding Executive Order 11735, 38 FR 21243. By this same E.O., the President has delegated similar authority over transportation-related onshore facilities, deepwater ports, and vessels to the U.S. Department of Transportation (DOT),

and authority over other offshore facilities, including associated pipelines, to the U.S. Department of the Interior (DOI). A Memorandum of Understanding (MOU) among EPA, DOI, and DOT effective February 3, 1994, has redelegated the responsibility to regulate certain offshore facilities located in and along the Great Lakes, rivers, coastal wetlands, and the Gulf Coast barrier islands from DOI to EPA. (E.O. 12777 § 2(I) regarding authority to redelegate.) The MOU is included as Appendix B to 40 CFR part 112. An MOU between the Secretary of Transportation and the EPA Administrator, dated November 24, 1971 (36 FR 24080), established the definitions of non-transportation-related facilities and transportation-related facilities. The definitions from the 1971 MOU are included as Appendix A to 40 CFR part 112.

C. Background of this Rulemaking

Part 112 of 40 CFR outlines requirements for both prevention of and response to oil spills. The prevention aspect of the rule requires preparation and implementation of the Spill Prevention, Control, and Countermeasure (SPCC) Plans. It was originally promulgated on December 11, 1973 (38 FR 34164), under the authority of section 311(j)(1)(C) of the Act. The regulation established spill prevention procedures, methods, and equipment requirements for non-transportation-related onshore and offshore facilities with aboveground oil storage capacity greater than 1,320 gallons (or greater than 660 gallons in a single container), or buried underground oil storage capacity greater than 42,000 gallons. Regulated facilities are also limited to those that, because of their location, could reasonably be expected to discharge oil in harmful quantities into the navigable waters of the United States or adjoining shorelines.

The SPCC requirements have been amended a number of times. On August 29, 1974, the regulation was amended to set out the Agency's policies on civil penalties for violation of section 311 requirements. 39 FR 31602. On March 26, 1976, the rule was again amended, primarily to clarify the criteria for determining whether or not a facility is subject to regulation. 41 FR 12567. Other revisions made in the March 26, 1976, rule clarified that the SPCC Plan must be in written form and specified the procedures for development of SPCC Plans for mobile facilities.

Implementation of the regulation since the 1976 revision indicated the need for other changes, primarily to clarify and simplify the rule. Therefore, on May 20, 1980, the Agency proposed further revisions to the SPCC rule. 45 FR 33814. The 1980 proposal was never finalized because the Agency believed these proposed changes needed additional justification. However, continuing experience with administering the program provided that justification and demonstrated a need for clarifications to 40 CFR 112.7. Accordingly, on October 22, 1991, the Agency proposed certain changes to 40 CFR 112.7 similar to those proposed in 1980. 56 FR 54612.

The October 1991 proposed revisions involved changes in the applicability of the regulation and the required procedures for the completion of SPCC Plans, as well as the addition of a facility notification provision. The proposed rule also reflected changes in the jurisdiction of section 311 of the Act made by amendments to the Act in 1977 and 1978. To date, the proposal has not been finalized.

On November 4, 1992 (57 FR 52705), the Agency promulgated a revision to the civil penalty provisions for violations occurring prior to the enactment of the Oil Pollution Act of 1990 (OPA). On March 11, 1996, EPA rescinded that penalty provision because it no longer accurately reflected the penalties provided for under section 311(b) of the Act, as amended by OPA. 61 FR 9646.

On February 17, 1993, the Agency again proposed further clarifications of and technical changes to the SPCC rule, and facility response plan requirements to implement OPA. 58 FR 8824. The proposed changes to the SPCC prevention requirements included clarifications of certain requirements, contingency plans for facilities without secondary containment, prevention training, and methods of determining whether a tank would be subject to brittle fracture. The facility response plan requirements of the 1993 proposal were promulgated on July 1, 1994, (59 FR 47384) and codified at 40 CFR 112.20–21. To date, the prevention requirements in the 1993 proposal have not been finalized.

In 1996, EPA concluded a survey of SPCC facilities. EPA used the results of that survey to help develop this proposed rule. The survey results are part of the administrative record for this rulemaking.

The purpose of this proposal is to reduce the information collection burden now imposed by the prevention requirements in the SPCC rule and the response requirements in the FRP rule without creating an adverse impact on public health or the environment. It supplements the 1991 and 1993 proposals. The earlier proposals remain pending, except for the withdrawal in this notice of the proposed 1991 definition of ''SPCC Plan.'' A revised definition of that term is being reproposed today. EPA will, after considering public comments, promulgate a rule finalizing this proposal. In that rule, EPA will also finalize the 1991 and 1993 proposals. EPA is not seeking additional comments on either the 1991 or 1993 proposals.

II. Request for Comment and Discussion of Proposed Revisions

A. Request for Comment

EPA proposes to reduce the information collection burden of the SPCC rule through program changes. In connection with these proposed changes, EPA requests public comment on new standards, technologies, or approaches that have been developed since the enactment of OPA which would reduce the burden of other SPCC rule requirements, without compromising environmental protection. EPA requests comments on these possible measures in order to discover additional ways to reduce the information collection burden of the rule. Conversely, EPA also seeks comments on measures not now required that would enhance the environmental protection the SPCC rule provides. Both of these requests for public comments are for the purpose of securing information to develop possible future rules or policies, and are not for the purpose of developing a final rule implementing this proposed rule. Lastly, for purposes of developing a final rule, EPA is considering whether any change is justified in the level of storage capacity which subjects a facility to the requirement to prepare an SPCC Plan. Currently, a facility with a total aboveground storage capacity of 1,320 gallons or less of oil, but that has a single container with a capacity in excess of 660 gallons of oil is subject to SPCC requirements. EPA is considering eliminating the provision in the current rule that requires a facility having a container with a storage capacity in excess of 660 gallons to prepare an SPCC Plan, as long as the total capacity of the facility remained at 1,320 gallons or less. The effect of such a change would be to raise the threshold for regulation to an aggregate aboveground storage capacity greater than 1,320 gallons, thereby eliminating the need for facilities with less than that capacity to prepare an SPCC Plan. EPA invites public comment on this issue and supporting data where available.

B. Proposed Program Revisions

Specific proposed revisions are discussed below.

40 CFR 112.2

On October 22, 1991, EPA proposed a definition for ''SPCC Plan or Plan.'' 56 FR 54612, 54632. Today, EPA is withdrawing that proposal in favor of a revised definition. The proposed rule would describe an SPCC Plan, and would allow an Integrated Contingency Plan or a State plan that meets all the requirements of part 112 to be counted as an SPCC Plan, if it is sequentially cross-referenced from the requirement in § 112.7 to the page(s) of the equivalent requirement in the other plan. The Regional Administrator may accept any other format if it: (1) meets all regulatory requirements in the SPCC rule; and, (2) is sequentially cross-referenced by SPCC rule provision to the page(s) of the equivalent requirement in the other plan. The proposed change would allow facilities new flexibility in formatting an SPCC Plan. A new facility developing an SPCC Plan would have the opportunity to use the most convenient acceptable format. Existing facilities could also elect to use one of the proposed alternative formats. EPA contemplates that at least two types of formats could be used in addition to the format prescribed in § 112.7, and would amend the rule to include those formats as acceptable examples. The formats are discussed below.

Integrated Contingency Plans or ICPs. One format that would be allowed is an Integrated Contingency Plan (ICP) prepared in accordance with the notice published at 61 FR 28642, June 5, 1996. The intent of the ICP is to provide a mechanism for consolidating multiple plans that facilities may have prepared to comply with various regulations into one functional emergency response plan.

The ICP was developed for facilities to integrate emergency response plan requirements. EPA does not contemplate that the use of an ICP or other format would reduce the information collection burden, but it would simplify compliance with multiple applicable statutes and rules.

State Plans and Requirements. Approximately 20 States have oil spill prevention requirements pursuant to State law. Included in those requirements is often the responsibility to prepare an SPCC-like plan. The proposed rule would allow an owner or operator of a facility flexibility to prepare a State SPCC-like plan in lieu of a Federal SPCC Plan if the State plan meets all the regulatory requirements contained in part 112. Like ICPs, State plans would also have to be cross-referenced sequentially from the Federal SPCC requirement in part 112 to the plan page(s) containing the equivalent requirement. In cases where an owner or operator of a facility chooses to prepare a State plan containing only some of the elements required in the Federal plan, the State plan would have to: (1) contain elements that are equal to or more stringent than Federal SPCC requirements; (2) be sequentially cross-referenced by SPCC rule provision to the page(s) of the equivalent Plan provision; and, (3) be supplemented by elements that meet the remainder of the EPA requirements contained in part 112.

40 CFR 112.4(a)

Section 112.4(a) requires that an owner or operator of a facility subject to the SPCC rule provide certain information to EPA after a discharge of 1,000 gallons of oil into or upon the navigable waters of the United States or adjoining shorelines in a single event, or when two reportable spills of any size occur within any twelve month period. Reportable spills are defined at 40 CFR 110.3. 61 FR 7419, February 28, 1996. EPA proposes to reduce the information that an owner or operator must report pursuant to § 112.4(a). The Agency proposes to require that the owner or operator would report: (1) the name of the facility; (2) the name(s) of the owner or operator of the facility; (3) the location of the facility; (4) a description of the facility, including maps, flow diagrams, and topographical charts; (5) the cause of the spill(s), including a failure analysis of system or subsystem in which the failure occurred; (6) corrective actions and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements; (7) additional preventive measures taken or contemplated to minimize the possibility of recurrence; and, (8) such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event. EPA would eliminate from the rule the need to always submit: (1) the date and year of initial facility operation; (2) maximum storage or handling capacity of the facility and normal daily throughput; and, (3) a complete copy of the SPCC Plan with any amendments. EPA believes that the information that would be eliminated from a post-spill report is not always necessary in order to accurately assess the spill or to require appropriate corrective action. The Regional Administrator would still retain discretion to require information that is specified by the current rule in a post-spill report, or any other information as he/she finds necessary. The reporting requirements under 40 CFR part 110 would still apply to any discharge of oil to navigable waters or adjoining shorelines that is ''harmful'' as specified in § 110.3.

40 CFR 112.5(b)

An owner or operator of a facility subject to the SPCC regulations must review and evaluate a facility's SPCC plan at least once every three years from the date the facility becomes subject to 40 CFR part 112. EPA is proposing to extend the period in which an owner or operator must conduct this review and evaluation from at least once every three years to at least once every five years. EPA is proposing this change because it believes that it would have the effect of reducing the record keeping burden, thus saving time and money for facilities, while causing no harm to the environment. A facility owner or operator would still have to amend an SPCC Plan whenever there is a change in facility design, construction, operation, or maintenance which materially affects the facility's potential for discharge of oil into or upon the navigable waters of the United States or adjoining shorelines. 40 CFR 112.5(a). Therefore, absent such changes, an SPCC plan should continue to provide adequate protection against discharges for a five year period.

In its 1991 proposal to amend the SPCC rule, EPA solicited comments on whether owners or operators of facilities should have to affix a signed and dated statement to the SPCC Plan indicating that the triennial review has taken place and whether or not amendment of the Plan is required. EPA did not at that time propose a rule change. 56 FR 54612, 54616, 54629, October 22, 1991. Today, EPA is implementing that request for comments with a proposed rule change that would provide that an owner or operator must certify completion of the review and evaluation. An owner or operator, for purposes of this certification, includes any person with authority to fully implement the Plan, e.g., a facility manager. The certification would entail little additional information collection burden as it would merely note completion of the review and evaluation process at least once every five years. See 5 CFR 1320.7(j)(1). It would be maintained with the Plan at the facility, and would provide EPA with written proof that the owner or operator has complied with the rule.

40 CFR 112.7 Introduction

EPA is proposing to amend the introduction to § 112.7 so that its language conforms to the newly proposed definition of an SPCC Plan in § 112.2. See the above discussion. The change to the introduction would merely track language in proposed § 112.2 to allow facilities flexibility to use certain alternative formats in lieu of the format prescribed in the SPCC rule, such as the ICP format, certain State formats, or other formats acceptable to the Regional Administrator.

40 CFR 112.7(e)(2)(iii)(D)

EPA is proposing to amend § 112.7(e)(2)(iii)(D), which applies to bulk storage tanks (onshore), excluding production facilities. Section 112.7(e)(2)(iii) authorizes the drainage of rainwater from the diked area into a storm drain or an effluent discharge that empties into an open water course, lake, or pond, and bypasses the in-plant treatment system if four conditions are met. 40 CFR 112.7(e)(2)(iii)(A)–(D). The change would allow the use of records recording stormwater bypass events which are required to be kept under a National Pollutant Discharge Elimination System (NPDES) permit. In the NPDES regulations, ''bypass'' is defined to mean the ''intentional diversion of waste streams from any portion of a treatment facility.'' 40 CFR 122.41(m)(1)(I).

The NPDES regulations set forth conditions that all NPDES permits must contain. 40 CFR 122.21. One of these NPDES ''standard conditions'' allows for excusable bypasses under certain conditions. 40 CFR 122.41(m)(2), (3), and (4). One of the conditions is that the permittee must provide notice of the bypass event. 40 CFR 122.41(m)(3). Under 40 CFR 122.41(j)(2), the permittee must maintain records of all such bypass events for at least three years from the date of the report. These permit conditions for notification and record keeping serve the same objective as the SPCC rule requirement in § 112.7(e)(2)(iii)(D), and the documentation is therefore acceptable to satisfy the SPCC requirement. Furthermore, the proposed change would reduce the information collection burden imposed by the SPCC rule. Owners or operators would no longer be required to maintain duplicate records of the same event pursuant to different regulatory programs.

This proposed change would also affect the information collection burden imposed by § 112.7(e)(5)(ii)(A). This section requires inspection of diked areas in onshore oil production facilities prior to drainage as provided in § 112.7(e)(2)(iii)(B), (C), and (D). By the cross reference to the record keeping requirements in § 112.7(e)(2)(iii)(D), the requirement to maintain adequate records of such events is included. Therefore, when those records of bypass event notification are maintained at onshore oil production facilities pursuant to NPDES permitting conditions as discussed above, duplicative record keeping under part 112 would be unnecessary.

40 CFR 112.7(e)(2)(vi)

Section 112.7(e)(2)(vi) requires periodic integrity testing of aboveground tanks, taking into account tank design (floating roof, etc.), and using such techniques as hydrostatic testing, visual inspection, or a system of non-destructive shell thickness testing. It further requires maintenance of comparison records when appropriate. Tank supports and foundations should be included in these inspections. In addition, the rule requires that the outside of the tank should be frequently observed by operating personnel for signs of deterioration, leaks which might cause a spill, or accumulation of oil inside diked areas.

EPA proposes to amend § 112.7(e)(2)(vi) to provide that usual and customary business records would suffice to meet the record keeping requirements of the section. Among such usual and customary business records are those maintained pursuant to API Standards 653 and 2610.

API Standard 653 concerns tank inspection, repair, alteration, and reconstruction. It is considered the predominant standard for aboveground tank inspection and its provisions are based on tank design principles found in API Standards 620 and 650. API Standard 653 calls for owners or operators of tanks and associated systems to maintain a complete record file consisting of construction, repair/alteration history, and inspection history records. Construction records include nameplate information, drawings, specifications, construction complete reports, and any results of material tests and analyses. Repair/alteration history includes all data accumulated on a tank from the time of its construction with regard to repairs, alterations, replacements, and service changes. Inspection history includes all measurements taken, the condition of all parts inspected, and a record of all examinations and tests.

API Standard 2610 concerns design, construction, operation, maintenance, and inspection of terminal and tank facilities. It incorporates the requirements of many different standards for tanks into one document. The Standard recommends that records should be kept of the activities conducted pursuant to the Standard. It recommends that periodic inspection and preventive maintenance should be conducted on all transfer systems to control leaks. Accurate inventory records may be maintained and periodically reconciled for indication of possible leakage from tanks and piping systems. It further calls on the operator to keep complete maintenance records for all equipment within a terminal.

40 CFR 112.7(e)(8)

EPA proposes to amend § 112.7(e)(8) to provide that usual and customary business records, such as records maintained pursuant to API Standards 653 and 2610, would suffice to meet the requirements of the section. The revision would have the effect of reducing the information collection burden of the SPCC rule. See the discussion concerning usual and customary business practices above.

The section requires that inspections required by part 112 be in accordance with written procedures developed for the facility by the owner or operator. These written procedures and a record of inspections, signed by the appropriate supervisor or inspector, must be made a part of the SPCC Plan and maintained for a period of three years.

40 CFR 112.20(f)(4)

The owner or operator of any non-transportation-related onshore facility that, because of its location could be expected to cause substantial harm to the environment by discharging oil in harmful quantities into or on the navigable waters of the United States or adjoining shorelines, is required to prepare and submit a facility response plan to EPA. To determine whether a facility could cause substantial harm, an owner or operator of a facility must review the criteria listed in Appendix C of the rule and base his/her determination on those criteria. A facility that transfers oil over water to or from vessels and that has a total oil capacity greater than or equal to 42,000 gallons would meet the substantial harm criteria and be required to prepare and submit a response plan as required by § 112.20 to the appropriate Regional Administrator. Any other facility with a capacity of one million gallons or more would evaluate the criteria in 40 CFR 112.20(f)(1)(ii)(A)–(D) and work through the flowchart in Appendix C to determine whether it is a substantial harm facility.

EPA proposes to add a new paragraph to § 112.20(f) to provide a method to calculate the oil storage capacity of aboveground tanks containing a mixture of process water/waste water with 10% or less of oil. EPA is proposing this change because it believes that the harm due to spills from tanks that contain 90% or more of process water/waste water is roughly proportional to their oil content. Discharges from tanks containing process water/waste water and 10% or less oil will cause less harm to the environment than tanks containing a greater proportion of oil. Facilities that are required to prepare and submit facility response plans must do so because of the substantial harm that discharges of oil from those facilities might cause. That substantial harm is predicated, at least in part, on a storage capacity determination. If there is a smaller percentage of oil in a tank, there will be less likelihood of great harm. Therefore, EPA believes that the entire capacity of process water/waste water tanks with 10% or less of oil should not be counted in the capacity necessary to subject a facility to the requirement to prepare a facility response plan. Only the oil portion of the storage capacity in process water/waste water of 10% or less oil would be counted. EPA believes that an oil threshold capacity to determine substantial harm calculations of 10% or less in tanks containing process water/waste water is a reasonable one. It is reasonable because it exempts lower risk facilities, from which discharges would not reach substantial harm levels, from having to prepare facility response plans.

The proposed rule change, however, would have no effect on the calculations necessary to determine whether to prepare an SPCC Plan. Calculation of capacity under the SPCC rule of tanks containing mixtures of process water/waste water and oil would continue to be done as it is now. No change is necessary in SPCC capacity calculations because SPCC Plans are designed for prevention purposes, not response. While harm might result from discharges from these SPCC facilities, it would not reach the substantial harm level. Finally, this proposed change would not apply to the oil capacity determination for substantial harm saline process water/waste water from oil drilling, production, or workover facilities because discharges from such facilities have a greater likelihood of causing environmental damage than facilities that do not handle saline water.

Pursuant to the proposed rule, a facility owner or operator would determine the percentage of oil in the process or waste water in a tank. If the percentage of oil varies over a period of time, the owner or operator would use the highest percentage of oil for purposes of the capacity calculation. If the capacity of oil is 10% or less, the owner or operator would multiply the percentage of oil by the capacity of the tank or container. If appropriate, the owner or operator would then add the volume of oil calculated to the total capacity of any other oil storage tank or container with 100% oil or mixtures of oil and process or waste water above the 10% amount to determine its total capacity for the substantial harm determination of § 112.20(f).

40 CFR 112.20(h)

EPA proposes to amend § 112.20(h) to clarify that an Integrated Contingency Plan (ICP) prepared in accordance with the notice published at 61 FR 28642, June 5, 1996 is an acceptable format for a facility response plan. The ICP was developed for facilities to integrate emergency response plan requirements. The intent of the ICP is to provide a mechanism for consolidating multiple plans that facilities may have prepared to comply with various regulations into one functional emergency response plan. Like the proposed requirements for SPCC Plans, the FRP rule already provides for cross-referencing. Similarly, an owner or operator who uses the ICP format must meet all of the regulatory requirements of the FRP rule for that format to be an acceptable substitute for the present FRP format.

EPA does not contemplate that the use of an ICP or other format would reduce the information collection burden of the FRP rule, but it would simplify compliance with multiple applicable statutes and rules.

Appendix C

EPA also proposes to amend Appendix C to this part to reflect changes proposed in § 112.20(f)(4). EPA also proposes to amend section 2.1 of Appendix C to state the correct capacity that subjects a facility to FRP requirements if it transfers oil over water to or from a vessel. That capacity in section 2.1 of Appendix C should read ''greater than or equal to 42,000 gallons * * *'' as specified in § 112.20(f)(1)(I).

III. Summary of Supporting Analyses

A. Executive Order 12866

Under E.O. 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the E.O. The E.O. 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 obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

Pursuant to the terms of E.O. 12866, it has been determined that this proposed rule is a ''significant regulatory action'' because it raises novel legal or policy issues. Such issues include proposed measures which would relieve some facilities of regulatory mandates and could change the manner in which facilities comply with remaining mandates. Therefore, this action was submitted to OMB for review. Changes made in responses to the OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a significant adverse impact on a substantial number of small entities. EPA has determined that this proposed rule would not have a significant adverse impact on a substantial number of small entities because it would impose few if any new burdens, and overall would substantially reduce existing burdens on small businesses. Therefore, I certify that this proposed rule is not expected to have a significant adverse impact on a substantial number of small entities. Thus, no Regulatory Flexibility Analysis is necessary.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule will be submitted for approval to OMB as required by the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* Information Collection Request (ICR) documents

have been prepared by EPA (EPA ICR no. EPA 0328.06 and 1630.04) and copies may be obtained from Sandy Farmer, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., S.W.; Washington, D.C. 20460 or by calling 202–260–2740. These ICRs are also available for viewing or downloading at EPA's ICR Internet site at http://www.epa.gov/icr.

EPA does not collect the information required by the Oil Pollution Prevention regulation (i.e., the SPCC Plan) on a routine basis. SPCC Plans ordinarily need not be submitted to EPA, but must be maintained at the facility. Preparation, implementation, and maintenance of an SPCC Plan by the facility helps prevent oil discharges, and mitigates the environmental damage caused by such discharges. Therefore, the primary user of the data is the facility.

Although the facility is the primary data user, EPA also uses the data in certain situations. EPA primarily uses SPCC Plan data to ensure that facilities comply with the regulation. This includes design and operation specifications, and inspection requirements. EPA reviews SPCC Plans: (1) When facilities submit the Plans because of certain oil discharges, and (2) as part of EPA's inspection program. Note however, that the proposed rule would eliminate the necessity to submit the entire Plan after certain discharges, and merely retain the requirement that it be maintained at the facility. State and local governments also use the data, which are not necessarily available elsewhere and can greatly assist local emergency preparedness planning efforts. Preparation of the information for affected facilities is required pursuant to section 311(j)(1) of the Act as implemented by 40 CFR part 112.

Through this rulemaking, EPA proposes to reduce the reporting and record keeping burden for facilities regulated under the SPCC regulation by: (1) expanding the format of an acceptable SPCC plan to include plans prepared to meet State or other Federal standards (i.e., State plans, Integrated Contingency Plans, etc.); (2) extending the period of time that a facility must review its Plan from at least once every three years to at least once every five years; and (3) reducing the reporting requirements in the event of certain reportable oil spills and the record keeping requirements relating to certain discharges of rainwater from a diked area. In addition to the program changes outlined above, EPA is also proposing to decrease the information collection burden calculated for the SPCC rule so that the information collection burden incurred by persons in the normal course of their business activities would no longer be attributed to the part 112 burden.

To quantify the effect of these proposed changes on reducing burden to the regulated community, EPA relied, in part, on data gathered through the 1995 SPCC survey. EPA developed a series of analyses using the survey data including the paper EPA produced in 1996 entitled ''Effectiveness of EPA's SPCC Program on Spill Risk.'' The results of the analysis show that compliance with several specific SPCC provisions appears to reduce both the number and the amount of oil that migrates outside of a facility's boundaries. Facility practices such as tank leak detection, spill overfill protection, pipe external protection, and secondary containment, also appear to reduce the number and magnitude of oil spills. The results also indicate that a facility's compliance with even one SPCC measure may serve as a general indicator of a facility owner's/operator's awareness of the importance of other spill prevention and control measures.

The net annual public reporting and record keeping burden for this collection of information, as proposed, for newly regulated facilities is estimated to range from 37.1 to 53.5 hours, with an average burden of 39.2 hours, including time for reviewing instructions and gathering the data needed. The net annual public reporting and record keeping burden for facilities already regulated by the Oil Pollution Prevention regulation is estimated to range from 3.7 to 9.5 hours, with an average burden of 4.0 hours. These average annual burden estimates take into account the varied frequencies of response for individual facilities according to characteristics specific to those facilities, including frequency of oil discharges and facility modification. Under the proposed rule, an estimated 446,498 existing and newly regulated facilities are subject to the information collection requirements of this proposed rule during the first year of the information collection period. The net annualized capital and start-up costs average $0.3 million, and net annualized labor and operation and maintenance costs are $49.8 million.

The present information collection burden of the SPCC rule averages 2,557,194 hours per year for the information collection period. Through this rulemaking EPA proposes to reduce that burden by approximately 864,471 hours. This proposed reduction would result in an average annual burden of 1,692,723 hours.

In addition to the modifications the Agency is proposing to make to the SPCC rule, the Agency is also proposing to modify the information collection requirements of the Facility Response Plan (FRP) regulation as part of this rulemaking effort. The FRP rule (40 CFR 112.20–112.21) requires that owners and operators of facilities that could cause ''substantial harm'' to the environment by discharging oil into navigable waters or adjoining shorelines prepare plans for responding, to the maximum extent practicable, to a worst case discharge of oil, to substantial threat of such a discharge, and, as appropriate, to discharges smaller than worst case discharges. Each FRP is submitted to the Agency, which in turn, reviews and approves plans from facilities identified as having the potential to cause ''significant and substantial harm'' to the environment from oil discharges. Other low-risk, regulated facilities are not required to prepare FRPs but are required to document their determination that they do not meet the ''substantial harm'' criteria.

Through this rulemaking, EPA proposes to reduce the reporting and record keeping burden for facilities regulated under the FRP rule by adding a paragraph to § 112.20(f) to provide a method to calculate the oil storage capacity of aboveground tanks containing a mixture of process water/waste water with 10 percent or less of oil. EPA also proposes to amend § 112.20(h) to clarify that an Integrated Contingency Plan prepared in accordance with the notice published at 61 FR 28642, June 5, 1996, is an acceptable format for an FRP; and to amend section 2.1 of Appendix C to state the correct capacity that subjects a facility to FRP requirements if it transfers oil over water or to or from a vessel.

The Agency anticipates that only the first proposed change will have an appreciable impact on the burden to the regulated community. The Agency expects that the number of facilities subject to the requirements to develop an FRP and maintain the plan on a year-to-year basis will slightly decrease as a result of the proposed process water/waste water calculation. In the current ICR, EPA estimated that 5,400 facilities would be required to develop and submit FRPs and 4,482 of these facilities were large facilities (i.e., facilities with storage capacity greater than one million gallons). Of these 4,482 facilities, EPA estimated that approximately 250 facilities in the industrial manufacturing category would be excluded from the FRP requirements as a result of the proposal. Although these facilities have

already incurred costs to develop an FRP, the facilities would no longer incur costs associated with maintaining the Plan or retaining outside response contractors in the event of an oil spill. The Agency has previously estimated that it requires approximately 118 hours for facility personnel in a large, consumption facility to comply with the annual, subsequent-year reporting and record keeping requirements of the FRP rule after adjusting for compliance with other Federal and State regulations. The present information collection burden of the FRP rule averages 376,599 hours a year. Through this rulemaking EPA proposes to reduce that burden by approximately 24,190 hours. This proposed reduction would result in an annual average burden of 352,409 hours.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates and the supporting analyses used to develop burden estimates, and any suggested methods for further minimizing respondent burden, including the use of automated collection techniques. Send comments on the Information Collection Request to the Director, OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2136); 401 M St., S.W.; Washington, D.C. 20460 or E-mail farmer.sandy@epamail.epa.gov; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., N.W., Washington, D.C. 20503, marked ''Attention: Desk Officer for EPA.'' Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after December 2, 1997, a comment to OMB is best assured of having its full effect if OMB receives it by January 2, 1998. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Differentiation Between Classes of Oils

Pursuant to Public Law 104–55, 33 U.S.C. 2720, enacted November 20, 1995, most Federal agencies (including EPA) must, in the issuance or enforcement of any regulation or the establishment of any interpretation or guideline relating to the transportation, storage, discharge, release, emission, or disposal of a fat, oil, or grease, consider differentiating between and establishing separate classes for animal fats and oils and greases, fish and marine mammal oils, and oils of vegetable origin (as opposed to petroleum and other oils and greases). EPA has considered whether differentiation between and establishment of separate classes of oils is appropriate for this proposed rule and concluded that it is not. This conclusion is based on the fact that the EPA proposal would reduce the information collection burden for all classes of facilities. Achievement of that goal does not require differentiation among classes of oils.

E. Unfunded Mandates

Pursuant to section 202 of the Unfunded Mandates Reform Act (the Act) of 1995, enacted March 22,1995, Federal agencies must prepare a statement to accompany any rule in which the estimated costs of State, local, or tribal governments in the aggregate, or to the private sector, will be $100 million or more in any one year. Section 205 of the Act requires agencies to select the most cost-effective and least-burdensome alternative that achieves the objective of the rule and that is consistent with statutory requirements. Section 203 of the Act requires an agency to establish a plan for informing and advising any small government that may be significantly impacted by the rule. Small governments would not be significantly impacted by this proposed rule, therefore, it is not necessary to establish a plan pursuant to section 203. In fact, the proposed rule would reduce the information collection burden on small governments that have facilities which are subject to the SPCC rule.

EPA has determined that this proposed rule does not include a Federal mandate that would result in estimated costs of $100 million or more either to State, local, or tribal governments in the aggregate, or to the private sector in any one year. This determination is based on the fact that the proposed rule would impose no new mandates, and would reduce costs to the private sector, while imposing no new costs on State, local, or tribal governments. Thus today's proposal is not subject to the requirements of sections 202 and 205 of the Act.

F. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) which are developed or adopted by voluntary consensus standard bodies. In those cases where the Act applies and where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

Without necessarily deciding whether the Act applies here, EPA invites comment on the potential use of voluntary consensus standards in this rulemaking. In particular, as noted above, EPA proposes to amend 40 CFR 112.7(e)(2)(vi) and (e)(8) to provide that the records maintained pursuant to usual and customary business practices would suffice to meet the recordkeeping requirements of the sections. While not specifically referenced in the proposed regulation, usual and customary business records would include those maintained pursuant to American Petroleum Institute (API) Standards 653 and 2610. The Agency proposes this flexible approach to be consistent with the goal of reducing the recordkeeping requirements of this regulation. EPA invites public comment on the Agency's proposal as well as identification and information about other standards, and in particular, voluntary consensus standards, which the Agency should consider.

List of Subjects in 40 CFR Part 112

Environmental protection, Fire prevention, Flammable materials, Materials handling and storage, Oil pollution, Oil spill prevention, Oil spill response, Petroleum, Reporting and

record keeping requirements, Tanks, Water pollution control, Water resources.

Dated: November 24, 1997.

Carol Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 112 is proposed to be amended as follows:

PART 112—OIL POLLUTION PREVENTION

1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C 1321 and 1361; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

2. Section 112.2 is amended by adding the definition ''Spill Prevention, Control, and Countermeasure Plan; SPCC Plan; or Plan'' in alphabetical order to read as follows:

§ 112.2 Definitions.

* * * * *

Spill Prevention, Control, and Countermeasure Plan; SPCC Plan; or *Plan* means the document required by § 112.3 that details the equipment, manpower, procedures, and steps to prevent, control, and provide adequate countermeasures to an oil spill. The Plan is a written description of the facility's compliance with the procedures in this part. It is prepared in writing and in accordance with the format specified in § 112.7, or in the format of a plan prepared pursuant to State law, or in another format acceptable to the Regional Administrator. If an owner or operator of a facility chooses to prepare a plan using either the Integrated Contingency Plan format or a State format or any other format acceptable to the Regional Administrator, such plan must meet all of the requirements in § 112.7, and be sequentially cross-referenced from the requirement in § 112.7 to the page(s) of the equivalent requirement in the other plan.

* * * * *

3. Section 112.4 is amended by revising paragraphs (a)(1) through (a)(8) to read as follows:

§ 112.4 Amendment of SPCC Plans by Regional Administrator.

(a) * * *

(1) Name of the facility;

(2) Name(s) of the owner or operator of the facility;

(3) Location of the facility;

(4) Corrective action and/or countermeasures taken, including an adequate description of equipment repairs and/or replacements;

(5) Description of the facility, including maps, flow diagrams, and topographical maps;

(6) The cause(s) of such spill(s), including a failure analysis of system or subsystem in which the failure occurred;

(7) Additional preventive measures taken or contemplated to minimize the possibility of recurrence; and

(8) Such other information as the Regional Administrator may reasonably require pertinent to the Plan or spill event.

* * * * *

4. Section 112.5 is amended by revising the first sentence of paragraph (b) to read as follows:

§ 112.5 Amendment of Spill Prevention Control and Countermeasure Plans by owners or operators.

* * * * *

(b) Notwithstanding compliance with paragraph (a) of this section, owners and operators of facilities subject to § 112.3(a), (b), or (c) shall certify completion of a review and evaluation of the SPCC Plan at least once every five years from the date such facility becomes subject to this part. * * *

* * * * *

5. Section 112.7 is amended by revising the last sentence of the introductory text; and by revising paragraph (e)(2)(iii)(D), and the last sentence of paragraphs (e)(2)(vi), and (e)(8) to read as follows:

§ 112.7 Guidelines for the preparation and implementation of a Spill Prevention Control and Countermeasure Plan.

* * * The complete SPCC Plan shall follow the sequence outlined below, unless it is in another format acceptable to the Regional Administrator, such as one described in § 112.2, and include a discussion of the facility's conformance with the appropriate guidelines listed:

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(D) Adequate records are kept of such events, such as records required pursuant to permits issued in accordance with §§ 122.41(j)(2) and 122.41(m)(3) of this chapter.

* * * * *

(vi) * * * Records of inspections maintained pursuant to usual and customary business practices will suffice for purposes of this paragraph.

* * * * *

(8) * * * Records of inspections maintained pursuant to usual and customary business practices will suffice for purposes of this paragraph.

* * * * *

6. Section 112.20 is amended by adding paragraph (f)(4) and by revising the first sentence of paragraph (h) to read as follows:

§ 112.20 Facility response plans.

* * * * *

(f) * * *

(4) To determine the capacity of a facility storing process water/waste water with oil concentrations of 10% or less, for purposes of paragraphs (f)(1)(i) and (ii) of this section (except for saline process water/waste water from an oil drilling, production, or workover facility), the following calculations shall be used:

(i) Determine the percentage of oil in the process water/waste water of a tank or container. If the percentage of oil varies over a period of time, the highest percentage shall be used;

(ii) If the percentage of oil is 10% or less, multiply the percentage of oil by the capacity of the tank or container;

(iii) If appropriate, add the amount calculated in paragraphs (f)(4)(i) and (4)(ii) of this section to the total capacity of any other oil tank or storage container containing 100% oil or mixtures of oil and process water/waste water above 10%;

(iv)(A) A facility that transfers oil over water to or from vessels and has a storage capacity of oil greater than or equal to 42,000 gallons will be considered a facility that could cause substantial harm to the environment by discharging oil to the navigable waters or adjoining shorelines.

(B) A facility with a capacity of 1 million gallons or greater shall continue through the criteria in appendix C of this part to determine whether the facility could cause substantial harm to the environment by discharging oil to the navigable waters or adjoining shorelines.; and

(v) A facility that has completed the calculations required by this paragraph and does not meet the substantial harm threshold will not have to prepare and submit a response plan unless directed to do so by the Regional Administrator.

* * * * *

(h) A response plan shall follow the format of the model facility-specific response plan included in Appendix F to this part, unless an equivalent response plan has been prepared to meet State or other Federal requirements. * * *

* * * * *

7. Appendix C to part 112 is amended by revising section 2.0 and the first sentence of section 2.1 to read as follows:

Appendix C to Part 112—Substantial Harm Criteria

* * * * *

2.0 Description of Screening Criteria for the Substantial Harm Flowchart

A facility that has the potential to cause substantial harm to the environment in the event of a discharge must prepare and submit a facility-specific response plan to EPA in accordance with appendix F to this part. To determine the capacity of a facility storing process water/waste water with oil concentrations of 10% or less (except for saline process water/waste water from an oil drilling, production, or workover facility), the respondent shall use the method prescribed in § 112.20(f)(4). A description of the screening criteria for the substantial harm flowchart is provided below:

2.1 Non-Transportation-Related Facilities With a Total Oil Storage Capacity Greater Than or Equal to 42,000 Gallons Where Operations Include Over-Water Transfers of Oil.

A non-transportation-related facility with a total oil storage capacity greater than or equal to 42,000 gallons that transfers oil over water to or from vessels must submit a response plan to EPA. * * *

* * * * *

[FR Doc. 97–31574 Filed 12–1–97; 8:45 am]

BILLING CODE 6560–50–P

federal register

Tuesday
December 2, 1997

Part VIII

The President

Presidential Determination No. 98–4—Assistance Program for the New Independent States of the Former Soviet Union

Federal Register
Vol. 62, No. 231
Tuesday, December 2, 1997

Presidential Documents

Title 3—

The President

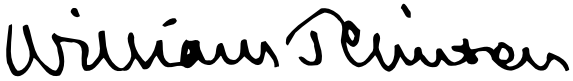
Presidential Determination No. 98–4 of November 14, 1997

Assistance Program for the New Independent States of the Former Soviet Union

Memorandum for the Secretary of State

Pursuant to subsection (o) under the heading ''Assistance for the New Independent States of the Former Soviet Union'' in Title II of the Foreign Operations, Export Financing and Related Programs Appropriations Act, for fiscal year 1996 (Public Law 104–107) and fiscal year 1997 (Public Law 104–208), I hereby determine that it is important to the national security interest of the United States to make available funds appropriated under that heading without regard to the restriction in that subsection.

You are authorized and directed to notify the Congress of this determination and to arrange for its publication in the **Federal Register.**



THE WHITE HOUSE,
Washington, November 14, 1997.

[FR Doc. 97–31772
Filed 12–1–97; 9:09 am]
Billing code 4710–10–M

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This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with ''P L U S'' (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/nara/fedreg/fedreg.html.

The text of laws is not published in the **Federal Register** but may be ordered in ''slip law'' (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). The text will also be made available on the Internet from GPO Access at http://www.access.gpo.gov/su_docs/. Some laws may not yet be available.

H.R. 2159/P.L. 105–118

Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1998 (Nov. 26, 1997; 111 Stat. 2386)

H.R. 2267/P.L. 105–119

Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1998 (Nov. 26, 1997; 111 Stat. 2440)

H.J. Res. 103/P.L. 105–120

Waiving certain enrollment requirements with respect to certain specified bills of the One Hundred Fifth Congress. (Nov. 26, 1997; 111 Stat. 2527)

S. 1026/P.L. 105–121

Export-Import Bank Reauthorization Act of 1997 (Nov. 26, 1997; 111 Stat. 2528)

Last List November 28, 1997