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Contents

Federal Register

Vol. 62, No. 242

Wednesday, December 17, 1997

Agricultural Marketing Service
PROPOSED RULES
Fruits, vegetables, and other products, fresh:
Destination market inspections; fees, 66033–66036

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Federal Crop Insurance Corporation
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service

Air Force Department
NOTICES
Meetings:
Scientific Advisory Board, 66059

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Rinderpest and foot-and-mouth disease, etc.; disease status change—
Luxembourg, 65999–66001

Army Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Evans Subpost Fort Monmouth, NJ; disposal and reuse, 66059
Privacy Act:
Systems of records, 66059–66061

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66105–66106
Grants and cooperative agreements; availability, etc.:
Human Immunodeficiency Virus (HIV) prevention; program application, 66106–66111

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Head Start—
Child development credentialing program, 66111–66112

Coast Guard
RULES
Drawbridge operations:
North Carolina, 66005–66006
Virginia, 66006
PROPOSED RULES
Drawbridge operations:
North Carolina, 66039–66040

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Macau, 66054–66055
Mexico, 66055–66056
Harmonized Tariff Schedule:
Textile and apparel categories; availability of correlation for 1998, 66057
Textile and apparel categories; changes to 1997 correlation, 66056–66057
Special access and special regime programs; requirements:
Carribean Basin countries, 66057–66058

Customs Service
NOTICES
Commercial guager:
Approval—
V.I.P. Cargo Surveys Inc., 66177

Defense Department
See Air Force Department
See Army Department
See Navy Department
NOTICES
Meetings:
Defense Science Board Task Force on Satellite Reconnaissance, 66058
Military Personnel Testing Advisory Committee, 66058

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Bilingual education and minority language affairs—
State bilingual program, 66068

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Colorado, 66007–66008
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Ethalflualin, 66008–66014
Pesticide residues; tolerances revocation for commodities no longer regulated, 66020–66026
Primisulfuron-methyl, 66014–66020
PROPOSED RULES
Air pollutants, hazardous; national emission standards:
Pesticide active ingredient production, 66049
Air quality implementation plans; approval and promulgation; various States:
Arizona, 66040–66042, 66043–66046
Colorado; correction, 66046–66049
Texas, 66042–66043
Water pollution; effluent guidelines for point source categories:
Industrial laundry, 66182–66214

NOTICES
Air quality implementation plans; approval and promulgation; various States:
Montana, 66076–66077
Pesticide, food, and feed additive petitions:
Bayer Corp., 66077–66083
DowElanco, 66083–66091
Ecolab Inc., et al., 66091–66094
Pesticides; experimental use permits, etc.:
DowElanco, 66094–66095
Superfund; response and remedial actions, proposed settlements, etc.:
Industri-Plex Superfund Site; Woburn, MA, 66095
Norwood PCB Disposal Site; Norwood, MA, 66095–66096

Executive Office of the President
See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, CO; special flight rules in vicinity (SFAR No. 50-2)
Effective date; partial delay, 66248–66250
Airworthiness directives:
Agusta S.p.A., 66001–66002
Class E airspace
Correction, 66179
Restricted areas, 66002–66003
NOTICES
Committees; establishment, renewal, termination, etc.:
Aviation Rulemaking Advisory Committee, 66171–66172

Federal Communications Commission
RULES
Common carrier services:
Access charges-
Local exchange carriers; price cap performance, etc; correction, 66029–66030
Radio stations; table of assignments:
Louisiana, 66030
Nevada, 66031
New York, 66030–66031

Federal Crop Insurance Corporation
RULES
Crop insurance regulations:
Canola and rapeseed, 65991–65999

Federal Emergency Management Agency
RULES
Flood insurance program:
Insurance coverage and rates—
Standard flood insurance policy; deductable increase, 66026–66029

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Wisconsin Electric Power Co. et al., 66074–66075
Hydroelectric applications, 66075–66076
Applications, hearings, determinations, etc.:
Cinergy Services, Inc., 66068–66069
Columbia Gas Transmission Corp., 66069
DePere Energy L.L.C., 66069
KN Interstate Gas Transmission Co., 66069–66070
Logan Generating Co. L.P., 66070
MIGC, Inc., 66070–66071
National Fuel Gas Supply Corp., 66071
Southern Natural Gas Co. et al., 66071–66072
Tennessee Gas Pipeline Co., 66072
Williams Natural Gas Co., 66072–66073
Williston Basin Interstate Pipeline Co., 66073–66074

Federal Highway Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66172
Environmental statements; notice of intent:
Buchanan County et al., VA, 66173
Roanoke County et al., VA, 66173–66174

Federal Maritime Commission
NOTICES
Agreements filed, etc., 66096
Freight forwarder licenses:
EXPA Corp. et al., 66096

Federal Railroad Administration
NOTICES
Applications, hearings, determinations, etc.:
CSX Transportation, Inc. et al., 66174
Union Pacific Railroad Co. et al., 66174–66175

Federal Reserve System
RULES
Truth in lending (Regulaton Z):
Residential mortgage and variable-rate transactions—
Fifteen-year historical example of rates and payments; disclosure; correction, 66179
NOTICES
Banks and bank holding companies:
Change in bank control, 66096–66097
Permissible nonbanking activities, 66097

Federal Retirement Thrift Investment Board
NOTICES
Privacy Act:
Systems of records, 66097–66098

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 66098–66105

Fish and Wildlife Service
PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Waters subject to subsistence priority; redefinition, 66216–66246

Food and Drug Administration
RULES
Medical devices:
Tumor-associated antigen immunological test system reclassification, 66003–66005
PROPOSED RULES
Medical devices:
State product liability claims preemption by Federal law
Correction, 66179
NOTICES
Medical devices:
Submission of tumor associated antigen premarket notifications [510(k)], to FDA; guidance availability, 66112–66113

Meetings:
Cardiovascular and Renal Drugs Advisory Committee, 66113
Reports and guidance documents; availability, etc:
Harmonization, international conference; general considerations for clinical trials; guidance, 66113–66119

Forest Service
PROPOSED RULES
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Waters subject to subsistence priority; redefinition, 66216–66246
NOTICES
Meetings:
Eastern Washington Cascades Provincial Advisory Committee, 66051
Yakima Provincial Advisory Committee, 66051

General Services Administration
NOTICES
Federal property management:
Sale of Government property—Negotiated Sales Contract (SF 114E); revision and stocking, 66105

Grain Inspection, Packers and Stockyards Administration
PROPOSED RULES
Grain standards:
Rye, 66036–66037
NOTICES
Agency designation actions:
Indiana, 66051
Iowa, 66051–66052

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66119–66124

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request
Correction, 66179

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Surface Mining Reclamation and Enforcement Office

International Trade Administration
NOTICES
Export trade certificates of review, 66053

International Trade Commission
NOTICES
Import investigations:
Carbon steel plate from—
China et al., 66128–66129
Recombinantly produced human growth hormones, 66129

Justice Department
NOTICES
Pollution control; consent judgments:
Barber & Sons Tobacco Co., 66129–66130
J&D Enterprises of Duluth, Inc., 66130
M&O Environmental Co. et al., 66130–66131
Trinity Industries, Inc. et al., 66131

Labor Department
See Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66131
North American Agreement on Labor Cooperation:
Operation and effectiveness; comment request, 66132

Land Management Bureau
NOTICES
Oil and gas leases:
Wyoming, 66124–66125
Public land orders:
California, 66125
Resource management plans:
San Juan, UT, 66125
Survey plat filings:
Illinois, 66125
Minnesota, 66126

Maritime Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66175–66176

National Archives and Records Administration
NOTICES
NARA Archival Information Locator (NAIL); public evaluation, 66133

National Highway Traffic Safety Administration
NOTICES
Meetings:
Research and development programs, 66176
Motor vehicle safety standards; exemption petitions, etc.:
Cooper Tire & Rubber Co., 66176–66177

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Bering sea and Aleutian Islands groundfish, 66031–66032
Ocean and coastal resource management:
Marine sanctuaries—
Florida Keys National Marine sanctuary, 66003
PROPOSED RULES
Fishery conservation and management:
West States and Western Pacific fisheries—
Northern anchovy, 66049–66050
NOTICES
Permits:
Endangered and threatened species, 66053–66054
Marine mammals, 66054

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
North Dakota, 66052

Navy Department
NOTICES
Environmental statements; availability, etc.:
Base realignment and closure—
Naval Station Puget Sound at Sand Point, Seattle, WA; disposal and reuse, 66061–66065
U.S. West Coast; development of facilities to support basing U.S. Pacific Fleet F/A-18E/F aircraft; public hearings, 66065–66066
Inventions, Government-owned; availability for licensing, 66066
Privacy Act:
Systems of records, 66066–66068

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Crane, Peter G., 66038
NOTICES
Operating licenses, amendments; no significant hazards consideratins; biweekly notices, 66133–66151
Petitions; Director's decisions:
American Electric Power Co., 66151

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 66132–66133

Office of United States Trade Representative
See Trade Representative, Office of United States

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 66151–66152
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 66154–66158
Depository Trust Co., 66158–66160
National Association of Securities Dealers, Inc., 66160–66167
Options Clearing Corp., 66167–66169
Philadelphia Stock Exchange, Inc., 66169–66170
Applications, hearings, determinations, etc.:
Ballantyne of Omaha, Inc., 66152–66153
ProFutures Capital Management, Inc., 66153–66154

Small Business Administration
NOTICES
License surrenders:
Unco Ventures, Ltd., 66170

Surface Mining Reclamation and Enforcement Office
NOTICES
Valid existing rights determinations:
Helmick, Walter D.; Monongahela National Forest, WV, 66126–66128

Surface Transportation Board
NOTICES
Rail carriers:
Cost of capital; railroad industry's annual rate, 66177

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Trade Representative, Office of United States
NOTICES
Tariff-rate quota amount determinations:
Certain cheeses from Hungary, 66170–66171

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Maritime Administration
See National Highway Traffic Safety Administration
See Surface Transportation Board

Treasury Department
See Customs Service

United States Information Agency
NOTICES
Meetings:
Public Diplomacy, U.S. Advisory Commission, 66177–66178

Separate Parts In This Issue

Part II
Environmental Protection Agency, 66182–66214

Part III
Department of Agriculture, Forest Service, and Department of Interior, Fish and Wildlife Service, 66216–66246

Part IV
Department of Transportation, Federal Aviation Administration, 66248–66250

Reader Aids

Additional information, including a list of telephone numbers, finding aids, reminders, and a list of Public Laws appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
457.....65991
Proposed Rules:
51.....66033
800.....66036
810.....66036

9 CFR
94.....65999

10 CFR
Proposed Rules:
50.....66038

12 CFR
226.....66179

14 CFR
39.....66001
71.....66179
73.....66002
91.....66248
93.....66248
121.....66248
135.....66248

15 CFR
922.....66003

21 CFR
866.....66003
Proposed Rules:
808.....66179

33 CFR
117 (2 documents) 66005, 66006
Proposed Rules:
117.....66039

36 CFR
Proposed Rules:
242.....66216

40 CFR
52.....66007
180 (3 documents) 66008, 66014, 66020
185.....66020
186.....66020
Proposed Rules:
52 (3 documents) 66040, 66042, 66043, 66046
63.....66049
441.....66182

44 CFR
61.....66026

47 CFR
69.....66029
73 (3 documents) 66030, 66031

50 CFR
679.....66031
Proposed Rules:
100.....66216
660.....66049

Rules and Regulations

Federal Register
Vol. 62, No. 242
Wednesday, December 17, 1997

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

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Canola and Rapeseed Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of canola and rapeseed. The provisions will be used in conjunction with the Common Crop Insurance Policy, Basic Provisions, which contain standard terms and conditions common to most crops. The intended effect of this action is to convert the canola and rapeseed pilot insurance program to a permanent insurance program.

EFFECTIVE DATE: This rule is effective December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Gary Johnson, Insurance Management Specialist, Research and Development, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO 64131, telephone (816) 926–3826.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be not significant for the purposes of Executive Order 12866 and, therefore, this rule has not been reviewed by OMB.

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget (OMB) under control number 0563–0053.

Unfunded Mandates Reform Act of 1995

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

Executive Order 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 economic impact on a substantial number of small entities. The regulation does not impose any burden on small entities than is required on the part of large entities. The amount of work required of insurance companies will not increase because the information to determine eligibility is already maintained in their office and the other required information is already being collected under the pilot program. No additional actions are required as a result of this rule on the part of the producer or the insurance companies. All producers must provide the same information regardless of size, including an application, acreage report, and notice of loss, if applicable. 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 12372

This program is not subject to the provisions of Executive Order 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 12988

This final rule has been reviewed in accordance with Executive Order No. 12988 on civil justice reform. The provisions of this rule will not have 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 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

On Thursday, September 18, 1997, FCIC published a proposed rule in the **Federal Register** at 62 FR 48956 to add to the Common Crop Insurance Regulations (7 CFR part 457), a new section, 7 CFR 457.161, Canola and Rapeseed Crop Provisions. The new provisions will be effective for the 1998 and succeeding crop years for canola and rapeseed with a November 30 contract change date and 1999 and succeeding crop years for canola and rapeseed with a June 30 contract change date. These provisions will replace and supersede the current unpublished pilot provisions for insuring canola and rapeseed.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of 80 comments were received from an insurance service organization, reinsured companies, a national

commodity group, a regional commodity group, state commodity groups, a state extension service, a seed company, a State Department of Agriculture director and producers. The comments received and FCIC's responses are as follows:

Comment: An insurance company commented that it is impossible to comment on the accuracy of differences in the late planted period and associated guarantee reduction from location to location as mentioned in the Background section, because the Special Provisions are not available for review.

Response: It is difficult to comment on the potential differences in the late planting period and associated guarantee reduction when the commenter does not have the Special Provisions. FCIC has determined that the variance for dates and guarantee reductions is needed to address the normal variability of planting conditions, weather influences, and crop response to late planting on a county-by-county basis. The dates and guarantee reduction percentages are subject to change by the contract change date each year. Any inaccuracies can be addressed at that time. No change has been made.

Comment: A regional commodity group requested specific counties and states to be covered by the canola and rapeseed insurance program. These counties were not a part of the original pilot area.

Response: When the canola and rapeseed Crop Provisions are published as final rule, insurance will be available when counties are added through the expansion process used for other permanent crop insurance programs. This process is outlined in the procedure ''General Guidelines and Criteria for Submitting Multiple and Individual County Crop Program Expansion Requests,'' dated May 9, 1996. A copy can be obtained by contacting the Deputy Administrator, Insurance Services Division, Risk Management Agency, 1400 Independence Avenue S.W., Washington, D.C. 20250–0801, telephone (202) 690–4494.

Comment: Grower associations, Extension specialists, a State Agriculture Department, a seed company, and producers submitted comments requesting that the pilot program be converted to a permanent program as soon as possible to allow for canola expansion into counties where canola and rapeseed insurance protection is not available.

Response: This rule converts the pilot program to a permanent program.

Comment: An insurance service organization recommended that the conversion of the canola and rapeseed pilot program to a permanent crop insurance program be deferred until the 1999 crop year since it is preferable for changes to be effective the same year for fall and spring.

Response: Many requests and comments have been received to expand the canola and rapeseed insurance program. Deferring the canola and rapeseed pilot program conversion until the 1999 crop year would delay the expansion of the canola and rapeseed insurance coverage to additional counties. Since the majority of canola and rapeseed producers are in counties with a March 15 sales closing date, converting the pilot program for 1998 spring crops will allow FCIC to meet its goal of converting the pilot program to a permanent program for most producing areas for the 1998 crop year.

Comment: A reinsured company suggested that the definition and references to ''FSA'' be deleted since there is no need for reliance on FSA information in the crop insurance program.

Response: FSA farm serial numbers are required to qualify for optional unit division in certain crop policies. In certain situations, FSA information may be used in the crop insurance program whether required or not. FCIC does not believe that such definitions ''mandate'' such use. No change has been made.

Comment: A reinsured company and an insurance service organization commented on the definition of ''good farming practices.'' The commenters questioned whether cultural practices exist that are not necessarily recognized or known by the Cooperative State Research, Education and Extension Service (CSREES). In addition it was suggested that the term ''county'' in the definition of ''good farming practices'' should be changed to ''area.''

Response: FCIC believes that the CSREES recognizes farming practices that are considered acceptable for canola and rapeseed. If a producer is following practices currently not recognized as acceptable by CSREES, there is no reason why such recognition cannot be sought by any interested party. The term ''area'' is less clear than the term ''county'' and would tend to make determinations more subjective in nature. Further, the actuarial documents are on a county basis. No change has been made.

Comment: A reinsured company recommended that in the definition of ''irrigated practice'' the words ''and quality'' be inserted after the word ''quantity.''

Response: FCIC agrees that water quality is an important issue. However, since no standards or procedures have been developed to measure water quality for insurance purposes, quality cannot be included in the definition. No change has been made.

Comment: An insurance service organization suggested various editorial changes, including the updating of certain definitions which the commenter indicated were generic and would be updated in the Basic Provisions. In addition, it was suggested that the definition of ''FSA'' be changed either by including the phrase ''an agency of the USDA'' in parentheses, or by inserting a comma before that phrase. The commenter also suggested revising the definition of ''practical to replant,'' by deleting the phrase ''of 'Practical to replant'.''

Response: All generic terms have been moved to the Basic Provisions, and any changes will be made in that rule.

Comment: A reinsured company recommended that in the definition of ''late planted'' the word ''initially'' be added between the words ''acreage'' and ''planted.''

Response: FCIC has revised the definition of ''late planted'' in the Basic Provisions to include the word ''initially.''

Comment: A reinsured company and an insurance service organization commented on the definition of ''practical to replant.'' A question was raised whether ''marketing window'' is appropriate for this crop. In addition, comments were made whether such items as ''moisture availability, condition of the field, marketing window and time to crop maturity'' are subjective and add unnecessary complexity to the program.

Response: The concept of a ''marketing window'' is most applicable to processor and fresh market crops and recognizes that canola and rapeseed are unlike these crops. However, the Federal Crop Insurance Act mandates that marketing windows be considered in determining if it is practical to replant the insured crop. Factors such as moisture availability and condition of the field are necessary to determine whether the conditions are acceptable for the producer to produce and harvest the crop before the end of the insurance period. No change has been made.

Comment: An insurance service organization questioned the use of the term ''price of damaged production.'' The commenter indicated the term is used several times in section 12, and questioned whether this definition adds anything beyond the ''local market price'' definition.

Response: The term price of damaged production is different from the local market price. The price of damaged production is used for quality adjustment if the canola production does not meet the U.S. No. 2 grade canola. No change has been made.

Comment: An insurance service organization suggested that clarification needs to be made to the current definition of ''replanting'' to ensure that the crop is replanted to the same crop as originally planted.

Response: FCIC has revised the definition of ''replanting'' in the Basic Provisions to specify replacing the seed or plants of the same crop in the insured acreage.

Comment: An insurance service organization suggested to remove the language describing when a crop must be replanted from section 7(a) for simplification.

Response: It is necessary to retain the language in section 7(a) of these Crop Provisions since acreage not replanted when it is practical to replant is uninsurable. FCIC has revised the condition when the crop must be replanted.

Comment: An insurance service organization questioned language regarding differences in conditions for replanting. Section 7(a) refers to insurable acreage ''damaged before the final planting date, to the extent that the majority of growers in the area would normally not further care for the crop,'' while the replanting payment section 10(a) says ''damaged by an insurable cause of loss to the extent that the remaining stand will not produce at least 90 percent of the production guarantee.''

Response: FCIC has made the two provisions consistent.

Comment: An insurance service organization suggested deleting ''if'' at the beginning of the last phrase in section 10(a).

Response: FCIC has simplified the provision and made it consistent with other practical to replant provisions.

Comment: An insurance service organization recommended the reference in section 11 to the 10-foot-wide strip in each field should be more specific. One sample would not be adequate in large fields. The number of strips needed will depend on the size of the field.

Response: The Basic Provisions and Crop Provisions use the plural term ''samples'' to allow the insurance provider the discretion to require more than one 10-foot-wide strip if it is necessary to obtain a more accurate appraisal of production. No change has been made.

Comment: An insurance service organization recommended a chart be developed and used for quality adjustment for industrial oil types and non-industrial types (similar to those in the coarse grains loss adjustment handbook) instead of settling claims based on prices obtained from buyers as stated in section 12(4)(ii)(D)(3).

Response: This section has been redesignated as section 12(d)(5)(ii)(C) in these crop provisions. FCIC agrees that there may be an alternative method to determine quality adjustment. However, the information needed to develop a chart for quality adjustment is presently not available. No change has been made.

Comment: An insurance company stated that section 12(d) of these Crop Provisions should be corrected from ''Mature canola and rapeseed may be adjusted for excess moisture and quality'' to ''mature canola may be adjusted for excess moisture and quality deficiencies. Mature rapeseed may be adjusted for excess moisture only.'' Rapeseed will not be adjusted for quality.

Response: FCIC has revised the Crop Provisions accordingly.

Comment: An insurance service organization commented that the calculation sequence in section 12 is difficult to follow because it is so wordy and it seems unnecessary to refer to the previous item by number as if it were on another page.

Response: Since some of the calculations involved are not performed in sequential order, it is necessary to refer to specific section numbers. Removal of the references would make the provisions less clear. No change has been made.

Comment: An insurance service organization received one comment stating that the policy should not allow the insured to defer settlement and wait for a later, generally lower appraisal.

Response: The provision in section 12(c)(1)(iv) allows deferment of a claim only if the insurance provider agrees that representative samples are necessary to more accurately determine the appraised amount of production and the insured agrees to care for the sample. If the insured does not provide sufficient care for the sample, the insurance provider may use the original appraisal. No change has been made.

Comment: A reinsured company commented that it appears that sections 13 and 14 are copied verbatim, except for one cited item addressing the percentage reduction for late planting, and that these sections were left out of other recently published Crop Provisions in anticipation of approval of the new Basic Provisions. The commenter questioned the difference with canola and rapeseed and how the subsequent removal of the sections would be accomplished. The commenter also questioned whether the comments made to the proposed Basic Provisions will be incorporated into the Basic Provisions Final Rule.

Response: The new Basic Provisions will be effective for the 1998 crop year for crops with a contract change date of November 30 or December 31 or later. Therefore, FCIC removed all common late planting and prevented planting provisions from these Crop Provisions. Sections 13 and 14 contain language that is necessary to recognize the differences in the late and prevented planting provisions for canola and rapeseed (as has been done for other crops). Those comments made to the proposed Basic Provisions deemed appropriate by FCIC have been incorporated into the Basic Provisions Final Rule.

Comment: An insurance service organization commented that sections 13(a)(1) and (2) of the proposed rule continue the current reductions for late-planted acreage, and are inconsistent with the Basic Provisions Proposed Rule, which listed a 1 percent reduction for each of the 25 days in the late planting period. The commenter noted that if the Special Provisions will vary by county, it would be better if the Crop Provisions matched the Basic Provisions. The commenter stated that different late planting periods determined by the Special Provisions is acceptable, if input from local people is considered in determining the late planting period, then the late planting period probably should not be 25 days for most crops in the northern states. The commenter questioned whether the current late planting provisions will apply if the new Basic Provisions Final Rule is not approved in time to be effective for the 1998 crop year for canola and rapeseed.

Response: FCIC has revised section 13 of these Crop Provisions to indicate that in lieu of section 16(a) of the Basic Provisions, the production guarantee for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date unless otherwise specified in the Special Provisions. The new Basic Provisions are effective beginning the 1998 crop year, in those counties with a November 30 contract change date listed in the revised canola and rapeseed Crop Provisions. The current (1997 crop year) late planting and prevented planting provisions apply to all other counties.

Comment: An insurance service organization questioned whether it is necessary in sections 13(a) and (b) to include ''amount of insurance'' (in addition to ''production guarantee'') for this APH crop. The commenter also questioned whether section 13(a) should read ''by each day planted'' or ''for each day planted.''

Response: Sections 13(a) and (b) have been moved to the Basic Provisions and, therefore, will need to include ''amount of insurance'' in addition to ''production guarantee.'' FCIC has revised the phrase from ''by each day planted'' to ''for each day planted'' in section 16 of the Basic Provisions.

Comment: A reinsured company commented that section 13 reinforces that ''practical to replant'' must be defined as the time period running through the late planting period.

Response: While section 13, now section 16 of the Basic Provisions, allows the time period to run through the late planting period, it is not required. Factors other than time must also be considered. Based on a consideration of all the factors, it is possible to determine that it is practical to replant only before the final planting date, during the late planting period or after the late planting period if replanting is generally occurring in the area.

Comment: An insurance service organization commented that section 13(a)(3), as written, does not flow from the lead-in sentence in section 13(a).

Response: The Crop Provisions and Basic Provisions have been revised to correct any such problem.

Comment: An insurance service organization commented that section 13(b) is confusing because it states that acreage planted after the late planting period will have the same guarantee as acreage that is prevented from being planted, and then adds that it must have been prevented from being planted by an insurable cause of loss occurring within the insurance period. The commenter pointed out that such acreage was planted and, therefore, was not prevented from being planted. Rather, it was prevented from being planted timely or within the late planting period.

Response: This comment was also received during the proposed rule comment period for the Basic Provisions. Section 16(b)(2) of the Basic Provisions has been revised to indicate that planting on such acreage must have been prevented by the final planting date or during the late planting period by an insurable cause occurring within the insurance period for prevented planting coverage.

Comment: An insurance service organization suggested changing section 13(c) to read ''during the late planting period'' in both sentences rather than ''after the final planting date'' since this section deals only with late-planted acreage and not prevented planting as well.

Response: FCIC has revised section 16(c) of the Basic Provisions to state that the premium amount for insurable acreage specified in sections 16 (a) or (b) will be the same as that for timely planted acreage.

Comment: An insurance service organization commented that because section 14 is in the canola and rapeseed proposed rule Crop Provisions only until they are incorporated into the new Basic Provisions, the ''Prevented planting'' definition should be included in the Crop Provisions.

Response: Since all common provisions, including definitions, have been incorporated into the Basic Provisions, there is no need to repeat the definition in this rule. No change has been made.

Comment: An insurance service organization recommended that FCIC consider reversing phrases in section 14(a)(1)(i) to match the order in (ii), or vice versa. The commenter is recommending that section 14(a)(1)(i) begin with ''For the crop year the application for insurance is accepted.''

Response: The different order in these two sections facilitates readability and comprehension. No change has been made in the corresponding sections 17(a)(1)(i) and (ii) in the Basic Provisions.

Comment: An insurance service organization recommended that FCIC consider changing section 14(a)(1)(ii) to ''...since that date (cancellation for the purpose of transferring the policy...will not be considered a break in continuity for this purpose); and.''

Response: This change would not significantly add to the understanding of the statement. No changes have been made in the corresponding section 17(a)(1)(ii) in the Basic Provisions.

Comment: An insurance service organization commented that section 14(b) seems to suggest that insureds who have chosen additional levels of coverage may select a different additional level for prevented planting. The commenter also questioned whether the Special Provisions will state which prevented planting level will apply by default if one is not specifically elected, and asked which level would be in the Crop Provisions.

Response: Insureds who have chosen additional levels of coverage may, in fact, select a different level for prevented planting. Section 17(b) of the Basic Provisions now specifies that the actuarial documents may contain additional levels of prevented planting coverage the insured may purchase. If the insured does not purchase one of those additional levels by the sales closing date, or the insured has a Catastrophic Risk Protection Endorsement, the insured will receive the prevented planting coverage specified in these Crop Provisions.

Comment: An insurance service organization commented that section 14(d)(2) seems to suggest that insureds may choose to claim prevented planting on irrigated acreage instead of planting non-irrigated acreage. The commenter added that section 14(d)(2) seems to contradict section 9(b) of the current Basic Provisions, which states that ''only that acreage for which you have adequate facilities and water, at the time coverage begins' can be reported and insured as irrigated. They also questioned whether carryover insureds could qualify for prevented planting payments based on an irrigated guarantee even though facilities or sufficient water did not exist at the time the crop should have been planted.

Response: To qualify for a prevented planting claim on irrigated acreage, the acreage must still meet all the requirements for irrigated acreage. Section 14(d)(2), now section 17(d)(2) of the revised Basic Provisions, does not contradict section 9(b) of the Basic Provisions since all it does is specify the date by which the acreage must qualify as irrigated to qualify for a prevented planting claim on irrigated acreage.

Comment: An insurance service organization commented on the organization of the table in section 14(e)(1). The commenter suggested combining portions of the table and other editorial changes which were also suggested for the table in the Basic Provisions.

Response: FCIC has revised portions of the table and made other editorial changes in section 17(e)(1) of the Basic Provisions.

Comment: An insurance service organization commented that there should be no written agreements for prevented planting acreage, and that an insured who has not raised a crop should not be able to have prevented planting acres of that crop on any ground. A reinsured company indicated it was not interested in more written agreements. However, it appeared that may be the only way to provide coverage in many cases.

Response: Based on the comments received on both the Basic Provisions and the Crop Provisions, FCIC has

determined that it is appropriate to delete references to ''written agreements'' in section 17(e) of the Basic Provisions, and to allow the use of an intended acreage report in certain instances as long as specified conditions are met.

Comment: A reinsured company commented that the word ''base'' should be deleted in all instances in section 14(e).

Response: This comment was also received on the Basic Provisions and the word ''base'' has been deleted from section 17 of the Basic Provisions.

Comment: A reinsured company commented that it presumed the determination of eligible acres in the table in section 14(e)(1) is done on a county basis.

Response: This comment was also received on the Basic Provisions and FCIC responded that eligible acres are determined on a county and crop basis.

Comment: A reinsured company commented on the determination of eligible acres for prevented planting in section 14(e)(1). The commenter stated that using the planted and prevented planting acres for the last four years will not be difficult for carryover policies. However, it will be a significant problem for transferred policies, as the prevented planting acres will not be a part of the APH record that is transferred. The commenter questioned how FCIC proposes that this information will be known by the company for a policy it gains by transfer.

Response: When policies are obtained by transfer, reinsured companies can obtain previous years' records of prevented planting acres from the insured, the ceding company, or the FCIC policyholder tracking system.

Comment: A reinsured company questioned the impact and acceptability of intended acreage reports concerning eligible prevented planting acres in section 14(e)(1). The commenter questioned the guidelines for approval of written agreements, and who has the authority to approve or disapprove such agreements. The company also questioned if, since the request for written agreement must be made on or before the sales closing date, all land added after the sales closing date by the insured is ineligible for prevented planting.

Response: The Basic Provisions have been amended so that a written agreement is no longer required to establish eligible acreage. Instead, intended acreage reports will be used. However, the reinsured company will be required to verify that the acreage reported does not exceed the number of acres of cropland in the producer's farming operation at the time the intended acreage report is submitted. The reinsured company will have the authority to accept or reject any intended acreage report based on standards approved by FCIC. This provision has also been revised to allow the number of acres determined to be eligible for prevented planting coverage to be increased if after the sales closing date specified conditions are met. Provisions in this section also allow producers who, in any of the four most recent crop years, have not produced any crop for which insurance was available, to establish eligible acres.

Comment: An insurance service organization commented that section 14(e)(3) says that the total number of acres requested for all crops cannot exceed the number of acres of cropland in the insured's farming operation for the crop year, and probably needs to allow for double-cropping, as in 14(f)(5).

Response: This provision, now located in section 17(e)(1) of the Basic Provisions, is revised to account for double cropped acreage.

Comment: An insurance service organization commented that section 14(e)(4) does not allow for land added after the sales closing date, or for business being conducted up to the last day of the sales period. The commenter also suggested that ''us'' be changed to ''your agent'' (or at least verify that ''us'' includes agents as well as the company underwriting office).

Response: These provisions, now included in section 17(e)(1)(i) of the Basic Provisions, have been revised to allow an increase in eligible prevented planting acres if the producer submits proof that additional acreage was purchased, leased, or released from any USDA program in time to plant it for the insured crop year and no cause of loss that will or could prevent planting is evident at the time the acreage is purchased, leased, or released from the USDA program. The term ''us'' refers to the company as provided in the section before the ''Agreement to insure'' in the Basic Provisions, and includes agents representing the company. No change has been made.

Comment: An insurance service organization questioned if section 14(f)(1) is intended to be a change from current language that allows prevented planting coverage for acreage less than 20 acres or 20 percent as long as the insured can show ''inputs'' were available.

Response: This change in what is now section 17(f) of the Basic Provisions, is intentional. FCIC requires the acreage to be contiguous to reduce prevented planting payments for small portions of fields that are wet in most years although planting occasionally may be possible.

Comment: A reinsured company suggested that in section 14(f)(1) the phrase ''whichever is less'' be changed to read ''whichever is larger'' and also suggested that the term ''insurable crop acreage in the unit'' be defined.

Response: The phrase ''whichever is less'' is appropriate. There is no reason to define the phrase ''insurable crop acreage in the unit'' since units, insured crop, and insured acreage are defined elsewhere in the policy. No change has been made.

Comment: An insurance service organization recommended that sections 14(f) (4) and (5) be revised to spell out the numeral ''4'' in the phrases ''the last 4 years.''

Response: This change does not significantly add to the understanding of these sections. No change has been made.

Comment: An insurance service organization questioned whether prevented planting acreage of either crop in a double-cropping history will maintain or break the continuity of the double-cropping history.

Response: Prevented planting acreage of either crop in a double-cropping history will not break the continuity of the double-cropping history. Sections 17(f)(4) and (5) of the Basic Provisions specify the last 4 years in which the insured crop was grown on the acreage.

Comment: A reinsured company commented on the provisions in section 14(f)(5). Although the commenter agreed with the concept, they questioned how a company would know if any crop from which a benefit is derived under any program administered by the USDA is planted and fails. The company also suggested modifying the sentence from may be hayed or grazed ''* * * after the final planting date for the insured crop * * *'' to ''* * * 60 days after the final planting date for the insured crop * * *''.

Response: Insurance providers must question insureds to determine if any crop was planted for the crop year on the acreage being claimed for prevented planting. Producers should not be denied grazing or haying benefits for 60 days after being prevented from planting. In many instances, cover crops are grown until preparation for planting occurs in the spring. If the producer was unable to remove the cover crop and plant a crop, such a cover crop could be hayed or grazed soon after the final planting date and a prevented planting payment would still be owed.

Comment: A reinsured company questioned how the insurer will know if a cash lease payment is also received for use of the same acreage in the same crop year as specified in section 14(f)(6), particularly if the cash lease payment is made after the prevented planting payment has already been made by the company.

Response: Insurance providers must question insureds to determine if a cash lease payment is, or will be, received for the acreage being claimed for prevented planting. Insureds who claim prevented planting on acreage they have or will cash lease would be misrepresenting a material fact and could be subject to civil and criminal false claim penalties.

Comment: A reinsured company stated that it did not disagree with the concept of section 14(f)(7) but that the provision is inconsistent with freedom to farm and is unenforceable.

Response: This section, now section 17(f)(7) of the Basic Provisions, indicates that prevented planting coverage will not be provided for any acreage for which planting history or conservation plans indicate that the acreage would have remained fallow for crop rotation purposes. This provision is necessary to protect the integrity of the program. FCIC is charged with establishing an actuarially sound insurance program, and relying upon ''intentions,'' without evidence to support such intentions is not an appropriate manner of achieving actuarial soundness. For example, if half the acreage in a farm has remained fallow every other year for the past ten years to maintain a summerfallow rotation, this is ample evidence that this is a normal practice. If such patterns exist, this provision is easier to administer than if the reinsured companies were forced to determine whether the producer actually intended to plant a crop. Since coverage for prevented planting now begins on the previous crop year's sales closing date for carry-over policies, producers could decide to claim an intent to plant acreage where the cause occurred months earlier in order to profit from the insurance program when they never intended to plant a crop. While the denial of prevented planting coverage may occasionally adversely affect some producers who genuinely intended to plant a crop, the inability to prove intent to plant and the need to protect the integrity of the program require FCIC to retain the provision. No change has been made.

Comment: An insurance service organization commented that section 14(f)(8) is unnecessary because it has been covered in 14(e).

Response: FCIC has separated the provisions of section 14(f)(8) into two separate provisions in section 17 of the Basic Provisions, and does not feel that either provision has been covered in section 14(e). No change has been made.

Comment: An insurance service organization commented that section 14(f)(9) has been added and might not be necessary if 14(f)(1) were changed to require ''proof of inputs'' available to plant and produce a crop. A reinsured company stated that they did not disagree with the concept of section 14(f)(9) but that it is an unenforceable provision. The company asked if capital on hand was considered proof that inputs were available.

Response: Since the prevented planting period could begin on the sales closing date for the previous crop year, many producers could know that they would be prevented from planting prior to the sales closing date and planting period. These producers would be in a position to claim the intent to plant higher valued crops than they normally plant. FCIC has revised the provision to clarify that proof of inputs is only necessary where there is a deviation from normal planting practices. For example, if the producer has rotated crops between corn and soybeans in alternate years and this was the year the rotational pattern showed that corn would normally be planted, the reinsured company does not need to determine whether the insured had sufficient inputs, if the producer seeks a prevented planting payment for corn. However, if the producer seeks a prevented planting payment for soybeans, the reinsured company would be required to determine whether the producer has sufficient inputs. Capital on hand would not be considered proof of inputs. If the producer could not produce receipts for seed, fertilizer, herbicides, etc., the lease of equipment or labor, or specific land preparation, it will be presumed that the crop usually planted by the producer was the crop that the producer intended to plant. While this provision may preclude a producer from receiving benefits for a crop that he or she genuinely intended to plant, the producer would still be eligible for a benefit on the crop usually planted and the need to protect program integrity outweighs its disadvantages. Since this situation should be rare, it should not impose an undue burden on the reinsured company.

Comment: A reinsured company stated that section 14(f)(11) is contrary to the freedom to farm concept. The company also questioned how the insurer would know if the crop was planted in one of the last four years.

Response: This section is now section 17(f)(12) of the Basic Provisions. The company should ask the insured if the crop was planted and this information can be verified from FCIC. This provision is intended to protect program integrity and avoid the problems associated with determining producer intent. FCIC has created an exception for new producers that qualify for coverage under section 17(e)(1)(i)(B).

Comment: An insurance service organization commented that the first sentence of section 14(f)(11) excludes prevented planting coverage on any crop types that have not been planted in at least one of the four most recent years. The commenter stated that the second sentence specifies that this refers to types requiring separate guarantees, amounts of insurance or price elections, and then says there must be an APH database or acreage must have been reported in one of the last four years. The commenter feels this suggests that, to get prevented planting coverage, the insured can set up an APH database for a type even if the insured has no actual history on it, and they recommended rewording the language if that is not the intent.

Response: Section 14(f)(11), now section 17(f)(12) of the Basic Provisions, still requires that the crop be planted in at least one of the four most recent years. The second sentence just specifies the conditions under which the crops must also be included in the APH database or reported on the acreage report. No change has been made.

Comment: Reinsured companies and an insurance service organization commented on the following provisions of section 15: (1) There are legitimate reasons for written agreements to be valid for more than one year, especially if no substantive changes occur from one year to the next. Limiting written agreements to one year only increases administrative cost, complexity and opportunity for misunderstanding and error, and flies in the face of efforts to simplify the program and reduce its administrative expense; (2) Written agreements should be effective for more than one year because: (a) There is already an exception since written agreements to establish units are continuous (unless the farming operation changes significantly); (b) FCIC does not often incorporate the written agreements into the actuarial documents within one year; and (c) FCIC's legal counsel objects to the concept of written agreements, which purportedly allows exceptions for those ''in the know'' while others may not be aware the possibility exists; (3) The commenters questioned whether these

provisions will be revised to simplify renewals; (4) The policy should require the insured to pay the cost of inspections necessary to obtain a written agreement because, in many instances there is no economic reason or incentive for a company to pursue such agreements; (5) Sections 15(a) and (e) should be combined since both deal with deadlines for written agreement requests. (The response to this comment in prior final rules has been that the sales closing date is intended to be the deadline with only limited exceptions. However, 7 of the 13 written agreement types listed in the 1998 Crop Insurance Handbook allow requests at acreage reporting time and one allows the request after acreage reporting. Of the 6 types with a sales closing date deadline, 4 are specific cases of a practice or type not listed in the actuarial, which is curious since the general type of unrated practice, type or variety can be requested at acreage reporting time. So, the exceptions seem to outnumber the rule. Many of the situations calling for written agreements do not become apparent until the acreage report is received. Therefore, the commenter again suggests this provision might be less misleading if the acreage reporting date exception noted in (e) were incorporated into (a)); (6) Provisions in section 15 that specify timing and content of the FCI–2 written agreement should not be part of the insurance policy. (New insureds would not have this information until it is too late to request a written agreement. This should have been reviewed by the insurance agent prior to acceptance of the application or issuance of the crop insurance policy.); and (7) Some of the written agreement provisions need to be carefully considered and compared to current procedures and comments to the Written Agreement proposed rule before the deadlines and annual status of written agreements are mandated in the Basic Provisions.

Response: The written agreement section was moved to section 18 of the Basic Provisions. The following responses address the questions by referencing changes made to the written agreement section of the Basic Provisions. Written agreements are intended to change policy terms or permit insurance in unusual situations. If such practices continue year to year, they should be incorporated into the policy or Special Provisions. It is important to keep non-uniform exceptions to a minimum and to ensure that the insured is well aware of the specific terms of the policy. There will no longer be exceptions to the timing or duration of written agreements except as provided in section 18. The provisions have been amended to indicate that written agreements may be submitted after the sales closing date only if the producer demonstrates that he or she was physically unable to apply prior to the sales closing date or in accordance with any regulation which may be promulgated under 7 CFR part 400. FCIC will be more vigilant in incorporating changes to the policy made by written agreement into the actuarial documents.

FCIC does not believe that a producer should bear the cost associated with any inspection done for the purposes of a written agreement. Such costs are a part of servicing the policy and, therefore, are already compensated by the expense reimbursement under the Standard Reinsurance Agreement.

In addition to the changes described above and minor editorial changes, FCIC has made the following changes to these Crop Provisions:

1. Section 1—Removed alphabetic paragraph designations and definitions of ''days,'' ''final planting date,'' ''FSA,'' ''good farming practices,'' ''interplanted,'' ''irrigated practice,'' ''late planted,'' ''late planting period,'' ''practical to replant,'' production guarantee,'' ''replanting,'' ''timely planted,'' and ''written agreement,'' and revised the definition of ''planted acreage'' for clarification.

2. Section 2—Revised to remove all provisions that were moved to the Basic Provisions.

3. Section 9(e)—Revised to add wildlife as a cause of loss to be consistent with other insurable crops.

Good cause is shown to make this rule effective upon publication in the **Federal Register**. This rule provides prevented planting coverage under the Basic Provisions. This rule must be effective prior to the contract change date for which these revised prevented planting provisions are effective. Therefore, public interest requires the agency to act immediately to make these provisions available for the 1998 crop year.

List of Subjects in 7 CFR Part 457

Crop insurance, Canola and rapeseed crop provisions.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends 7 CFR part 457 as follows:

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

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

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

2. Section 457.161 is added to read as follows:

§ 457.161 Canola and rapeseed crop insurance provisions.

The Canola and Rapeseed Crop Insurance Provisions for the 1998 and succeeding crop years are as follows:

FCIC policies:

Department of Agriculture

Federal Crop Insurance Corporation

Reinsured policies:

(Appropriate title for insurance provider)

Both FCIC and reinsured policies:

Canola and Rapeseed Crop Provisions

If a conflict exists among the policy provisions, the order of priority is as follows: (1) the Catastrophic Risk Protection Endorsement, if applicable; (2) the Special Provisions; (3) these Crop Provisions; and (4) the Basic Provisions, with (1) controlling (2), etc.

1. Definitions.

Canola. A crop of the genus *Brassica* as defined in accordance with the Official United States Standards for Grain—Subpart C—U.S. Standards for Canola.

Harvest. Combining or threshing for seed. A crop that is swathed prior to combining is not considered harvested.

Local market price (Canola). The cash price per pound for U.S. No. 2 grade canola that reflects the maximum limits of quality deficiencies allowable for the U.S. No. 2 grade canola.

Planted acreage. In addition to the definition contained in the Basic Provisions, land on which seed is initially spread onto the soil surface by any method and subsequently is mechanically incorporated into the soil in a timely manner and at the proper depth will be considered planted. Acreage planted in any other manner will not be insurable unless otherwise provided by the Special Provisions, actuarial documents, or by written agreement.

Price of damaged production. The cash price per pound available if the production were sold for canola that qualifies for quality adjustment in accordance with section 12 of these crop provisions.

Rapeseed. A crop of the genus *Brassica* that contains at least 30 percent of an industrial type of oil as shown on the Special Provisions and that is measured on a basis free from foreign material.

Swathed. Severance of the stem and seed pods from the ground and placing into windrows without removal of the seed from the pod.

2. Unit Division.

In addition to optional units by section, section equivalent or FSA farm serial number and by irrigated and non-irrigated practices,

optional units may be by type if the type is designated on the Special Provisions.

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

In addition to the requirements of section 3 of the Basic Provisions, you may select only one price election for all the canola and rapeseed in the county insured under this policy unless the Special Provisions provide different price elections by type, in which case you may select one price election for each canola and rapeseed type designated in the Special Provisions. The price elections you choose for each type must have the same percentage relationship to the maximum price offered by us for each type. For example, if you choose 100 percent of the maximum price election for a specific type, you must also choose 100 percent of the maximum price election for all other types.

4. Contract Changes.

In accordance with section 4 of the Basic Provisions, the contract change date is November 30 preceding the cancellation date for counties with a March 15 cancellation date, and June 30 preceding the cancellation date for all other counties.

5. Cancellation and Termination Dates.

In accordance with section 2 of the Basic Provisions, the cancellation and termination dates are:

State and county	Cancellation and Termination dates
All counties in Georgia	Sept. 30.
All other counties without fall planted types specified on the actuarial table.	Mar. 15.
All other counties with fall planted types specified on the actuarial table.	Aug. 31.

6. Insured Crop.

In accordance with section 8 of the Basic Provisions, the crop insured will be all canola and rapeseed in the county for which a premium rate is provided by the actuarial table:

(a) In which you have a share;

(b) That is planted for harvest as seed; and

(c) That is not, unless allowed by Special Provisions or by written agreement:

(1) Interplanted with another crop; or

(2) Planted into an established grass or legume.

7. Insurable Acreage.

In addition to the provisions of section 9 of the Basic Provisions,

(a) Any acreage of the insured crop that is damaged before the final planting date, to the extent that most producers producing crops on similarly situated acreage in the area would not normally further care for the crop, must be replanted unless we agree that it is not practical to replant; and

(b) We will not insure any acreage that does not meet the rotation requirements contained in the Special Provisions.

8. Insurance Period.

In accordance with the provisions of section 11 of the Basic Provisions, the end of the insurance period is October 31 of the calendar year in which the crop is normally harvested.

9. Causes of Loss.

In accordance with the provisions of section 12 of the Basic Provisions, insurance is provided only against the following causes of loss which occur during the insurance period:

(a) Adverse weather conditions;

(b) Fire;

(c) Insects, but not damage due to insufficient or improper application of pest control measures;

(d) Plant disease, but not damage due to insufficient or improper application of disease control measures;

(e) Wildlife;

(f) Earthquake;

(g) Volcanic eruption; or

(h) Failure of the irrigation water supply, if applicable, caused by an insured cause of loss that occurs during the insurance period.

10. Replanting Payment.

(a) In accordance with section 13 of the Basic Provisions, a replanting payment is allowed if the insured crop is damaged by an insurable cause of loss to the extent that most producers producing the crop on similarly situated acreage in the area, would not continue to care for the crop and it is practical to replant.

(b) The maximum amount of the replanting payment per acre will be the lesser of 20 percent of the production guarantee or 175 pounds, multiplied by your price election, multiplied by your insured share.

(c) When the canola or rapeseed is replanted using a practice or type that is uninsurable as an original planting, the liability for the unit will be reduced by the amount of the replanting payment that is attributable to your share. The premium amount will not be reduced.

11. Duties in the Event of Damage or Loss.

In accordance with the requirements of section 14 of the Basic Provisions, the representative samples of the unharvested crop that we may require must be at least 10 feet wide and extend the entire length of each field in the unit. If you intend to put the acreage to another use or not harvest the acreage, the samples must not be harvested or destroyed until our inspection.

12. Settlement of Claim.

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

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

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

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

(1) Multiplying the insured acreage by its respective production guarantee;

(2) Multiplying each result in section 12(b)(1) by the respective price election for each type, if applicable;

(3) If there are more than one type, totaling the results in section 12(b)(2);

(4) Multiplying the total production to be counted of each type, if applicable, (see section 12(c)) by the respective price election;

(5) If there are more than one type, totaling the results in section 12(b)(4);

(6) If there are more than one type, subtracting the total in section 12(b)(5) from the total in section 12(b)(3);

(7) If there is only one type, subtracting the total in section 12(b)(4) from the total in section 12(b)(2); and

(8) Multiplying the result in section 12(b)(6) and 12(b)(7), as applicable, by your share.

(c) The total production to count (pounds) from all insurable acreage on the unit will include:

(1) All appraised production as follows:

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

(A) That is abandoned;

(B) That is put to another use without our consent;

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

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

(ii) Production lost due to uninsured causes;

(iii) Unharvested production (mature unharvested production may be adjusted for quality deficiencies and excess moisture in accordance with section 12(d)); and

(iv) Potential production on insured acreage that you intend to put to another use or abandon, if you and we agree on the appraised amount of production. Upon such agreement, the insurance period for that acreage will end when you put the acreage to another use or abandon the crop. If agreement on the appraised amount of production is not reached:

(A) If you do not elect to continue to care for the crop, we may give you consent to put the acreage to another use if you agree to leave intact, and provide sufficient care for, representative samples of the crop in locations acceptable to us (The amount of production to count for such acreage will be based on the harvested production or appraisals from the samples at the time harvest should have occurred. If you do not leave the required samples intact, or you fail to provide sufficient care for the samples, our appraisal made prior to giving you consent to put the acreage to another use will be used to determine the amount of production to count); or

(B) If you elect to continue to care for the crop, the amount of production to count for the acreage will be the harvested production, or our reappraisal if additional damage occurs and the crop is not harvested; and

(2) All harvested production from the insurable acreage.

(d) Mature canola may be adjusted for excess moisture and quality deficiencies. Mature rapeseed may be adjusted for excess moisture only. If moisture adjustment is applicable, it will be made prior to any adjustment for quality.

(1) Canola and rapeseed production will be reduced by 0.12 percent for each 0.1 percentage point of moisture in excess of 8.5 percent. We must be permitted to obtain samples of the production to determine the moisture content.

(2) Canola production will be eligible for quality adjustment if:

(i) Deficiencies in quality, in accordance with the Official United States Standards for Grain, result in the canola not meeting the grade requirements for U.S. No. 3 or better (U.S. Sample grade) because of kernel damage (excluding heat damage), or a musty, sour, or commercially objectionable foreign odor; or

(ii) Substances or conditions are present that are identified by the Food and Drug Administration or other public health organizations of the United States as being injurious to human or animal health.

(3) Quality will be a factor in determining your loss in canola production only if:

(i) The deficiencies, substances, or conditions resulted from a cause of loss against which insurance is provided under these Crop Provisions and which occurs within the insurance period;

(ii) The deficiencies, substances, or conditions result in a net price for the damaged production that is less than the local market price;

(iii) All determinations of these deficiencies, substances, or conditions are made using samples of the production obtained by us or by a disinterested third party approved by us; and

(iv) The samples are analyzed by a grader licensed to grade canola under the authority of the United States Grain Standards Act or the United States Warehouse Act with regard to deficiencies in quality, or by a laboratory approved by us with regard to substances or conditions injurious to human or animal health.

(4) Canola production that is eligible for quality adjustment, as specified in sections 12(d)(2) and (3), will be reduced:

(i) In accordance with the quality adjustment factors contained in the Special Provisions; or

(ii) As follows if quality adjustment factors are not contained in the Special Provisions:

(A) Divide the price of damaged production by the local market price to determine the quality adjustment factor.

(B) The number of pounds remaining after any reduction due to excessive moisture (the moisture-adjusted gross pounds) of the damaged or conditioned production will then be multiplied by the quality adjustment factor to determine the net production to count.

(5) For canola, the price of damaged production and the local market price will be determined at the earlier of the date such quality adjusted production is sold or the date of final inspection for the unit subject to the following conditions:

(i) Discounts used to establish the price of damaged production will be limited to those that are usual, customary, and reasonable.

(ii) The price of damaged production will not be reduced for:

(A) Moisture content;

(B) Damage due to uninsured causes;

(C) Drying, handling, processing, or any other costs associated with normal harvesting, handling, and marketing of the canola; except, if the price of damaged production can be increased by conditioning, we may reduce the price of damaged production after the production has been conditioned by the cost of conditioning but not lower than the price of damaged production before conditioning. We may obtain prices of damaged production from any buyer of our choice. If we obtain prices of damaged production from one or more buyers located outside your local market area, we will reduce such price of damaged production by the additional costs required to deliver the canola to those buyers; or

(D) Erucic acid or glucosinolates in excess of the amount allowed under the definition of canola contained in the Official United States Standards for Grain; and

(iii) Factors not associated with grading under the Official United States Standards for Grain including, but not limited to protein and oil, will not be considered.

(e) Any production harvested from plants growing in the insured crop may be counted as production of the insured crop on an unadjusted weight basis.

For example:

You have 100 percent share in 25 acres of Fall Oleic Canola in a unit with a 650 pound production guarantee and a price election of $0.11 per pound. You are only able to harvest 14,700 pounds and there is no appraised production. Your indemnity would be calculated as follows:

(1) 25 acres x 650 pounds = 16,250 pounds of Fall Oleic Canola;
(2) 16,250 pounds x $0.11 price election = $1,788 value of guarantee for Fall Oleic Canola;
(3) 14,700 pounds x $0.11 price election = $1,617 total value of production to count for Fall Oleic Canola;
(4) $1,788 value of guarantee − $1,617 value of production to count = $171 value of loss; and
(5) $171 value of loss x 100 percent = $171 indemnity payment.

You also have a 100 percent share in 50 acres of Fall High Erucic Rapeseed in the same unit with a production guarantee of 750 pounds per acre and a price election of $0.15 per pound. You are only able to harvest 14,000 pounds and there is no appraised production. Your total indemnity for both Fall Oleic Canola and Fall High Erucic Rapeseed would be calculated as follows:

(1) 25 acres x 650 pounds = 16,250 pounds guarantee for the Fall Oleic Canola, and
50 acres x 750 pounds = 37,500 pounds guarantee for the Fall High Erucic Rapeseed;
(2) 16,250 pounds guarantee x $0.11 price election = $1,788 value of the guarantee for the Fall Oleic Canola, and
37,500 pounds guarantee x $0.15 price election = $5,625 value of the guarantee for the Fall High Erucic Rapeseed;
(3) $1,788 + $5,625 = $7,413 total value of the guarantees;
(4) 14,700 pound x $0.11 price election = $1,617 value of production to count for the Fall Oleic Canola, and
14,000 pounds x $0.15 price election = $2,100 value of production to count for the Fall High Erucic Rapeseed;
(5) $1,617 + $2,100 = $3,717 total value of production to count;
(6) $7,413 value of guarantee − $3,717 value of production = $3,696 loss; and
(7) $3,696 value of loss x 100 percent = $3,696 indemnity payment.

13. Late Planting.

In lieu of section 16(a) of the Basic Provisions, the production guarantee for each acre planted to the insured crop during the late planting period will be reduced by 1 percent per day for each day planted after the final planting date unless otherwise specified in the Special Provisions.

14. Prevented Planting.

In addition to the provisions contained in section 17 of the Basic Provisions, your prevented planting coverage will be 60 percent of your production guarantee for timely planted acreage. If you have limited or additional levels of coverage, as specified in 7 CFR part 400, subpart T, and pay an additional premium, you may increase your prevented planting coverage to the levels specified in the actuarial documents.

Signed in Washington, D.C., on December 11, 1997.

Suzette Dittrich,

Deputy Manager,

Federal Crop Insurance Corporation.

[FR Doc. 97–32848 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 97–118–1]

Change in Disease Status of Luxembourg Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations by adding Luxembourg to the list of regions where bovine spongiform encephalopathy (BSE) exists because the disease has been detected in a cow in that region. The effect of this action is to prohibit or restrict the importation of ruminants which have been in Luxembourg and certain fresh (chilled or frozen) meat, and certain other animal products and animal byproducts from ruminants which have been in Luxembourg. This action is necessary to reduce the risk that BSE could be introduced into the United States.

DATES: Interim rule effective December 2, 1997. Consideration will be given only to comments received on or before February 17, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 97–118–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Please state that your comments refer to Docket No. 97–118–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Animal Products Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231, (301) 734–3399; or e-mail: jcougill@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR parts 93, 94, and 95 (referred to below as the regulations) govern the importation of certain animals, birds, poultry, meat, animal products, animal byproducts, hay, and straw into the United States in order to prevent the introduction of various animal diseases, including bovine spongiform encephalopathy (BSE).

BSE is a neurological disease of bovine animals and other ruminants and is not known to exist in the United States.

It appears that BSE is primarily spread through the use of ruminant feed containing protein and other products from ruminants infected with BSE. Therefore, BSE could become established in the United States if materials carrying the BSE agent, such as certain meat, animal products, and animal byproducts from ruminants in regions in which BSE exists, are imported into the United States and are fed to ruminants in the United States. BSE could also become established in the United States if ruminants from regions in which BSE exists are imported.

Sections 94.18 and 95.4 of the regulations prohibit and restrict the importation of certain meat, animal products, and animal byproducts from ruminants which have been in regions in which BSE exists. These regions are listed in § 94.18 of the regulations. Furthermore, § 93.404(a)(3) states that the Animal and Plant Health Inspection Service may deny the importation of ruminants from regions where a communicable disease such as BSE exists.

Luxembourg's Ministry of Agriculture has reported a case of BSE in Luxembourg. BSE was confirmed by histopathological examination according to standardized procedures for the diagnosis of BSE. Luxembourg's Ministry of Agriculture confirmed that BSE was in a cow born in Luxembourg. The exposure of this animal to the BSE agent could only have occurred in Luxembourg. In order to reduce the risk of introducing BSE into the United States, we are, therefore, adding Luxembourg to the list of regions where BSE is known to exist. Thus, we are prohibiting or restricting the importation into the United States of ruminants which have been in Luxembourg, and certain fresh (chilled or frozen) meat, and certain other animal products and animal byproducts from ruminants which have been in Luxembourg.

We are making this action effective retroactively to December 2, 1997, as that was the day on which the case of BSE was reported by Luxembourg's Ministry of Agriculture. This effective date is necessary to ensure that the prohibitions and restrictions established by this rule apply to ruminants, as well as fresh (chilled or frozen) meat, and certain other animal products and animal byproducts from ruminants that have been shipped to the United States from Luxembourg on or after October 31, 1997.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the introduction of BSE into the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this rule effective on December 2, 1997. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action adds Luxembourg to the list of regions where BSE exists. We are taking this action based on reports we have received from Luxembourg's Ministry of Agriculture, which confirmed that a case of BSE has occurred in Luxembourg.

This emergency situation makes compliance with section 603 and timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. If we determine that this rule will have a significant economic impact on a substantial number of small entities, then we will discuss the issues raised by section 604 of the Regulatory Flexibility Act in our Final Regulatory Flexibility Analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to December 2, 1997; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306, 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

§ 94.18 [Amended]

2. In § 94.18, paragraph (a) is amended by adding the word ''Luxembourg,'' immediately after ''Great Britain,''.

Done in Washington, DC, this 11th day of December 1997.

Craig A. Reed,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 97–32811 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–54–AD; Amendment 39–10252; AD 97–26–09]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109K2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Agusta S.p.A (Agusta) Model A109K2 helicopters. This action requires inspecting the Gleason crown on the main transmission for cracks, and replacing the Gleason crown with an airworthy Gleason crown if any crack is found. This amendment is prompted by three reports of fatigue cracks found in the Gleason crown. The actions specified in this AD are intended to prevent failure of the Gleason crown, failure of the main transmission and subsequent loss of control of the helicopter.

DATES: Effective January 2, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 2, 1998.

Comments for inclusion in the Rules Docket must be received on or before February 17, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–54–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. This information may be examined at the FAA, Office of Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5125, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Registro Aeronautico Italiano (RAI), which is the airworthiness authority for Italy, recently notified the FAA that an unsafe condition may exist on Agusta Model A109K2 helicopters with main transmission assembly, part number (P/N) 109–0400–03, serial number (S/N) 005, 006, 007, 008, 010, 011, 012, 013, 014, 015, 016, 017, 018, 020, 022, 024, 027, 030, 031, 032, 033, 034, 035, 038, 039, 042, 047, 048, A2/1053, A2/1073, A2/1397, or B54895 e C347. The RAI advises that, due to reports of cracks being discovered in the Gleason crown on the main transmission, the actions specified by the Agusta Bollettino Tecnico (Technical Bulletin) No. 109K–16, dated April 24, 1997, are mandatory.

Agusta has issued Agusta Bollettino Tecnico (Technical Bulletin) No. 109K–16, dated April 24, 1997, which specifies a magnetic particle inspection of certain Gleason crowns for cracks. The RAI classified this service bulletin as mandatory and issued AD 97–122, dated April 29, 1997, in order to assure the continued airworthiness of these helicopters in Italy.

This helicopter model is manufactured in Italy and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RAI has kept the FAA informed of the situation described above. The FAA has examined the findings of the RAI, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Agusta Model A109K2 helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of the Gleason crown, failure of the main transmission, and subsequent loss of control of the helicopter. The Gleason crown is a part of the main transmission assembly and is therefore a critical component of the main rotor drive system. Due to the criticality of the Gleason crown to the continued safe flight of the affected helicopters, and the required inspection before the next 50 hours time-in-service (TIS), this rule must be issued immediately to correct an unsafe condition. This AD requires, within 50 hours TIS and thereafter at intervals not to exceed 300 hours TIS, a magnetic particle inspection of the main transmission Gleason crown for cracks. If any crack is found, replacement of the Gleason crown, P/N 109–0403–07–103, with an airworthy Gleason crown, P/N 109–0403–07–103, S/N B58264 through S/N B58270, or S/N B58272 and subsequent (S/N B58271 is not an acceptable replacement part), and vibro-etching the main transmission tag with ''S.M. 109–25094'' are required. These actions are required to be accomplished in accordance with the technical bulletin described previously.

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

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

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

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–54–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

97–26–09 Agusta S.p.A.: Amendment 39–10252. Docket No. 97–SW–54–AD.

Applicability: Model A109K2 helicopters with main transmission assembly, part number (P/N) 109–0400–03, serial number (S/N) 005, 006, 007, 008, 010, 011, 012, 013, 014, 015, 016, 017, 018, 020, 022, 024, 027, 030, 031, 032, 033, 034, 035, 038, 039, 042, 047, 048, A2/1053, A2/1073, 2/1397, or B54895 e C347, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must use the authority provided in paragraph (c) to request approval from the FAA. This approval may address either no action, if the current configuration eliminates the unsafe condition, or different actions necessary to address the unsafe condition described in this AD. Such a request should include an assessment of the effect of the changed configuration on the unsafe condition addressed by this AD. In no case does the presence of any modification, alteration, or repair remove any helicopter from the applicability of this AD.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main transmission Gleason crown (Gleason crown), failure of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD, and thereafter at intervals not to exceed 300 hours TIS, perform a magnetic particle inspection of the Gleason Crown, P/N 109–0403–07, for cracks in accordance with steps 1 through 3 of Part II of the Compliance Instructions of Agusta Bollettino Tecnico (Technical Bulletin) No. 109K–16, dated April 24, 1997.

(b) If any crack is found, remove the Gleason crown and replace it with an airworthy Gleason crown, P/N 109–0403–07–103, S/N B58264 through S/N B58270, or S/N B58272 and subsequent (S/N B58271 is not an acceptable replacement part), and vibro-etch the main transmission tag with ''S.M. 109–25094''. Replacement of the Gleason crown with an airworthy Gleason crown, P/N 109–0403–07–103, S/N B58264 through S/N B58270 or S/N B58272 and subsequent, constitutes a terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

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

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

(e) The inspections and replacement shall be done in accordance with Agusta Bollettino Tecnico (Technical Bulletin) No. 109K–16, dated April 24, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Agusta S.p.A., 21017 Cascina Costa di Samarate (VA), Via Giovanni Agusta 520, telephone (0331) 229111, fax (0331) 229605–222595. Copies may be inspected at the FAA, Office of Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on January 2, 1998.

Note 3: The subject of this AD is addressed in Registro Aeronautico Italiano (Italy) AD 97–122, dated April 29, 1997.

Issued in Fort Worth, Texas, on December 9, 1997.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 97–32992 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 97–ANM–10]

RIN 2120–AA66

Change Controlling Agency for Restricted Areas R–6412A and R–6412B; Camp Williams, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action changes the published controlling agencies for Restricted Areas R–6412A and R–6412B, Camp Williams, UT. This is an administrative change initiated by the Northwest Mountain Region. There are no changes to the boundaries, altitudes, times of designation, or activities conducted within the restricted areas.

EFFECTIVE DATE: 0901 UTC, February 26, 1998.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7686.

SUPPLEMENTARY INFORMATION:

The Rule

This action amends 14 CFR part 73 by changing the published controlling

agencies for Restricted Areas R–6412A and R–6412B, Camp Williams, UT. This is an administrative change initiated by the Northwest Mountain Region. There are no changes to the boundaries, altitudes, times of designation, or activities conducted within the restricted areas.

Since this action simply changes the published controlling agency of the affected restricted areas, and does not involve a change in the dimensions or operating requirements of the restricted areas, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 73.64 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8E, dated November 7, 1997.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, it (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1997); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal.

Environmental Review

In accordance with FAA Order 1050.1D, ''Polices and Procedures for Considering Environmental Impacts,'' this action is not subject to environmental assessments and procedures.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

PART 73—SPECIAL USE AIRSPACE

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

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 73.64 [Amended]

2. § 73.64 is amended as follows:

* * * * *

R–6412A Camp Williams UT [Amended]

By removing ''Controlling agency. FAA, Salt Lake City Tower'' and substituting the following:

''Controlling agency. FAA, Salt Lake City TRACON.''

R–6412B Camp Williams UT [Amended]

By removing ''Controlling agency. FAA, Salt Lake City Tower'' and substituting the following:

''Controlling agency. FAA, Salt Lake City TRACON.''

* * * * *

Issued in Washington, DC, on December 2, 1997.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 97–32571 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 960712192–6192–01]

RIN 0648–AD85

Florida Keys National Marine Sanctuary Final Regulations

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations which were published Thursday, January 30, 1997 (62 FR 4578). The regulations pertain to the Florida Keys National Marine Sanctuary and made revisions to the national marine sanctuary program regulations at 15 CFR Part 922.

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Michael Weiss (301) 713–2969, ext. 216.

SUPPLEMENTARY INFORMATION: Final regulations for the Florida Keys National Marine Sanctuary were published on Thursday, January 30, 1997 (62 FR 4578). These regulations were subsequently amended on June 12, 1997 (62 FR 32154). The January 30, 1997 **Federal Register** document made revisions to the national marine sanctuary program regulations at 15 CFR Part 922. The January 30, 1997 **Federal Register** document that is the subject of this correction contains amendatory language for § 922.48(b) of the national marine sanctuary program regulations, which pertains to national marine sanctuary permits. The amendatory instruction for paragraph (b) of section 922.48 was incorrect by failing to state that only the introductory language to paragraph (b) was amended, thus leaving the remaining subparagraphs to paragraph (b) unchanged. Left uncorrected, the amendatory language would erroneously result in subparagraphs (1) through (5) of paragraph 922.48(b) being deleted from the Code of Federal Regulations.

Correction of Publication

Accordingly, the **Federal Register** document published on January 30, 1997 (62 FR 4578) is corrected by revising amendatory instruction 14 on page 4607, third column, to read as follows:

''14. Section 922.48 is amended by revising paragraph (a) and the introductory text of paragraph (b) as follows:''

Nancy Foster,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 97–32857 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–12–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 866

[Docket No. 95P–0136]

Medical Devices; Reclassification of Tumor-Associated Antigen Immunological Test Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is codifying the reclassification of tumor-associated antigen immunological test systems intended as an aid in monitoring patients for disease progression or response to therapy or for the detection of recurrent or residual disease from class III (premarket approval) to class II (special controls). FDA is also announcing that it has issued an order in the form of a letter to Centocor, Inc., reclassifying serum tumor markers into class II. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 and the Safe Medical Devices Act of 1990.

EFFECTIVE DATES: The reclassification was effective September 19, 1996. The codification becomes effective December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices

and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2974.

SUPPLEMENTARY INFORMATION:

I. Background

On April 18, 1995, FDA filed a petition submitted by Centocor, Inc., requesting reclassification from class III to class II of tumor-associated antigen immunological test systems, commonly called serum tumor markers, indicated for use in the monitoring of tumor-associated antigen levels in patient serum samples. The tumor-associated antigen immunological test system was a class III ''transitional'' device under section 520(l) of the act (21 U.S.C. 360j(l)). The petition, was seeking reclassification under the procedures set forth in section 520(l)(2) of the act and 21 CFR 860.136 of the agency's regulations.

FDA consulted with the Immunology Devices Panel (the Panel). During the open public meeting on December 1, 1995, the Panel recommended that FDA reclassify the tumor-associated antigen immunoassay systems for use in monitoring from class III to class II. It further recommended that those tumor markers used for screening indications remain in class III.

Based on its consultation with the Panel, review of the data and information contained in the petition and presented before the Panel, published studies and professional standards, FDA concurred with the Panel's recommendation that tumor-associated antigen immunoassay systems should be reclassified from class III into class II with implementing special controls. FDA further concurred that markers used for screening indications will remain in class III.

On September 19, 1996, FDA issued an order (Ref. 1) in the form of a letter to Centocor, Inc., reclassifying the generic type of device, tumor-associated antigen immunological test systems intended as an aid in monitoring patients for disease progression or response to therapy or for the detection of recurrent or residual disease, from class III to class II. The order identified the generic type of tumor-associated antigen immunological test system as a device that consists of the reagents used to qualitatively or quantitatively measure, by immunochemical techniques, tumor-associated antigens in serum, plasma, urine, or other body fluids. This generic type of device does not include tissue receptor assays, immunohistochemical stains, or direct tests for oncogenes or other genetic markers associated with a predisposition to development of certain cancers.

Measurement of tumor-associated antigen levels aid in the monitoring of certain cancers. Monitoring is defined here as assessing disease progression, recurrence, or response to therapy. This includes the serial measurement of antigens in patients with histologically confirmed diagnoses who are undergoing therapy for residual or advanced disease. Increasing tumor marker concentrations are indicative of progressive disease, decreasing concentrations are indicative of response to therapy, and constant serial tumor marker concentrations are associated with a stable disease state. Monitoring is further defined as single or serial measurements used as an aid in the detection of recurrent or residual disease in patients following primary curative treatment. Sustained elevations in marker concentrations are suggestive of residual disease, whereas increasing concentrations are indicative of recurring disease.

The order also identified FDA's designated special controls as a premarket notification, section 510(k) (21 U.S.C. 360(k)), guidance document for tumor-associated antigens (Ref. 2), and existing voluntary standards for assay performance by the National Committee for Clinical Laboratory Standards (the NCCLS) (Ref. 3). The guidance document provides the review criteria and data requirements for a 510(k) submission. The guidance document also provides suggestions for non-clinical laboratory studies and the design, conduct, and analysis of appropriate clinical studies to support the performance of these devices. The NCCLS assay performance standards provide evaluative techniques to assure the accurate performance of the antigen tests. FDA believes that these special controls provide the necessary control to reasonably assure the safety and effectiveness of these devices.

FDA notes that the risks associated with the use of tumor markers are relatively low in comparison to the benefits that result from their use for patient monitoring. Furthermore, the risks and benefits associated with the use of tumor markers in the practice of medical oncology are well understood by clinicians. The use and performance characteristics of these devices have been addressed in thousands of peer-review scientific reports and the evaluative techniques used to establish acceptable performance are well described and referenced in the special controls. Additionally, FDA has 20 years of scientific review experience to draw upon in the evaluation of new tumor markers, and believes that tumor antigen immunoassay systems are well characterized.

Consistent with the act and the regulations, FDA is announcing that on September 19, 1996, an order in the form of a letter was sent to Centocor, Inc., reclassifying the generic type tumor-associated antigen immunoassay system that is intended as an aid in monitoring patients for disease progression or response to therapy or for the detection of recurrent or residual disease from class III to class II. Additionally, FDA is codifying the reclassification of this device, by amending 21 CFR 866.6010.

II. Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121)), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of this devices from class III to class II will relieve manufacturers of the device of the cost of complying with the premarket approval requirements of section 515 of the act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by lowering their costs. The Commissioner of Food and Drugs, certifies that this final rule will not have a significant economic impact on a

substantial number of small entities. This final rule also does not trigger the requirement for a written statement under section 202(a) of the Unfunded Mandates Reform Act because it does not impose a mandate that results in an expenditure of $100 million of more by State, local, or tribal governments in the aggregate, or by the private sector, in any 1 year.

IV. 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. FDA letter (order) to Centocor, Inc., dated September 19, 1996.

2. Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications (510(k)) to FDA, September 19, 1996.

3. The National Committee for Clinical Laboratory Standards: Document EP5–T2, Evaluation of Precision Performance of Clinical Chemistry Devices; Document EP9–A, Method Comparison and Bias Estimation Using Patient Samples; Document EP7–P, Interference Testing in Clinical Chemistry.

List of Subjects in 21 CFR Part 866

Medical Devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 866 is amended as follows:

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

1. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 866.6010 is revised to read as follows:

§ 866.6010 Tumor-associated antigen immunological test system.

(a) *Identification*. A tumor-associated antigen immunological test system is a device that consists of reagents used to qualitatively or quantitatively measure, by immunochemical techniques, tumor-associated antigens in serum, plasma, urine, or other body fluids. This device is intended as an aid in monitoring patients for disease progress or response to therapy or for the detection of recurrent or residual disease.

(b) *Classification*. Class II (special controls). Tumor markers must comply with the following special controls: (1) A guidance document entitled ''Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications (510(k)s) to FDA,'' and (2) voluntary assay performance standards issued by the National Committee on Clinical Laboratory Standards.

Dated: November 6, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–32876 Filed 12–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–009]

RIN 2115–AE47

Drawbirdge Operation Regulations; Pasquotank River, Elizabeth City, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Highway 158 drawbridge across the Pasquotank River, mile 50.7, at Elizabeth City, North Carolina, by eliminating bridge openings for pleasure vessels from Monday through Friday between 7 a.m. and 9 a.m., and 4 p.m. and 6 p.m., except that, openings will be scheduled at 7:30 and 8:30 a.m., and 4:30 and 5:30 p.m. for any waiting pleasure vessels. This rule is intended to help relieve automobile traffic congestion during the morning and afternoon rush hours, while still providing for the reasonable needs of navigation.

DATES: This final rule is effective January 16, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at the office of the Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On July 1, 1997, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Pasquotank River, Elizabeth City, North Carolina'' in the Federal Register (62 FR 35453). The Coast Guard did not receive any comments on the proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Highway 158 drawbridge across the Pasquotank River, mile 50.7, at Elizabeth City, North Carolina is currently required to open on signal year round. The City of Elizabeth City, through the North Carolina Department of Transportation (NCDOT), requested permission to restrict drawbridge openings for pleasure vessels only to reduce highway traffic congestion during the morning and evening rush hours. In support of its request, the NCDOT contends that 10 years of records during the period from 1985 through 1995 show that highway traffic increases have caused excessive highway congestion.

Prior to publishing the Notice of Proposed Rulemaking the Coast Guard reviewed the NCDOT highway traffic data during the 10 year period from 1985 through 1995, and the drawbridge opening logs from January 1995 to December 1995, copies of which are included in the docket for this rulemaking. This data supports NCDOT's request. According to the 1995 drawbridge logs, 234 openings occurred between 7 a.m. and 9 a.m. and 235 openings occurred between 4 p.m. and 6 p.m. Thus, the daily average for the year was 0.6 openings for each of the proposed restricted periods. Only during the month of May 1995 were there more than 2.0 openings during the time periods in question. During May 1995, an average of 2.6 openings occurred between 7 a.m. and 9 a.m. Even though 2.6 openings is not excessive, NCDOT states that the random timing of the openings caused highway traffic to backup four to six blocks. In support of this contention, the NCDOT provided highway traffic data which shows that highway traffic volumes increased by an average of between 200 and 300 vehicles during the morning and evening restricted periods as compared to other daylight hours. Based upon this data, the Coast Guard believes that 2.0 scheduled openings for pleasures vessels for each time period is adequate for marine traffic and should help to reduce highway traffic congestion.

Discussion of Comment and Changes

The Coast Guard received no comments on the proposed rulemaking.

Therefore, the proposed rule is being implemented without change.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Cost Guard must consider whether this final rule will have significant economic impact on a substantial number of small entities. ''Small entities'' include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant encomic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this final rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. The text of § 117.833 is redesignated as paragraph (a) and a new paragraph (b) is added to read as follows:

§ 117.833 Pasquotank River.

(a) * * *

(b) The draw of the US 158 Highway Bridge, mile 50.7, at Elizabeth City, shall open on signal; except that between 7 a.m. and 9 a.m., and 4 p.m. and 6 p.m., Monday through Friday, the draw need open only at 7:30 a.m., 8:30 a.m., 4:30 p.m., and 5:30 p.m. for any pleasure vessels waiting to pass.

Dated: December 8, 1997.

Roger Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 97–32885 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–086]

RIN 2115–AE47

Drawbridge Operation Regulations; Elizabeth River, Eastern Branch

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the US 460 (Berkley Bridge) drawbridge across the Eastern Branch of the Elizabeth River, mile 0.4, at Norfolk, Virginia. Beginning December 15, 1997 through January 9, 1998, this deviation restricts bridge openings between the hours of 9 a.m. to 3:30 p.m., seven days a week. During these times, vessels requiring bridge lifts will be required to provide the Berkley Bridge bridge tender with a two-hour advance notice. This closure is necessary to allow the Virginia Department of Transportation to conduct an oil change on the major lift equipment while still providing for the reasonable needs of navigation.

DATES: This deviation is effective from December 15, 1997 through January 9, 1998.

FOR FURTHER INFORMATION CONTACT:

Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

SUPPLEMENTARY INFORMATION: The Berkley Bridge is owned and operated by the Virginia Department of Transportation (VDOT) and maintained by the Elizabeth River Tunnels Department of Maintenance. On December 1, 1997, VDOT sent a letter to the Coast Guard requesting a temporary deviation from the normal operation of the bridge in order to accommodate the maintenance work. Presently, the draw is required to open on signal at any time except from 5:30 a.m. to 9 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays. Between the hours of 5:30 a.m. and 9 a.m. and 3:30 p.m. and 6:30 p.m., vessels with a draft of 22 feet or more may request a bridge lift provided at least 12 hours advance notice is given.

The maintenance work involves draining and subsequent refilling of oil in the gear boxes in the major lift equipment of the US 460 (Berkley Bridge) drawbridge. Vessels presently transiting through the Berkley Bridge during the hours of deviation will not be negatively impacted since bridge lifts will be provided with a two-hour advance notice.

From December 15, 1997 to January 9, 1998, this deviation restricts bridge lifts of the Berkley Bridge between the hours of 9 a.m. and 3:30 p.m. seven days a week. Vessels requiring a bridge lift during these times will be required to provide a two-hour advance notice to the Berkley Bridge bridge tender. All other provisions of § 117.1007 remain in effect during the period of the deviation.

Dated: December 8, 1997.

Roger Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 97–32884 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO47–1–6946 & CO–001–0020; FRL–5934–1]

Approval and Promulgation of Implementation Plans; Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to procedures described at 54 FR 2214 (January 19, 1989), EPA has recently approved two minor State Implementation Plan (SIP) revisions for the State of Colorado. This document lists the revisions EPA has approved and revises the Code of Federal Regulations to reflect those approvals.

EFFECTIVE DATE: This action is effective December 17, 1997.

ADDRESSES: Copies of the State SIP revision requests and EPA's letter notices of approval are available for public inspection during normal business hours at the following locations: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2466; and the Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8P2–A, at the EPA regional office listed above, (303) 312–6445.

SUPPLEMENTARY INFORMATION: EPA Region VIII has approved the following minor SIP revision requests under section 110(a) of the Clean Air Act:

State	Pollutant	Subject matter	Date of submission	Date of approval
Colorado	PM–10	Aspen Element of the Colorado PM–10 SIP	Mar. 13, 1995	Aug. 21, 1997.
Colorado	PM–10	Pagosa Springs Element of the Colorado PM–10 SIP	Aug. 2, 1996	Aug. 21, 1997.

EPA has determined that these SIP revisions comply with all applicable requirements of the Act and EPA policy and regulations concerning such revisions. Due to the minor nature of these revisions, EPA concluded that conducting notice-and-comment rulemaking prior to approving the revisions would have been ''unnecessary and contrary to the public interest'' and, hence, was not required by the Administrative Procedures Act, 5 U.S.C. 553(b). Each of these SIP approvals became final and effective on the date of EPA approval as listed in the chart above.

I. Administrative Requirements

A. Executive Order 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. 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.

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 small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory 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. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

D. Submission to Congress and the General Accounting Office

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the General Accounting Office prior to publication of 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 Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by February 17, 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 must 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, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: October 21, 1997.

William P. Yellowtail,

Regional Administrator, Region VIII.

Title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401 *et seq.*

Subpart G—Colorado

2. Section 52.332 is amended by redesignating paragraph (b) as paragraph (b)(1), redesignating paragraph (e) as paragraph (e)(1), and adding paragraphs (b)(2) and (e)(2) to read as follows:

§ 52.332 Moderate PM–10 nonattainment area plans.

* * * * *

(b) * * *

(2) On August 2, 1996, the Governor of Colorado submitted minor revisions to the Pagosa Springs Element of the Colorado PM–10 SIP.

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(2) On March 13, 1995, the Governor of Colorado submitted minor revisions to the Aspen Element of the Colorado PM–10 SIP.

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[FR Doc. 97–32930 Filed 12–16–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300585; FRL 5756–4]

RIN 2070–AB78

Ethalfluralin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of ethalfluralin in or on canola seed. This action is in response to EPA allowing issuance of crisis emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on canola in Montana and North Dakota. This regulation establishes a maximum permissible level for residues of ethalfluralin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on October 31, 1998.

DATES: This regulation is effective December 17, 1997. Objections and requests for hearings must be received by EPA on or before February 17, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300585], 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–300585], must also be submitted 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, 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 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300585]. 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: Andrea Beard, 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) 308–9356; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the herbicide ethalfluralin, in or on canola seed at 0.05 part per million (ppm). This tolerance will expire and is revoked on October 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

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

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

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

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

providing notice or period for public comment.

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

II. Emergency Exemption for Ethalfluralin on Canola and FFDCA Tolerances

The Applicants state that as canola acreage has grown, wild buckwheat has become an increasingly significant weed pest, and that the only available herbicide, trifluralin, does not provided adequate control of this weed. Thus, the Applicants found it necessary to issue crisis exemptions for this use of ethalfluralin, to avoid significant economic loss. EPA has authorized under FIFRA section 18 (the crisis provisions) the use of ethalfluralin on canola for control of wild buckwheat in Montana and North Dakota.

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

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether ethalfluralin meets EPA's registration requirements for use on canola or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of ethalfluralin by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any State other than Montana or North Dakota to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for ethalfluralin, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

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

A. Toxicity

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

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

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

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

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

Short-term risk results from exposure to the pesticide for a period of 1–7 days, and therefore overlaps with the acute risk assessment. Historically, this risk assessment was intended to address primarily dermal and inhalation exposure which could result, for example, from residential pesticide applications. However, since enaction of FQPA, this assessment has been expanded to include both dietary and

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

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

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

B. Aggregate Exposure

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

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

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of ethalfluralin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of ethalfluralin on canola seed at 0.05 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 ethalfluralin are discussed below.

1. *Acute toxicity*. For acute dietary risk assessment, EPA scientists have determined that the developmental NOEL of 75 mg/kg/day, from the rabbit developmental study should be used. The LOEL of 150 mg/kg/day is based on increased number of resorptions and increased sternal and cranial variations. Since the effect of concern is reproductive in nature, the acute risk assessment will evaluate acute dietary risk to the population subgroup of concern, females 13 + years old.

2. *Short - and intermediate - term toxicity.* No short- or intermediate-term toxicity endpoints have been identified for ethalfluralin, and OPP scientists determined that this assessment is not necessary.

3. *Chronic toxicity*. EPA has established the RfD for ethalfluralin at 0.04 milligrams/kilogram/day (mg/kg/day). This RfD is based on a 1–year feeding study in dogs with a NOEL of 4.0 mg/kg/day, and an uncertainty factor of 100. The LOEL of 20 mg/kg/day was based upon altered red cell morphology and urinary bilirubin.

4. *Carcinogenicity*. Based on mammary gland fibroadenomas and combined mammary gland adenomas and/or fibroadenomas in female rats, ethalfluralin has been classified in Group C possible human carcinogen, according to EPA's Cancer Assessment Guidelines. The OPP Cancer Peer Review Committee recommended using the Q* approach for risk assessment, and the Q* of 8.9×10^{-2} has been calculated.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.416) for the residues of ethalfluralin, in or on the following raw agricultural commodities: dry beans and peas, cucurbit vegetables, peanuts, soybeans, and sunflower seeds; and in animal commodities fat, meat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep; and milk and eggs. According to the Ethalfluralin Reregistration Eligibility Document (RED), published March 1995, EPA is requiring revocation of all animal commodity tolerances, as they are not needed there is no expectation of finite residues. In the following risk assessments, the animal commodity tolerances are included, and then subsequently excluded from the refined cancer risk assessment. Risk assessments were conducted by EPA to

assess dietary exposures and risks from ethalfluralin as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute risk assessment used tolerance-level residues for all commodities having ethalfluralin tolerances. For the population subgroup of concern, females 13 + years old, the Margin of Exposure (MOE) for the high-end consumer was calculated to be 25,000 (an MOE of ≤ 100 represents a negligible risk. Canola seed is processed into canola oil, a commodity which is not listed in OPP's dietary risk exposure system (DRES), so a standard DRES risk analysis including it cannot be conducted. However, canola oil is a very low consumption human food item 0.01% of the RfD, see below, and would be expected to contribute only a minor incremental increase to the acute dietary exposure. Additionally, the estimate given above should be considered extremely conservative, and if it were refined, using a Monte Carlo technique and incorporating anticipated residues and percent of crop treated figures, the MOEs would likely be much higher.

ii. *Chronic exposure and risk.* The chronic dietary (food only) risk assessment for ethalfluralin was conducted using anticipated residue values and percent of crop treated information for some of the crops. Based on this, EPA has concluded that dietary exposure to ethalfluralin will utilize 2% of the RfD for the Overall US Population 0.01% of this attributed to canola oil. The major identifiable subgroup with the highest exposure is non-nursing infants < 1 year old, at 9% of the RfD. This is further discussed below in the section on infants and children. EPA generally has no concern for exposure below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to ethalfluralin in drinking water. EPA does not expect the aggregate exposure to exceed 100% of the RfD.

2. *From drinking water.* According to available data, ethalfluralin is moderately persistent and relatively immobile in soil, and is not expected to be a groundwater contaminant. Ethalfluralin does appear to have some potential to reach surface waters on eroded soil particles, but in surface waters, ethalfluralin would be expected to photodegrade rapidly. According to EPA's Pesticides in Ground Water Database, a total of 188 wells in Texas were monitored for ethalfluralin residues in 1987–88, and no detectable residues were reported. There are no Maximum Contaminant Levels or Health Advisory Levels established for ethalfluralin in drinking water.

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

3. *From non-dietary exposure.* Ethalfluralin is not currently registered for use on any residential non-food sites, and thus, it is not expected that non-occupational, non-dietary exposures will occur.

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.

Although ethalfluralin is a member of the nitroaniline class of herbicides, EPA does not have, at this time, available data to determine whether ethalfluralin 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, ethalfluralin does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that ethalfluralin has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* For the population subgroup of concern, females 13 + years old, the calculated MOE value for dietary exposure from food only is

25,000. Although there is potential for exposure to ethalfluralin in drinking water, EPA does not expect that this would result in an aggregate MOE food plus water that would exceed the level of concern MOE < 100 for acute dietary exposure. Therefore, EPA concludes that there is reasonable certainty that no harm will result from aggregate acute exposure to ethalfluralin.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to ethalfluralin from food will utilize 2% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants < 1 year old, at 9% of the RfD, discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to ethalfluralin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate chronic exposure to ethalfluralin residues.

D. Aggregate Cancer Risk for U.S. Population

Based on the Q* of 0.089 $(mg/kg/day)^{-1}$, and the anticipated residue contribution, the upper bound cancer risk estimate for the U.S. population is 6.2×10^{-5}, contributed through all the published tolerances for ethalfluralin. However, as stated above, EPA is requiring revocation of the ethalfluralin tolerances for meat, milk, poultry, and eggs, due to the presumption that there are undetectable residues in these food items. When the cancer risk is calculated excluding these animal commodity tolerances, the resulting upper bound risk is 5.7×10^{-7}, which is considered a negligible risk. This cancer risk analysis does not include canola oil, which is not covered by the DRES analysis. However, the consumption of canola oil has been calculated to comprise only 0.01% of the RfD, and thus, in the best scientific judgment of EPA, would not contribute appreciably to the dietary cancer risk from food uses of ethalfluralin.

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

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of ethalfluralin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 3-generation reproduction study in the rat, and a 7-month multigeneration study in rats. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional 10–fold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty safety factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 100–fold safely factor usually 100 for combined inter- and intra-species variability and not the additional 10–fold safety factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard safety factor.

ii. *Developmental toxicity studies.* In the developmental toxicity study in rats, the maternal systemic NOEL was 50 mg/kg/day, based on decreased body weight gain and dark urine at the LOEL of 250 mg/kg/day. The fetal developmental NOEL was 1000 mg/kg/day, at the highest dose tested (no effects observed to the fetuses).

In the developmental toxicity study in rabbits, the maternal systemic NOEL was 75 mg/kg/day, based on abortions and decreased food consumption at the LOEL of 150 mg/kg/day. The fetal developmental NOEL was also 75 mg/kg/day, based on a slightly increased number of resorptions, abnormal cranial development, and increased sternal variants, at the LOEL of 150 mg/kg/day.

iii. *Reproductive toxicity study.* In a 3-generation reproductive toxicity study in rats, the parental systemic NOEL was 12.5 mg/kg/day, based on decreased mean body weight gains in males in all generations, at the LOEL of 37.5 mg/kg/day. The pup reproductive NOEL was 37.5 mg/kg/day, the highest dose tested no effects seen on the pups.

In a 7-month multigeneration study in rats, the parental NOEL of 20 mg/kg/day was based on increased liver weights at the LOEL of 61 mg/kg/day. The pup reproductive NOEL was ≤ 61 mg/kg/day, the highest dose tested no effects seen on the pups.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating pre- and post-natal effects is complete for ethalfluralin. Based on the results of the developmental and reproduction studies outlined above, there are no pre-or post-natal toxicity concerns for infants and children, from exposure to ethalfluralin.

v. *Conclusion.* Since no pre-or post-natal concerns have been identified for ethalfluralin, EPA scientists conclude that reliable data support use of the standard 100–fold uncertainty factor, and an additional uncertainty factor is not needed to protect infants and children.

2. *Acute risk.* For the population subgroup of concern, females 13 + years old, the MOE for ethalfluralin dietary (food only) exposure is 25,000; this accounts for both maternal and fetal exposure. Although there is potential for exposure to ethalfluralin in drinking water, EPA does not expect that this would result in an aggregate MOE (food plus water) that would exceed the level of concern MOE < 100 for acute dietary exposure. Therefore, EPA concludes that there is reasonable certainty that no harm will result, for both Females 13+ Years Old, and for the pre-natal development of infants, from aggregate acute exposure to ethalfluralin.

3. *Chronic risk.* Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to ethalfluralin from food will utilize 9% of the RfD for the highest exposed subgroup of infants and children, non-nursing infants, < 1 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to ethalfluralin in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate chronic exposure to ethalfluralin residues.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue of ethalfluralin in plants and animals is adequately understood; the residue of concern is ethalfluralin per se, as specified in 40 CFR 180.416.

B. Analytical Enforcement Methodology

Adequate enforcement methods gas-liquid chromatography with electron capture detection are available to enforce the tolerance, in both plant and animal tissues, and are listed in the Pesticide Analytical Manual, Volume II PAM-II.

C. Magnitude of Residues

Residues of ethalfluralin are not expected to exceed 0.05 ppm in/on canola seed as a result of this section 18 use. Residues are not expected to concentrate in the processed commodities meal, refined oil of canola, and no tolerances are required for these commodities.

D. International Residue Limits

There are no Codex, Canadian, or Mexican maximum residue limits established for ethalfluralin.

E. Rotational Crop Restrictions

There are no plantback restrictions needed, and tolerances for rotational crop commodities need not be established.

VI. Conclusion

Therefore, the tolerance is established for residues of ethalfluralin in canola seed at 0.05 ppm.

VII. Objections and Hearing Requests

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

Any person may, by February 17, 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 CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–-300585] (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 Highway, Arlington, VA.

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

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

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

IX. Regulatory Assessment Requirements

This final rule establishes [a tolerance] under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735), October 4, 1993. This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093), October 28, 1993, or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629), February 16, 1994, or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885), April 23, 1997.

In addition, since these tolerances and exemptions that are established under FFDCA section 408 (l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's

generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR part 180

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

Dated: November 25, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180 — [AMENDED]

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

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

2. Section 180.416, is amended as follows:

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

ii. By adding a new paragraph (b).

iii. By adding and reserving new paragraphs (c) and (d) with headings to read as follows.

§180.416 Ethalfluralin; tolerances for residues.

(a) *General.* * * *

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

Commodity	Parts per million	Expiration/revocation date
Canola, seed	0.05	10/31/98

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

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

[FR Doc. 97–32933 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300573; FRL 5753–6]

RIN 2070–AB78

Primisulfuron-methyl; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of primisulfuron-methyl in or on bluegrass grown for seed. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on bluegrass grown for seed. This regulation establishes a maximum permissible level for residues of primisulfuron-methyl in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on October 31, 1998.

DATES: This regulation is effective December 17, 1997. Objections and requests for hearings must be received by EPA on or before February 17, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300573], 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–300573], must also be submitted 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, 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–300573]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Pat Cimino, Registration Division 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) 308–9357; e-mail: cimino.pat@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for residues of the herbicide primisulfuron-methyl, in or on bluegrass grown for seed at 0.10 parts per million (ppm). This tolerance will expire and is revoked on October 31, 1998. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations.

I. Background and Statutory Authority

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

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

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

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

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

II. Emergency Exemption for Primisulfuron-methyl on Bluegrass Grown for Seed and FFDCA Tolerances

The applicant asserts that recent growing conditions and curtailment of burning, a cultural weed control method, by the federal, state, and/or county Clean Air Act requirements have created unacceptable levels of weedy grasses proliferating in Kentucky bluegrass fields. There are no effective registered pesticides or alternative control practices available which will provide adequate control of the weeds. EPA has authorized under FIFRA section 18 the use of primisulfuron-methyl on bluegrass grown for seed for control of quackgrass, windgrass, downey brome, wild oat, and other weeds in Washington and Idaho. After having reviewed the submission, EPA concurs that emergency conditions exist for these states.

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

Because this tolerance is being approved under emergency conditions EPA has not made any decisions about whether primisulfuron-methyl meets EPA's registration requirements for use on bluegrass grown for seed or whether a permanent tolerance for this use would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of primisulfuron-methyl by a State for special local needs under FIFRA section 24(c). Nor does this tolerance serve as the basis for any States other than Washington and Idaho to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for primisulfuron-methyl, contact the Agency's Registration Division at the address provided above.

III. Risk Assessment and Statutory Findings

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

A. Toxicity

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

Once a study has been evaluated and the observed effects have been determined to be threshold effects, EPA generally divides the NOEL from the study with the lowest NOEL by an uncertainty factor (usually 100 or more) to determine the Reference Dose (RfD). The RfD is a level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. An uncertainty factor (sometimes called a ''safety factor'') of 100 is commonly used since it is assumed that people may be up to 10 times more sensitive to pesticides than the test animals, and that one person or subgroup of the population (such as

infants and children) could be up to 10 times more sensitive to a pesticide than another. In addition, EPA assesses the potential risks to infants and children based on the weight of the evidence of the toxicology studies and determines whether an additional uncertainty factor is warranted. Thus, an aggregate daily exposure to a pesticide residue at or below the RfD (expressed as 100 percent or less of the RfD) is generally considered acceptable by EPA. EPA generally uses the RfD to evaluate the chronic risks posed by pesticide exposure. For shorter term risks, EPA calculates a margin of exposure (MOE) by dividing the estimated human exposure into the NOEL from the appropriate animal study. Commonly, EPA finds MOEs lower than 100 to be unacceptable. This 100-fold MOE is based on the same rationale as the 100-fold uncertainty factor.

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

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

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

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

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

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

B. Aggregate Exposure

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

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

IV. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action, EPA has sufficient data to assess the hazards of primisulfuron-methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of primisulfuron-methyl on bluegrass grown for seed at 0.10 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 primisulfuron-methyl are discussed below.

1. *Acute toxicity*. For acute dietary risk assessment, the Agency used a NOEL of 100 mg/kg/day, based on delayed or absent ossification effects in fetuses at the LEL of 500 mg/kg/day, from the oral developmental study in rats. This risk assessment will evaluate acute dietary risk to the population subgroup of concern, females 13+ years of age.

2. *Chronic toxicity*. EPA has established the RfD for primisulfuron-methyl at 0.006 milligrams/kilogram/day (mg/kg/day). This RfD is based on an 80–week mouse feeding study with a LOEL of 1.7 mg/kg/day based on increased absolute and relative liver weights. An uncertainty factor of 300 was used because a NOEL was not achieved.

3. *Carcinogenicity*. Primisulfuron-methyl has been classified as a Group D chemical incomplete evidence based on liver tumors in mice.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.452) for the residues of primisulfuron-methyl, in or on the raw agricultural commodities fresh corn and corn forage and fodder. Tolerances are also established on cattle, goat, hog, horse, sheep, and poultry commodities as well as milk and eggs. Risk assessments were conducted by EPA to assess dietary exposures and risks from primisulfuron-methyl as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary food only risk assessment used tolerance level residues for all commodities with primisulfuron-methyl tolerances. Therefore, the resulting exposure estimates should be viewed as conservative; further refinement using anticipated residues and/or Monte Carlo and percent of crop-treated would result in lower dietary exposure estimates. Since the acute dietary effect is based on delayed or absent ossification effects in fetuses, the subgroup of concern is females 13+ years of age. For females 13+ years of age, an MOE value of 71,000 was calculated using the high-end exposure value of 0.0014 mg/kg/day.

ii. *Chronic exposure and risk*. Because there are no human food items associated with bluegrass and existing meat/milk/poultry/egg tolerances are adequate to cover secondary residues, a new chronic Dietary Risk Evaluation System (DRES) run was not performed for this section 18 request. The latest chronic DRES run was performed in conjunction with the registration of primisulfuron-methyl on corn. The chronic dietary exposure estimates were not refined using anticipated residues and percent crop treated data. The existing primisulfuron-methyl tolerances result in a Theoretical Maximum Residue Contribution (TMRC) that is equivalent to the following percentages of the RfD:

Subpopulation	TMRCfood Value(mg/kg/day)	% RfD
U.S. Population	0.000571	10%
Nursing Infants	0.000484	8%
Non-Nursing Infants < 1 year old	0.001732	29%
Children 1–6 years old	0.001327	22%
Children 7–12 years old	0.000876	15%
Hispanics	0.000723	12%
Non-Hispanic Others	0.000644	11%

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

2. *From drinking water.* Based on information available to the Agency, primisulfuron-methyl is moderately persistent and highly mobile. There is no established Maximum Concentration Level for residues of primisulfuron-methyl in drinking water. No health advisory levels for primisulfuron-methyl in drinking water have been established. Based on ''Pesticides in Groundwater Database'' (EPA 734–12–92–001, Sept 1992), primisulfuron-methyl has not been analyzed for in water.

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

4. *From non-dietary exposure.* Primisulfuron-methyl is not registered for uses that would be expected to result

in indoor or outdoor residential exposure.

5. *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 primisulfuron-methyl 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, primisulfuron-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that primisulfuron-methyl has a common mechanism of toxicity with other substances.

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

1. *Acute risk.* The acute aggregate risk assessment takes into account exposure from dietary food and water only. As noted earlier, the MOE for females 13+ years of age was calculated to be 71,000. Therefore, EPA does not have an acute aggregate risk concern.

2. *Chronic risk.* Using the conservative TMRC exposure assumptions described above, and taking into account the completeness and reliability of the toxicity data, EPA has calculated that dietary exposure to primisulfuron-methyl from food will utilize 10% of the RfD for the U.S. population. The Agency generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to primisulfuron-methyl in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to primisulfuron-methyl residues.

D. 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 primisulfuron-methyl, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Developmental toxicity studies.* From the rat developmental study, the maternal (systemic) NOEL was less than 100 mg/kg/day, based on decreased weight gain during dosing at the LOEL of 100 mg/kg/day. The developmental (fetal) NOEL was 100 mg/kg/day, based on delayed or absent ossification at the LOEL of 500 mg/kg/day.

From the rabbit developmental study, the maternal (systemic) NOEL was 10 mg/kg/day, based on abortions, decreased weight gain and loose stool at the LOEL of 300 mg/kg/day. The developmental (fetal) NOEL was 600 mg/kg/day highest dose tested.

iii. *Reproductive toxicity study.* From the rat reproductive study, the parental (systemic) NOEL was 50 mg/kg/day, based on decreased weight gain at the LOEL of 250 mg/kg/day. The developmental (pup) NOEL was 50 mg/kg/day, based on decreased pup body weight findings at the LOEL of 250 mg/kg/day. The reproductive NOEL was 50 mg/kg/day, based on decrease in testicular/spermatic function at the LOEL of 250 mg/kg/day.

iv. *Pre- and post-natal sensitivity.* In rats, although the developmental and maternal NOELs and LOELs were at the same dose levels, the finding of developmental effects [absent ossification] required that an acute dietary risk assessment be performed for females 13+ years of age. The calculated MOE of 71,000 demonstrated that acute pre-natal developmental risks were below EPA's level of concern. There were no pre-natal developmental concerns in rabbits, since the developmental NOEL was greater than 600 mg/kg/day (HDT).

Similarly, there were no post-natal rat reproductive study findings that

required additional safety factors, since the maternal and pup NOEL and LOEL of 50 and 250 mg/kg/day, respectively, occurred at the same dose levels and both adult and pup animals had similar toxic effects (decreased weight gain).

v. *Conclusion*. The pre- and post-natal toxicology data base for primisulfuron-methyl is complete with respect to current toxicological data requirements. The Agency concludes that reliable data support use of the standard 100-fold margin of exposure/uncertainty factor and that an additional margin/factor is not needed to protect infants and children.

2. *Acute risk*. The finding of developmental effects in the rat study absent ossification required that an acute dietary risk assessment be performed for females 13+ years of age. The calculated MOE of 71,000 demonstrated that acute pre-natal developmental risks were below EPA's level of concern.

3. *Chronic risk*. Using the conservative exposure assumptions described above, EPA has concluded that aggregate exposure to primisulfuron-methyl from food will utilize from 8% of the RfD for nursing infants up to 29% of the RfD for non-nursing infants < 1 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

V. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in corn and animals is adequately understood. The residue of concern is the parent compound only, as specified in 40 CFR 180.452.

B. Analytical Enforcement Methodology

Adequate enforcement methodology (HPLC) has been submitted for inclusion in PAM Vol. II to enforce the tolerance expression. Method I of PAM II (Method AG–499A) has been validated on corn commodities and Method II (Method AG–506) has been validated on livestock commodities. Method A of PAM II is a confirmation method for plant commodities.

C. Magnitude of Residues

Residues of primisulfuron-methyl are not expected to exceed 0.10 ppm in/on bluegrass hay as a result of this section 18 use. A time-limited tolerance will be established at this level. Secondary residues in animal commodities are not expected to exceed existing tolerances as a result of this section 18 use.

D. International Residue Limits

No Codex (MRLs) have been established for residues of primisulfuron-methyl on grasses.

VI. Conclusion

Therefore, the tolerance is established for residues of primisulfuron-methyl in bluegrass grown for seed at 0.10 ppm.

VII. Objections and Hearing Requests

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

Any person may, by February 17, 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 CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Docket

EPA has established a record for this rulemaking under docket control number [OPP–300573] (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 Highway, Arlington, VA.

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

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

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

IX. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does

not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, since these tolerances and exemptions that are established under FFDCA section 408(l)(6), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency has previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the General Accounting Office

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

List of Subjects in 40 CFR Part 180

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

Dated: November 18, 1997.

James Jones,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.452, is amended as follows:

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

ii. By adding new paragraph (b).

iii. By adding and reserving new paragraphs (c) and (d) with headings to read as follows.

§180.452 Primisulfuron-methyl; tolerances for residues.

(a) *General.* * * *

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

Commodity	Parts per million	Expiration/revocation date
Bluegrass hay	0.10	10/31/1998

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

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

[FR Doc. 97–32937 Filed 12–16–97; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 180, 185 and 186

[OPP–300503A; FRL–5753–1]

RIN 2070–AB78

Revocation of Tolerances for Commodities No Longer Regulated for Pesticide Residues and Other Actions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revokes tolerances for pesticide residues in or on livestock feed commodities that have been deleted from the list of significant livestock feed commodities in Table I of Pesticide Assessment Guideline 860.1000. In implementing the Federal Food, Drug, and Cosmetic Act (FFDCA), EPA does not require data on or set individual tolerance levels for minor, non-significant livestock animal commodities. As explained in this document, EPA considers residues in minor, non-significant livestock feed commodities to be covered by the tolerances for the pesticide on the principal commodities of a crop.

DATES: This final rule becomes effective January 16, 1998. Written objections and requests for hearing must be received by February 17, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300503A], may 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 should be identified by the document control number and submitted to: Public Information and Records Integrity Branch, Information Resources and Services (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

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 in 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300503A]. 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: Jeff Morris, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number and e-mail address: Special Review Branch, Crystal Station #1, 3rd floor, 2800 Crystal Drive, Arlington, VA 22202. Telephone: (703) 308–8029; e-mail: morris.jeffrey@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Legal Authority

The Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 et seq., as amended by the Food Quality Protection Act of 1996, Pub. L. 104–170) authorizes the establishment of tolerances (maximum residue levels), exemptions from the requirement of a tolerance, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods pursuant to section 408 of the FFDCA (21 U.S.C. 346(a), as amended). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore ''adulterated'' under section 402(a) of the FFDCA, and hence may not legally be moved in interstate commerce (21 U.S.C. 342). For a pesticide to be sold and distributed, the pesticide must not only have appropriate tolerances or exemptions under the FFDCA, but also must be registered under section 3 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136a(3)(a)). '

II. Regulatory Background

A. Revisions to Table I

Most agricultural crops and their corresponding raw agricultural and processed commodities can be, and are, fed to livestock. EPA, however, only requires pesticide residue data on, and sets individual tolerances for, significant livestock feed commodities. EPA considers a livestock feed commodity to be significant if it has the potential to contribute to the human diet (through the consumption of livestock commodities) more than a negligible quantity of pesticide residue. EPA's listing of significant food and feed commodities (raw and processed) can be found in Table I of Guideline 860.1000. Because of minor nomenclature variations, the tolerances as written in 40 CFR may not coincide precisely with the commodity names as listed in Table I.

EPA revised Table I (formerly Table II) in June of 1994 because of the significant changes in agricultural, processing, and feeding practices that had occurred over the past decade. The June 1994 update was further revised in September of 1995 in order to reflect the most recent data and to address comments received in response to the June 1994 update. This September 1995 revision of table I resulted in the removal of numerous commodities from the table. Data used to update Table I came from such sources as Office of Pesticide Programs'(OPP) files, the U.S. Department of Agriculture (USDA), academia, industry, and trade associations throughout the United States.

In the June 1994 revisions, EPA used the following criteria to decide what feedstuffs are considered ''significant:'' (1) The annual U.S. production of a particular raw agricultural commodity (RAC) (e.g., wheat grain, or wheat straw) is greater than or equal to 250,000 tons and the maximum amount in the livestock diet is greater than or equal to 10 percent, or (2) the commodity is grown mainly as a feedstuff. (Processed commodities with less than 250,000 tons annual U.S. production were considered significant feeds in the 1994 revisions if the RAC from which they were derived exceeded 250,000 tons.) For the September 1995 revisions to Table I, EPA, in response to comments and in consultation with USDA and industry representatives, amended the criteria as follows: The amount of a commodity (raw agricultural or processed) produced or diverted for use as a feedstuff is at least 0.04 percent of the total annual tonnage of all feedstuffs available for livestock utilization in the United States. For feedstuffs less than 0.04 percent of the total estimated annual tonnage of all feedstuffs available, the 1995 revisions stated that those feedstuff are to be included in Table I, and therefore considered to be significant, if: (a) The feedstuff is listed and routinely traded on the commodities exchange markets; (b) there is regional production, seasonal considerations, or an incident history for use of the feedstuff or (c) the feedstuff is grown exclusively for livestock feeding in quantities greater than 10,000 tons (0.0015 percent of the total estimated annual tonnage of all feedstuffs available in the United States). EPA determined that any livestock feed commodities that met these criteria for exclusion from the list of significant feed commodities were likely to contribute no greater than a negligible amount of pesticide residue to the human diet. Moreover, EPA believes that the residue contribution from livestock feed commodities judged to be insignificant will contribute a negligible amount of pesticide residue to the human diet relative to the residues contributed by other portions of the same crop.

EPA expects that Table I after being revised based on the above criteria, now accounts for greater than 99 percent of the available tonnage (on a dry-matter basis) of feedstuffs used in the domestic production of greater than 95 percent of beef and dairy cattle, poultry, swine, milk, and eggs.

B. Proposed Revocations

EPA published a proposed rule to revoke the tolerances listed in this document on July 2, 1997 (62 FR 35760) (FRL–5722–3). EPA proposed these revocations because the livestock feed commodities associated with the tolerances have been removed from Table I of Pesticide Assessment Guideline 860.1000.

C. Comments and Corrections

EPA received one comment from the California Citrus Quality Council in support of the proposed rule. In addition, EPA became aware that the proposed rule was in error by proposing to remove peppermint hay and spearmint hay wherever they appear in 40 CFR part 180, because mint hay is used in the production of mint commodities and is not a livestock feed item. Rather, only references to ''spent mint hay'' should be removed from part 186, since spent mint hay is a commodity that EPA no longer considers to be a significant livestock feed item. In addition, EPA noted that the references to the removal of the term ''peanut hulls'' from §§ 180.230 and 180.236 are duplicative of the proposal to delete ''peanut hulls'' from wherever the term appears in part 180. These corrections have been made to the regulatory text of this document.

III. Final Action

This rule revokes the tolerances listed herein. Each of the tolerances revoked are for specific livestock feed items dropped from Table I due to a

determination that they were not a significant livestock feed commodity.

It is not EPA's intention that these revocations should have the effect of rendering the affected commodities adulterated due to the absence of a tolerance. Rather, EPA interprets its tolerance regulation for the principal RAC as covering any insignificant livestock feed commodities (i.e. those not on Table I) of that crop as provided below. Pesticide residues in an insignificant livestock feed commodity would be in compliance with the tolerance for the RAC of the same crop if the residues in the RAC from which the feedstuff is derived or with which it is associated (e.g., straw harvested at the same crop stage as grain, the RAC) are at or below the appropriate tolerance level. If no information is available regarding the residue level in the RAC from which the feedstuff is derived or with which it is associated, then pesticide residues in an insignificant livestock feed commodity would be considered in compliance with the RAC tolerance of that crop if the residue level in the insignificant livestock feed commodity is consistent with the RAC from which the feedstuff is derived or with which it is associated containing residues at or below the appropriate tolerance. This interpretation applies only to insignificant livestock feed commodities.

IV. Effective Date

These revocations will become effective January 16, 1998.

V. Objections and Hearing Request

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

Any person adversely affected by this regulation may, by February 17, 1998, file written objections to the regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket number [OPP–300503A] (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 Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

VII. Regulatory Assessment Requirements

This action, which revokes tolerances previously established under FFDCA section 408(e), is not subject to review by the Office of Management and Budget (OMB) under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993), or Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). In addition, this action does not contain any information collections subject to 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), special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994) or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

In addition, pursuant to section 605(b) of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency hereby certifies that, absent extraordinary circumstances, the revocation of a tolerance after the use of the related pesticide becomes illegal in this country will not have a significant impact on a substantial number of small entities. Because the following factual basis is applicable to all tolerance revocations, it will also serve as the generic certification for the promulgation of any future tolerance revocation unless otherwise stated, and EPA will incorporate it by reference in future individual tolerance revocations.

The certification presented above is based on the following rationale. In the case of domestically grown food, the tolerance revocations contained in this notice, as is generally the case, will have no economic impact. The associated pesticide registered uses have already been canceled. Since U.S. growers may no longer use the pesticide in those ways, revoking the tolerance should have no effect on food grown in the

United States. after cancellation of the registered uses of the pesticide. As for food grown before the cancellation occurred, it will not be considered adulterated if it was treated in a way that complied with the tolerance in effect at the time of treatment.

The revocation of a pesticide tolerance generally has a greater potential to affect foreign-grown food, since the uses of the pesticide prohibited in the United States may still be lawful in other countries. If foreign growers use the pesticide in the ways prohibited in the United States, the food they grow will be considered adulterated once the tolerance is revoked. However, while revocation may have an economic effect on foreign growers that import food to the United States, the RFA is concerned only with the effect of U.S. regulations on domestic small entities.

The revocation of a pesticide tolerance may also have an effect on domestic importers of foreign-grown food, to the extent their suppliers use pesticides in ways that result in residues no longer allowed in the United States. However, EPA believes that the effect on U.S. importers will generally be minimal. Theoretically, U.S. importers could face higher food prices and transactions costs. The revocation of a particular tolerance, however, is unlikely to have a significant impact on the price of a commodity on the international market. Transaction costs may occur as a result of having to find alternative suppliers of food untreated with pesticides for which tolerances were revoked. Affected importers would have the options of finding other suppliers in the same country or in other countries, or inducing the same supplier to switch to alternative pest controls. Given the existence of these options, EPA expects that any price increases or transaction costs resulting from revocations will be minor. Any such impacts will be further reduced by the FDA's enforcement policy of not considering imported foods with residues adulterated until, in most cases, three years after the effective date of the revocation. EPA has reviewed its available data on imports and foreign pesticide usage and concludes that there is a reasonable international supply of food not treated with the revoked pesticides, generally within the same countries from which the relevant commodities are currently imported.

Moreover, whatever the effect on U.S. importers of foreign-grown food, EPA believes that it would be inappropriate and inconsistent with the purpose of the RFA to ameliorate that effect. To the extent any adverse effect occurs, it will be the result of foreign growers using pesticides in ways not allowed in the United States. Domestic growers have no choice but to refrain from using pesticides in ways prohibited by U.S. law. U.S. growers and those who follow them in the chain of commerce — distributors and consumers — will bear the cost of complying with U.S. law. For EPA to somehow address the economic effect of the revocation on U.S. distributors of foreign-grown food would potentially give those distributors a competitive advantage over distributors of U.S.-grown food, and that advantage could potentially translate to a competitive advantage for foreign growers over domestic growers. The RFA was enacted in part to preserve competition in the marketplace, and it would be perverse to implement it in a way that creates competitive inequities, particularly between U.S. and foreign products.

Finally, EPA notes that potential increased costs to importers would not be cognizable as grounds for not revoking the tolerance. Because no extraordinary circumstances exist as to the present revocation that would change EPA's above analysis, the Agency hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This certification and the above rationale has been 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

40 CFR Part 180

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

40 CFR Part 185

Environmental protection, Food additives, pesticides and pests.

40 CFR Part 186

Environmental protection, Animal feeds, Pesticides and pests.

Dated: November 14, 1997.

Jack E. Housinger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, 40 CFR parts 180, 185 and 186 are amended as follows:

PART 180—[AMENDED]

1. In part 180:

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

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

B. Part 180 is amended as follows:.

i. By removing the phrase ''barley, forage,'' wherever it appears in part 180.

ii. By removing the phrases ''barley, forage, green,'' and ''barley green forage,'' wherever they appear in part 180.

iii. By removing the phrases ''peanuts, hulls,'' ''peanut vine hulls,'' ''peanut hulls,'' or ''peanuts (hulls) pre-H,'' wherever they appear in part 180.

C. Section 180.111 is amended as follows:

i. By designating the existing text as paragraph (a)(1), and adding a paragraph (a) heading.

ii. By removing the phrases ''lupine, hay (PRE-H)'' and ''lupine, straw (Pre-H)'' from the table in newly designated paragraph (a)(1).

iii. By adding and reserving new paragraphs (b), (c) and (d) with paragraph headings.

The additions read as follows:

§ 180.111 Malathion; tolerances for residues.

(a) *General.* (1) * * *

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

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

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

§ 180.205 [Amended]

D. Section 180.205 is amended by removing the phrase ''lentil, forage'' wherever it appears.

§ 180.277 [Removed]

E. By removing § 180.277.

F. By revising § 180.288 to read as follows:

§ 180.288 2-(Thiocyano-methylthio)benzothiazole; tolerances for residues.

(a) *General.* Tolerances are established for negligible residues of the fungicide 2-(thiocyanomethylthio) benzothiazole in or on barley (fodder, grain and straw), corn (fodder, forage, and grain), cotton forage, cottonseed, oats (fodder, forage, grain, and straw), rice (grain and straw) safflower (seed), sorghum (fodder, forage, and grain), sugarbeets (roots and tops), and wheat (fodder, forage, grain, and straw) at 0.1 part per million.

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

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

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

G. Section 180.314 is amended as follows:

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

ii. By removing the phrase ''lentils, forage'' wherever it appears in § 180.314.

iii. By adding and reserving new paragraphs (b), (c) and (d) with paragraph headings.

The additions read as follows:

§ 180.314 S–2,3,3-Trichloroallyl diisopropylthiocarbamate; tolerances for residues.

(a) *General.* * * *

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

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

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

H. Section 180.330 is amended as follows:

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

ii. By removing the phrase ''alfalfa, chaff, or seed'' from the table in paragraph (a).

iii. By adding an entry in alphabetical order to the table in paragraph (a) for ''sorghum milled fractions (except flour).''

iv. By redesignating paragraph (b) as paragraph (c), and adding a paragraph heading to newly designated paragraph (c).

v. By adding and reserving new paragraphs (b) and (d) with paragraphs headings.

The additions read as follows:

§ 180.330 S-[2-(Ethylsulfinyl)ethyl] O, O-dimethyl phosphorothioate; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * * * * *	
Sorghum milled fractions (except flour)	2.0
* * * * * * *	

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

(c) *Tolerances with regional registrations.* * * *

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

I. Section 180.332 is amended as follows:

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

ii. By removing the phrase ''lentils, forage'' wherever it appears in § 180.332.

iii. By adding and reserving new paragraphs (b), (c) and (d) with paragraph headings.

The additions read as follows:

§ 180.332 4-Amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one; tolerances for residues.

(a) *General.* * * *

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

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

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

§ 180.368 [Amended]

J. Section 180.368 is amended by removing from the table in paragraph (a) the phrases ''barley, forage,'' ''buckwheat, fodder,'' and ''buckwheat, forage.''

§ 180.379 [Amended]

K. In § 180.379, in paragraph (a)(3) by removing from the table the entries for dried apple pomace, dried tomato pomace, sugarcane bagasse, and sunflower hulls.

L. By revising 180.408 to read as follows:

§ 180.408 Metalaxyl; tolerances for residues.

(a) *General.* Tolerances are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dmethylphyenyl)-*N*-(methoxyacetyl) alanine methylester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methylphenyl)-*N*-(methoxyacetyl)-alanine methyl ester, each expressed as metalaxyl equivalents, in or on the following raw agricultural commodities:

Commodity	Parts per million
Alfalfa, forage	6.0
Alfalfa, hay	20.0
Almonds	0.5
Almonds, hulls	10.0
Apples	0.2
Apple, pomace (wet)	0.4
Asparagus	7.0
Avocados	4.0
Beets	0.1
Beet, tops	0.1
Blueberries	2.0
Brassica (cole) leafy vegetables group [except broccoli, cabbage, cauliflower, brussels sprouts, and mustard greens]	0.1
Broccoli	2.0
Brussels sprouts	2.0
Cabbage	1.0
Cattle, fat	0.4
Cattle, kidney	0.4
Cattle, liver	0.4
Cattle, meat	0.05
Cattle, mbyp (except kidney and liver)	0.05
Cauliflower	1.0
Cereal grains (except wheat, barley, and oats)	0.1
Citrus fruit	1.0
Citrus, pulp	7.0
Clover, forage	1.0
Clover, hay	2.5
Cottonseed	0.1
Cranberry	4.0
Cucurbit vegetables group	1.0
Eggs	0.05
Fruiting vegetables (except cucurbits) group	1.0
Ginseng	3.0
Goats, fat	0.4
Goats, kidney	0.4
Goats, liver	0.4
Goats, meat	0.05
Goats, mbyp (except kidney and liver)	0.05
Grain, crops	0.1
Grapes	2.0
Grass, forage	10.0
Grass, hay	25.0
Hogs, fat	0.4
Hogs, kidney	0.4
Hogs, liver	0.4
Hogs, meat	0.05
Hogs, mbyp (except kidney and liver)	0.05
Hops, dry	2.0
Hops, green	2.0
Horses, fat	0.4
Horses, kidney	0.4
Horses, liver	0.4
Horses, meat	0.05
Horses, mbyp (except kidney and liver)	0.05
Leafy vegetables (except brassica) group (except spinach)	5.0

Commodity	Parts per million
Leaves of root and tuber vegetables (human food or animal feed) group	15.0
Legume vegetable, cannery waste	5.0
Legume vegetable foliage	8.0
Legume vegetable group (dry or succulent)	0.2
Lettuce, head	5.0
Milk	0.02
Mustard greens	5.0
Onions, dry bulb	3.0
Onions, green	10.0
Peanut, hay	20.0
Peanut, meal	1.0
Peanut, nuts	0.2
Peanut, shells	2.0
Peanut, vines	20.0
Pineapples	0.1
Pineapple fodder	0.1
Pineapple forage	0.1
Potato waste, dried, processed	4.0
Poultry, fat	0.4
Poultry, kidney	0.4
Poultry, liver	0.4
Poultry, meat	0.05
Poultry, mbyp (except kidney and liver)	0.05
Potatoes	0.5
Raspberries	0.5
Root and tuber vegetables group	0.5
Sheep, fat	0.4
Sheep, kidney	0.4
Sheep, liver	0.4
Sheep, meat	0.05
Sheep, mbyp (except kidney and liver)	0.05
Soybean, grain	1.0
Soybean, hulls	2.0
Soybean, meal	2.0
Spinach	10.0
Stonefruit group	1.0
Strawberries	10.0
Sugar beets	0.1
Sugar beet molasses	1.0
Sugar beet (roots)	0.5
Sugar beet (tops)	10.0
Sunflowers	0.1
Sunflower, forage	0.1
Walnuts	0.5

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

(c) *Tolerances with regional registrations.* Tolerances with regional registration (refer to § 180.1(n)) are established for the combined residues of the fungicide metalaxyl [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester] and its metabolites containing the 2,6-dimethylaniline moiety, and *N*-(2-hydroxy methyl-6-methyl)-*N*-(methoxyacetyl)-alanine methylester, each expressed as metalaxyl, in or on the following raw agricultural commodity:

Commodity	Parts per million
Papaya	0.1

(d) *Indirect or inadvertent tolerances.* Tolerances are established for indirect or inadvertent residues of metalaxyl in or on the raw agricultural commodities when present therein as a result of the application of metalaxyl to growing crops listed in paragraph (a) of this section and other non-food crops to read as follows:

Commodity	Part per million
Barley, grain	0.2
Barley, fodder	2.0
Barley, straw	2.0
Cereal grains group (except wheat, barley, and oats), fodder	1.0
Cereal grains group (except wheat, barley, and oats), forage	1.0
Cereal grains group (except wheat, barley, and oats), straw	1.0
Oat, fodder	2.0
Oat, forage	2.0
Oat, grain	0.2
Oat, straw	2.0
Wheat, fodder	2.0
Wheat, forage	2.0
Wheat, grain	0.2
Wheat, straw	2.0

M. Section 180.422 is amended by adding paragraph (a)(3) to read as follows:

§ 180.422 Tralomethrin; tolerances for residues.

(a) * * *

(3) A feed additive tolerance of 0.02 part per million is established for the combined residues of the insecticide tralomethrin ((*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*S*)-2,2-dimethyl-3-[(*RS*)-1,2,2,2-tetrabromoethyl] cyclopropanecarboxylate) and its metabolites *cis*-deltamethrin [(*S*)-*alpha*-cyano-3-phenoxybenzyl-(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate] and *trans*-deltamethrin [(*S*)-*alpha*-cyano-3-phenoxybenzyl (1*S*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylate as follows:

(i) In or on all feed items (other than those covered by a higher tolerance as a result of use on growing crops) in feed-handling establishments.

(ii) The insecticide may be present as a residue from application of tralomethrin in feed-handling establishments, including feed manufacturing and processing establishments in accordance with the following prescribed conditions:

(A) Application shall be limited to a general surface and spot and/or crack and crevice treatment in feed-handling establishments where feed and feed products are held or processed. General surface application may be used only when the facility is not in operation provided exposed feed has been covered or removed from the area being treated. All feed-contact surfaces and equipment must be thoroughly cleaned after general surface applications. Spot and/or crack and crevice application may be used while the facility is in operation provided exposed feed is covered or removed from the area being treated prior to application. Spray concentration shall be limited to a maximum of 0.06 percent active ingredient. Contamination of feed and feed- contact surfaces shall be avoided.

(B) To assure safe use of the insecticide, its label and labelling shall conform to that registered with the U.S. Environmental Protection Agency and shall be used in accordance with such label and labelling.

* * * * *

PART 185—[AMENDED]

2. In part 185:

A. The authority citation for part 185 is revised to read as follows:

Authority: 21 U.S.C. 346a and 348.

§ 185.3850 [Partially Redesignated and Removed]

B. Section 185.3850 is amended as follows:

i. By transferring the text of § 185.3850 to § 180.111, and redesignating it as paragraphs (a)(2) introductory text, (a)(2)(i), (a)(2)(ii), (a)(2)(iii), and (a)(3), respectively.

ii. By removing the remainder of § 185.3850.

PART 186—[AMENDED]

3. In part 186:

A. The authority citation for part 186 is revised to read as follows:

Authority: 21 .U.S. C 342, 348, and 371.

§ 186.250 [Partially Redesignated and Removed]

B. Section 186.250 is amended as follows:

i. By removing from the table the entries for ''Sugarcane bagasse'' and ''Tomato pomace, dried.''

ii. By transferring the remaining entries in the table and adding them alphabetically into the table in § 180.332(a).

iii. By removing the remainder of § 186.250.

§ 186.350 [Amended]

C. Section 186.350 is amended by removing the entry beginning with ''70 parts per million in dried apple pomace...''.

§ 186.450 [Amended]

D. Section 186.450 is amended by removing the phrase ''citrus molasses and''.

§§ 186.600 [Removed]

E. By removing § 186.600.

§ 186.1000 [Amended]

F. Section 186.1000 is amended by removing from the table in paragraph (a) the entry for ''apple pomace, dried,'' ''corn soapstock,'' ''grape, pomace, dried,'' and ''sunflower seed hulls.''

§ 186.1075 [Amended]

G. Section 186.1075 is amended by removing from the table in paragraph (a) the entry for ''soybean soapstock.''

§ 186.1350 [Amended]

H. Section 186.1350 is amended by removing the entry in the table for ''apple pomace, dried.''

I. Section 186.1650 is revised to read as follows:

§ 186.1650 Dialifor.

Tolerances are established for combined residues of the insecticide dialifor (*S*-(2-chloro-1-phthalimidoethyl) *O*,*O*-diethyl phosphorodithioate) and its oxygen analog *S*-(2-chloro-1-phthalimido-ethyl) *O*,*O*-diethyl phosphorothioate in or on the following processed foods when present therein as a result of application to the following growing citrus:

Commodity	Parts per million
Dried citrus pulp	15

§ 186.2000 [Amended]

J. Section 186.2000 is amended by removing the entry in the table for ''Soybean soap stock.''

§ 186.2400 [Removed]

K. Section 186.2400 is removed.

§ 186.2700 [Amended]

L. Section 186.2700 is amended by removing from the table in paragraph (a) the entry for ''raisin waste.''

§ 186.2950 [Amended]

M. Section 186.2950 is amended by removing from the table the entries ''apple pomace (dried),'' ''citrus molasses,'' ''grape pomace,'' and ''raisin waste.''

§ 186.3050 [Removed]

N. Section 186.3050 is removed.

O. Section 186.3250 is revised to read as follows:

§ 186.3250 Fluazifop-butyl.

Tolerances are established for residues of (±)-2-[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoic acid (fluazifop), both free and conjugated, and of (±)-butyl 2[4-[[5-(trifluoromethyl)-2-pyridinyl]oxy]phenoxy]propanoate (fluazifop-butyl), all expressed as fluazifop, in or on the following feeds:

Food	Parts per million
Soybean, meal	2.0

§ 186.3350 and 186.3450 [Removed]

P. Sections 186.3350 and 186.3450 are removed.

§ 186.3550 [Amended]

Q. Section 186.3550 is amended by removing from the table in paragraph (a) the entries ''apple pomace, dried,'' ''grape pomace, dried,'' and ''raisin waste.''

§ 186.3750 [Amended]

R. Section 186.3750 is amended by removing from the table the entries ''grape, pomace, dry,'' ''raisin waste,'' and ''soapstock.''

§§ 186.4000 and 186.4800 [Removed]

S. Sections 186.4000, 186.4800 are removed.

T. Section 186.4975 is revised to read as follows:

§ 186.4975 Profenofos.

A regulation is established permitting residues of the insecticide profenofos [*O*-(4-bromo-2-chlorophenyl)-*O*-ethyl-*S*-propyl phosphorothioate] and its metabolites converted to 4-bromo-2-chlorophenol and calculated as profenofos in cottonseed hulls at 6.0 ppm.

§ 186.5000 [Amended]

U. Section 186.5000 is amended by removing the entries in the table for ''apple pomace, dried'' and ''grape pomace, dried.''

§ 186.5450 [Removed]

V. Section 186.5450 is removed.

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 61

RIN 3067–AC73

National Flood Insurance Program (NFIP); Standard Flood Insurance Policy

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule increases the amount of the deductible under the Standard Flood Insurance Policy—from $750 to $1,000—for structures with subsidized coverage.

EFFECTIVE DATE: May 1, 1998.

FOR FURTHER INFORMATION CONTACT: Charles M. Plaxico, Jr., Federal Emergency Management Agency, Federal Insurance Administration, 202–646–3422, (facsimile) 202–646–4327.

SUPPLEMENTARY INFORMATION: On October 7, 1997, FEMA published in the **Federal Register**, 62 FR 52304, a proposed rule to amend the regulations of the National Flood Insurance Program (NFIP) to increase the deductible from $750 to $1,000 for structures with subsidized coverage. The proposal also described a buy-back feature that would permit insureds to 'buy back,' in consideration of additional premium, a reduced deductible under the Standard Flood Insurance Policy (SFIP).

During the comment period, comments were received from: The Flood Insurance Producers National Committee (FIPNC), a staff underwriter from one of the insurance companies participating in the NFIP's Write Your Own (WYO) program, and the Association of State Flood Plain Managers (ASFPM).

FIPNC agreed with the proposed change in its entirety and recommended that the amount of the reduced deductible that a policyholder could buy back be set at $500. While the policy language itself will remain silent on the amount of the reduced buy-back, the $500 figure is the amount contemplated by the Federal Insurance Administration in implementing this rule.

The underwriter from one of the WYO companies expressed concern that changing the deductible would introduce complexities that would undermine the NFIP's growth and policy sales goals. Assuming that the commenter is referring to the underwriting steps to reduce the deductible to $500 for an additional charge, any additional complexity is more than offset by the ability of the insured to purchase the desired coverage. Since optional increased deductibles have already been available for many years, it would appear that the flexibility to reduce the deductible does not add any large degree of complexity in writing the policy.

The underwriter also expressed concern that increasing the deductible and offering a buy-back would require ''enormous changes'' to the computer systems of a participating company. It is unclear why this would be necessary. The FIA consulted with the NFIP Bureau and Statistical Agent and several WYO companies before initiating rulemaking. There was no indication at all that establishing a surcharge for an optional deductible would pose any difficulty. From past experience, the proposed lead-time for implementing this change should be adequate.

The underwriter also raised the question of whether increasing the deductible would ''provide enough benefit to warrant such a drastic change.'' It is FEMA's position that the change is far from ''drastic'' and actually is only a modest one for agents and companies participating under the WYO Program. The reason for implementing this change is to benefit the general body of taxpayers by distributing costs more equitably between the public taxpayers who have subsidized the coverage and the policyholders who benefit from less than actuarial rates.

The last issue raised by the insurance underwriter focused on whether the deductible will be accepted by mortgage companies and recommended that FEMA coordinate the rule change with lending institutions prior to implementation. It is a standard procedure for FEMA to coordinate with the Federal agencies that regulate lending activities any change connected with the National Flood Insurance Program. This change will be no exception. Before the effective date of May 1, 1998, in addition to the close coordination FEMA will make with these agencies, FEMA will incorporate this change in its lenders workshops scheduled for this fiscal year.

ASFPM, the third commenter, believed that the ''Federal Insurance Administration (FIA) has unnecessarily narrowed its options for building reserves for catastrophic loss years.'' ASFPM recommended that before FIA inaugurates an increase in the deductible for subsidized policies other measures should be taken. ASFPM said that, ''Limiting the options to those whose costs are borne by the policy holder ignores a number of programmatic, process, and operational measures that should be examined. FIA has a responsibility to demonstrate to Congress, and the rate payers, that its performance as a business is efficient.''

FEMA disagrees that it has restricted its options. To increase the deductible for subsidized policies through rulemaking, which is the necessary and appropriate vehicle for changes to the Standard Flood Insurance Policy, does not prevent FEMA from continuing to pursue other program improvements that do not require rulemaking, such as the ones recommended by the Association. FEMA does not believe that it serves business efficiency by delaying modest actions that can reasonably be taken now to reduce outlays from the National Flood Insurance Fund while other initiatives, including some of those proposed by the Association, are already underway independent of rulemaking.

ASFPM also expressed concern that the NFIP's '' 'administrative grandfathering' measure allows a policyholder to 'lock in' a rate regardless of future changes in risk or in the mapped Special Flood Hazard Area.'' Unlike the ''lock in'' feature of many home purchase agreements where a homebuyer may ''lock in'' a set interest rate for his or her mortgage loan for the term of the loan and can thereby be assured of the same monthly payment for the entire term of the loan, there are no such guarantees for policy-holders under the NFIP. While the policyholder with a pre-FIRM structure may be entitled under the NFIP's ''administrative grandfathering'' provision to the same risk classification, it does not guarantee that the policyholder will not experience an increase in the premium paid each year for flood insurance coverage. The entire issue of ''administrative grandfathering,'' however, is under review by the Federal Insurance Administration. In the meantime, FEMA will implement this modest change of increasing the deductible for subsidized policies.

FEMA agrees wholeheartedly with the ASFPM's recommendation that underused, low-cost mitigation measures should be encouraged, such as relocating furnaces and hot water heaters. FEMA encourages such measures in its Interagency Hazard Mitigation Team Reports, through its publications to homeowners and insureds, by assigning mitigation specialists to assist flood victims and communities during the recovery process, and by conducting on-site mitigation workshops after flood disasters. States, localities, and FEMA have been working in partnership for years on this issue and will continue to work to implement the type of low cost mitigation measures cited by the Association. To suggest that increasing the deductible should be delayed until *after* more success is achieved in this area is not reasonable.

ASFPM also recommended that FEMA improve ''quality control when policies are written and by evaluating the policies currently on the books.'' The Association argued that corrections in ratings ''will increase premium income in a manner that will benefit all policy holders.'' FIA has conducted studies to determine the possible extent of misrating. These studies show that only a relatively small percentage of NFIP policies are misrated. FEMA has underway efforts to improve the quality of underwriting in the NFIP.

First, during fiscal year 1997, the NFIP conducted 396 workshops for insurance agents to master the underwriting requirements of the NFIP so that policies will be rated properly when submitted to the NFIP or to the Write Your Own company participating in the NFIP. So far, 150 workshops for agents have been scheduled for fiscal year 1998.

Second, there are other initiatives underway designed to improve the quality control of NFIP's underwriting. In May 1998, FIA will use a Geographic Information System (GIS) to ensure that structures insured by Preferred Risk Policies (PRP) are in fact located in zones entitling them to PRP rates. If this proves to be an effective tool for monitoring structures insured under PRP policies, FIA may expand the use of the GIS system as a quality control tool for other policies as well. Also, a condominium re-inspection program has been an effective tool to ensure proper rating of condominiums.

ASPFM cited the difficult experience of State and local floodplain managers in administering the NFIP's 'substantial damage' provision after significant flood damage. The Association recommended that ''FEMA should examine current methods for determining 'substantial damage' and seek to simplify the process.'' FEMA has long recognized the problems with regard to State and community implementation of the NFIP substantial damage requirement. The

NFIP substantial damage requirement, although a necessary step to reduce flood damages, has often created financial hardship for individual property owners who must comply with a floodplain management ordinance which requires that buildings be elevated or floodproofed to an elevation above the base flood elevation (a flood having a one percent chance of being equaled or exceeded in any given year). FEMA believes that the new Increased Cost of Compliance (ICC) coverage under the Standard Flood Insurance Policy, a coverage mandated by § 555 of Pub. L. 103–325 and implemented by FEMA through publication of a final rule on February 25, 1997, in the **Federal Register** 62 FR 8391, will help policyholders to pay for the additional costs to comply with State or community floodplain management laws or ordinances for substantially damaged as well as repetitively damaged buildings. In addition, FEMA has developed the ''Residential Substantial Damage Estimator,'' which is a computer program to assist State and local officials in estimating building value and damage costs for both single family and manufactured homes. Furthermore, FIA has worked closely with the Mitigation Directorate to develop a procedure for alerting both the local community and the FEMA Regional Mitigation staff of potential cases of substantial damage after a flood event. Once sufficient claims have been paid on the new coverage, FEMA intends to evaluate how well the ICC coverage is working. FEMA will also continue to examine how well communities are implementing the substantial damage requirement and evaluate methods for determining substantial damage.

The Association also stated that ''the claims adjustment process should be critically evaluated to determine that claims amounts are appropriate. The Association is aware of anecdotal evidence that some policyholders may be receiving claim payments that are in excess of damage. Occasionally, it is perceived that a claims adjuster may be lax because the dollars used to pay claims are not the responsibility of his or her insurance company.''

On the broader issues of claims payments and fiscal responsibility, FEMA has adopted a number of safeguards to ensure a claim program of the highest quality and service possible. A company participating in the NFIP's Write Your Own program bears responsibility for overpayments that result from error—and not simply a matter of judgement—and must reimburse the National Flood Insurance Fund for overpayments due to such errors. FEMA has a regular system of re-inspections and audits to maintain quality control over the claim process. The NFIP has on its staff experienced general property adjusters who conduct random re-inspections of claims handled by each of the companies participating in the NFIP's Write Your Own program. In addition to the claims re-inspection program, claims are audited by an accounting firm selected by FEMA's Office of Inspector General. These audits include a representative number of claim files for each year that are reviewed for compliance with NFIP regulations. Under the NFIP's claim audit procedures, Write Your Own companies themselves must hire independent auditors to do audits every two years. In addition, FIA is about to conduct a study that will review the whole process of claims adjustments and audits. The experience from past audits and re-inspections is that claims overpayments have not been a significant problem. Nonetheless, FEMA invites concrete evidence on any policyholders who may have received ''claim payments that are in excess of damage'' or where the claims adjuster ''may be lax.'' That information may be submitted directly to: Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street SW., Washington, DC 20472, Attention: Director of Claims.

The Association also recommended that the expense allowance—the amount of premium retained by companies participating in the NFIP's Write Your Own program, especially the amount of commission paid to agents for policy renewals—be examined ''carefully because the NFIP is fundamentally a program designed to reduce federal disaster expenditures and to help floodplain occupants.'' FEMA is in the process of evaluating what percentage of the expense allowance is appropriate for companies to retain and how that should relate to meeting specified growth goals.

Finally, the Association cited repetitive losses as a ''significant drain on the National Flood Insurance Fund'' and urged ''closer examination of the repetitive loss problem in order to determine whether certain types of risks can be discriminated, and perhaps targeted with mitigation information.'' The problem of repetitive losses has presented a significant challenge to the program. In the past, FIA proposed several remedies, including premium surcharges, to address the problem of repetitive flood losses. These proposals, however, encountered political opposition and have not been implemented.

Currently, FEMA is addressing this problem through its Community Rating System (CRS), implementation of ICC coverage, and mitigation grant and assistance programs authorized by Congress. The NFIP's CRS, through community-wide premium discounts, gives incentives to communities to mitigate repetitive flood losses. In addition, Congress authorized ICC coverage not only for substantially flood-damaged buildings but also for repetitively flood-damaged buildings in States and communities that require compliance with laws and ordinances affecting these buildings. With passage of the National Flood Insurance Reform Act, Pub. L. 103–325, Congress also authorized establishment of a Federal grant program—Flood Mitigation Assistance (FMA)—to provide financial assistance to States and communities for flood mitigation planning and activities. A major statutory goal of FEMA is to fund cost-effective mitigation measures that reduce the number of repetitively damaged buildings. FEMA's Hazard Mitigation Grant Program authorized under § 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act also provides financial assistance to States and communities to fund mitigation measures for repetitively damaged buildings following a major disaster declaration. FEMA will continue to explore other measures to address the issue of repetitive losses.

Increasing the deductible is one relatively modest step that is expected to reduce outlays from the National Flood Insurance Fund by $6.3 million in the first full year of implementation. This action is a measured change compatible with Congressional intent for the program. The subsidy study that the ASFPM wished to see completed before the increase in deductible takes effect is intended to examine the affects of subsidy changes of much greater impact and wider scope. FEMA intends to pursue a balanced approach through its program initiatives for the NFIP with modest reductions in subsidy that are consistent with the larger NFIP subsidy issue. These efforts complement the recommendations made by the Association. FEMA does not agree that increasing the deductible should be delayed until larger scale solutions are identified and implemented.

National Environmental Policy Act

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4371 *et seq.*, and the implementing regulations of the Council

on Environmental Quality, 40 CFR parts 1500–1508, FEMA has conducted an environmental assessment of this final rule. The assessment concludes that there will be no significant impact on the human environment as a result of the issuance of this final rule, and no Environmental Impact Statement will be prepared. Copies of the environmental assessment are on file for inspection through the Rules Docket Clerk, Federal Emergency Management Agency, room 840, 500 C Street SW., Washington, DC 20472.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action within the meaning of § 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735, but attempts to adhere to the regulatory principles set forth in E.O. 12866. The final rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Paperwork Reduction Act

This final rule does not contain a collection of information and therefore is not subject to the provisions of the Paperwork Reduction Act of 1995.

Executive Order 12612, Federalism

This final rule involves no policies that have federalism implications under E.O. 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This final rule meets the applicable standards of § 2(b)(2) of E.O. 12778.

Congressional Review of Agency Rulemaking

This final rule has been submitted to the Congress and to the General Accounting Office under the Congressional Review of Agency Rulemaking Act, Pub. L. 104–121. The rule is not a ''major rule'' within the meaning of that Act. It does not result in nor is it likely to result in an annual effect on the economy of $100,000,000 or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and it will not have ''significant adverse effects'' on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises.

This final rule is exempt (1) from the requirements of the Regulatory Flexibility Act, and (2) from the Paperwork Reduction Act. The rule is not an unfunded Federal mandate within the meaning of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4. It does not meet the $100,000,000 threshold of that Act, and any enforceable duties are imposed as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program.

List of Subjects in 44 CFR Part 61

Flood insurance.

Accordingly, 44 CFR Part 61 is amended as follows:

PART 61—INSURANCE COVERAGE AND RATES

1. The authority citation for Part 61 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Paragraph C. of Article 7 of Appendix A(1) is revised to read as follows:

Appendix A(1)—Federal Emergency Management Agency, Federal Insurance Administration Standard Flood Insurance Policy

* * * * *

C. For any *flood* insurance *policy* issued or renewed for a property located in an *Emergency Program community* or for any property located in a *Regular Program community* in Zones A, AO, AH, A1–A30, AE, AR, AR/AE, AR/AH, AR/AO, AR/A1–A30, AR/A, VO, V1–V30, VE, or V where the rates available for *buildings* built before the effective date of the initial Flood Insurance Rate Map or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: We shall be liable only when such loss exceeds $1,000, or the amount of any other deductible that you selected when you applied for this *policy* or subsequently by endorsement.

* * * * *

3. Paragraph C. of Article 7 of Appendix A(2) is revised to read as follows:

Appendix A(2)—Federal Emergency Management Agency, Federal Insurance Administration Standard Flood Insurance Policy

C. For any *flood* insurance *policy* issued or renewed for a property located in an *Emergency Program community* or for any property located in a *Regular Program community* in Zones A, AO, AH, A1–A30, AE, AR, AR/AE, AR/AH, AR/AO, AR/A1–A30, AR/A, VO, V1–V30, VE, or V where the rates available for *buildings* built before the effective date of the initial Flood Insurance Rate Map or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $1,000, or the amount of any other deductible that the Insured selected when it applied for this *policy* or subsequently by endorsement.

* * * * *

4. Paragraph C. of Article 7 of Appendix A(3) is revised to read as follows:

Appendix A(3)—Federal Emergency Management Agency, Federal Insurance Administration Standard Flood Insurance Policy

C. For any *flood* insurance *policy* issued or renewed for any property located in Zones A, AO, AH, A1–A30, AE, AR, AR/AE, AR/AH, AR/AO, AR/A1–A30, AR/A, VO, V1–V30, VE, or V where the rates available for *buildings* built before the effective date of the initial Flood Insurance Rate Map or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $1,000, or the amount of any other deductible that the Insured selected when it applied for this *policy* or subsequently by endorsement.

* * * * *

(Catalog of Federal Domestic Assistance No. 83.100, ''Flood Insurance''; No. 83.516, ''Disaster Assistance'')

Dated: December 12, 1997.

Edward T. Pasterick,

Acting Executive Administrator, Federal Insurance Administration.

[FR Doc. 97–32945 Filed 12–16–97; 8:45 am]

BILLING CODE 6718–03–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 69

[CC Docket Nos. 96–262, 94–1, 91–213, 95–72; FCC 97–368]

Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers; Transport Rate Structure

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of October 29, 1997, (62 FR 56121), a document revising rules governing the access charges of incumbent local exchange carriers. Inadvertently, the Commission failed to amend the rule that describes how incumbent LECs that are not subject to price cap regulation calculate the transport interconnection charge. This document makes that amendment.

DATES: Effective December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Aaron Goldschmidt, Attorney, Common Carrier Bureau, Competitive Pricing Division, (202) 418–1530.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published FR Doc. 97–28548 in the **Federal Register** of October 29, 1997 (62 FR 56121), a document revising rules governing the access charges of incumbent local exchange carriers. Inadvertently, the Commission failed to amend the rule that describes how incumbent LECs that are not subject to price cap regulation calculate the transport interconnection charge. This document makes that amendment. The full text of this Erratum is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M St., NW., Washington, DC. The complete text also may be obtained through the World Wide Web, at http://www.fcc.gov/Bureaus/Common_Carrier/Orders/1997/err97368.wp, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

In rule FR Doc. 97–28548 published on October 29, 1997, (62 FR 56121) make the following correction.

1. On page 56132, in the third column, correct the number of amendatory instruction 80 to read ''81'', and on page 56133, in the second column, correct the number of amendatory instruction 81 to read ''82''.

2. On page 56132, in the third column, add a new amendatory paragraph 80 to read as follows:

80. Section 69.124 is revised to read as follows:

§ 69.124 Interconnection charge.

(a) Local exchange carriers not subject to price cap regulation shall assess an interconnection charge expressed in dollars and cents per access minute upon all interexchange carriers and upon all other persons using the telephone company switched access network.

(b) If the use made of the local exchange carrier's switched access network includes the local switch, but not local transport, the interconnection charge assessed pursuant to paragraph (a) of this section shall be computed by subtracting entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signalling transport revenues, as well as any interconnection charge revenues that the local exchange carrier anticipates will be reassigned to other, facilities-based rate elements in the future, from the part 69 transport revenue requirement, and dividing by the total interstate local switching minutes.

(c) If the use made of the local exchange carrier's switched access network includes local transport, the interconnection charge to be assessed pursuant to paragraph (a) of this section shall be computed by dividing any interconnection charge revenues that the local exchange carrier anticipates will be reassigned to other, facilities-based rate elements in the future by the total interstate local transport minutes, and adding thereto the per minute amount calculated pursuant to paragraph (b) of this section.

Federal Communications Commission.

James D. Schlichting,

Chief, Competitive Pricing Division, Common Carrier Bureau.

[FR Doc. 97–32770 Filed 12–16–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–170; RM–8844, RM–9057]

Radio Broadcasting Services; Franklin and White Castle, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Annette G. Thompson, allots Channel 295C3 to Franklin, Louisiana, as the community's second local FM service. See 61 FR 44288, August 28, 1996. Channel 295C3 can be allotted in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 295C3 at Franklin are 29–47–42 NL and 91–30–12 WL. We also dismiss the counterproposal filed by White Castle Broadcasting (RM–9057) requesting the allotment of Channel 295A to White Castle, Louisiana. White Castle Broadcasting's counterproposal is not consistent with the Commission's procedural requirements. With this action, this proceeding is terminated.

EFFECTIVE DATE: January 20, 1998. A filing window for Channel 295C3 at Franklin, Louisiana, 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: Pam Blumenthal, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–170, adopted November 19, 1997, and released December 5, 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 contractor, ITS, 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 Louisiana, is amended by adding Channel 295C3 at Franklin.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32891 Filed 12–16–97; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 96–240; RM–8946, RM–9019]

Radio Broadcasting Services; Lockport and Amherst, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kevin O'Kane, allots Channel

221A to Amherst, NY, as the community's first local FM service. *See* 61 FR 65509, December 13, 1996. The request of Culver Communications Corp. to allot Channel 221A to Lockport, NY, is denied. Channel 221A can be allotted to Amherst in compliance with the Commission's minimum mileage separation requirements with respect to all domestic allotments without the imposition of a site restriction, at coordinates 42–58–42 North Latitude and 78–48–00 West Longitude. The allotment is short-spaced to Channel 219C1, St. Catharines, Ontario, Channels 221C1/221B, Brantford, Ontario, and Channel 222B, Oshawa, Ontario, Canada. However, concurrence by the Canadian government has been received in the Amherst allotment as a specially negotiated sort-spaced allotment. With this action, this proceeding is terminated.

DATES: Effective January 20, 1998. A filing window for Channel 221A at Amherst, New York, 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: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 96–240, adopted November 19, 1997, and released December 5, 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 contractor, International Transcription Services, 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 New York, is amended by adding Amherst, Channel 221A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32890 Filed 12–16–97; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–132; RM–9081]

Radio Broadcasting Services; Mesquite, NV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Will Kemp, allots Channel 244C to Mesquite, NV, as the community's second local FM service. *See* 62 FR 27711, May 21, 1997. Channel 244C can be allotted to Mesquite in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.4 miles) north, at coordinates 36–51–15 North Latitude and 114–03–30 West Longitude, to avoid a short-spacing to the outstanding construction permit (BMPH–960607IH) of Station KTVF, Channel 244C2, Williams, AZ, and to one of the pending applications (ARN–950825MB) for Channel 244C2 at Lake Havasu City, AZ. With this action, this proceeding is terminated.

DATES: Effective January 20, 1998. A filing window for Channel 244C at Mesquite, NV, 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: Leslie K. Shapiro, Mass Media Bureau, 202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 97–132, adopted November 12, 1997, and released December 5, 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 contractor, International Transcription Services, 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 Nevada, is amended by adding Channel 244C at Mesquite.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 97–32889 Filed 12–16–97; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 961107312–7021–02; I.D. 120897B]

Fisheries of the Exclusive Economic Zone Off Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; Apportionment of Reserve

ACTION: Apportionment of reserve; request for comments.

SUMMARY: NMFS apportions reserve to certain target species in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to account for previous harvest of the total allowable catch (TAC). It is intended to promote the goals and objectives of the North Pacific Fishery Management Council.

DATES: Effective December 16, 1997. Comments must be received no later than 4:30 p.m., Alaska local time, January 2, 1998.

ADDRESSES: Comments may be sent to Susan Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, 709 West 9th Street, Room 453, Juneau, AK 99801 or P.O. Box 21688, Juneau, AK 99802, Attn: Lori Gravel.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the

Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at subpart H of 50 CFR parts 600 and 679.

The Administrator, Alaska Region, NMFS, has determined that the initial TACs specified for Greenland turbot in the Bering Sea subarea and squid and ''other species'' in the Bering Sea and Aleutian Islands subarea need to be supplemented from the non-specific reserve in order to continue operations and account for prior harvest.

Therefore, in accordance with § 679.20(b)(3), NMFS apportions from the reserve to TACs for the following species: Bering Sea subarea—2,245 metric tons (mt) to Greenland turbot; Bering Sea and Aleutian Islands subareas—295 mt to squid, 3,870 mt to ''other species.''

The apportionments are consistent with § 679.20(b)(1)(ii) and do not result in overfishing of a target species or the ''other species'' category because the revised TACs are equal to or less than specifications of acceptable biological catch.

Classification

This action is required by 50 CFR 679.20 and is exempt from review under E.O 12866.

The Assistant Administrator for Fisheries, NOAA, has determined, under section 553(b)(3)(B) and (d)(3) of the Administrative Procedure Act and 50 CFR 679.20(b)(3)(iii)(A), that good cause exists for waiving the opportunity for prior public comment and the 30-day delayed effectiveness period for this action. Fisheries are currently taking place that will be supplemented by this apportionment. Delaying the implementation of this action would be disruptive and costly to those ongoing operations.

Authority: 16 U.S.C. 1801, *et seq.*

Date: December 11, 1997.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32946 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 62, No. 242
Wednesday, December 17, 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

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV–97–302]

RIN 0581–AB51

Fees for Destination Market Inspections of Fresh Fruits, Vegetables and Other Products

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the regulations governing the inspection and certification for fresh fruits, vegetables and other products by increasing by approximately 10 percent the fees charged for the inspection of these products at destination markets. These revisions are necessary in order to recover, as nearly as practicable, the costs of performing inspection services at destination markets under the Agricultural Marketing Act of 1946. The fees charged to persons required to have inspections on imported commodities in accordance with the Agricultural Marketing Agreement Act of 1937 and for imported peanuts under the Agricultural Act of 1949 would also be affected. This rule would also revise the regulations with regard to the disposition of inspection certificates to require that one copy of the certificate be delivered or mailed to the shipper of the inspected product.

DATES: Comments must be postmarked or courier dated on or before February 17, 1998.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent to the Program Support Section, Fresh Products Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2049 South Building, Washington, D.C. 20090–6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Rob Huttenlocker at the above address or call (202) 720–0297.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

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

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

AMS regularly reviews its user-fee financed programs to determine if the fees are adequate. The existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Current revenue projections for destination market inspection work during FY 97 are $12.0 million with costs projected at $11.9 million and an end-of-year reserve of $3.0 million. However, the Fresh Products Branch's (FPB) trust fund balance for this program will be approximately $1.0 million under the four-month level of approximately $4.0 million. Further, FPB's costs of operating the destination market program are expected to increase to approximately $12.9 million during FY 98 and to approximately $13.2 million in FY 99. These cost increases will result from both inflationary increases with regard to current FPB operations and services and the need to improve or expand current services.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 4.66 percent depending on locality, effective January 1997, significantly increased program costs. Another general and locality salary increase is expected to become effective in January 1998. In addition, inflation also impacts upon FPB's non-salary costs. These increases will increase FPB's costs of operating this program by approximately $300,000 per year.

Additional revenues are also needed to enable FPB to cover the costs of improving program integrity by mailing copies of all destination market certificates to the shippers of the products inspected. FPB estimates that it will cost $200,000 per year for the postage, envelopes and additional staff time to send the approximately 275,000 inspection certificates it issues annually. Additional revenues are also necessary in order that FPB may cover the costs of securing the additional staff ($200,000) needed to increase the timeliness of service delivery in several destination markets which are currently in need of additional staffing (e.g., Dallas, Texas). Finally, FPB needs an additional $200,000 per year for three to four years to cover the costs of securing the equipment (e.g., digital imaging cameras and computers, inspector notebook computers and Agency-mandated information systems upgrades) needed to expand FPB's services and to make existing services more efficient in the future.

This proposed fee increase should result in an estimated $1.2 million in additional revenues per year (only $600,000 during FY 98 since any fee increase would be effective on April 1, 1998) and should enable FPB to cover its costs while maintaining current program reserves (at a level below that provided for by Agency policy).

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. The action described herein is being considered for several reasons, including that additional user fee revenues are needed to cover the costs of: (1) providing current program operations and services; (2) improving program integrity by mailing copies of all destination market certificates to the shippers of the products inspected (the basis for the proposed change in regulation with regard to the disposition of inspection certificates to include that one copy be delivered or mailed to the shipper of the inspected product); (3) improving the timeliness with which inspection services are provided; and (4) acquiring technological advancements (e.g., digital imaging cameras and computers, inspector notebook

computers and Agency-mandated information systems upgrades) aimed at expanding FPB's services and making them more efficient in the future. The objective of this proposed rule is to increase user fee revenue generated under the destination market program by approximately $1.2 million or approximately 10 percent per year. This action is authorized under the Agricultural Marketing Act (AMA) of 1946 (see 7 U.S.C. 1622(h)) which states that the Secretary of Agriculture may assess and collect ''such fees as will be reasonable and as nearly as may be to cover the costs of services rendered * * *''

There are more than 2,000 users of FPB's destination market grading services (including applicants who must meet import requirements [1]—inspections which amount to under 2.5 percent of all lot inspections performed). A small portion of these users are small entities under the criteria established by the Small Business Administration (13 CFR 121.601). There will be no additional reporting, recordkeeping, or other compliance requirements imposed upon small entities as a result of this proposed rule. FPB has not identified any other Federal rules which may duplicate, overlap or conflict with this proposed rule.

Inasmuch as the destination market grading services are voluntary (except when required for imported commodities), and since the fees charged to users of these services vary with usage, the impact on all businesses, including small entities, is very similar. Further, even though fees will be raised, the increase is small (approximately ten percent) and should not significantly affect these entities. Finally, except for those persons who are required to obtain inspections, most of these businesses are typically under no obligation to use these inspection services, and, therefore, any decision on their part to discontinue the use of the services should not prevent them from marketing their products.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Proposed Action

The AMA authorizes official inspection, grading and certification, on a user-fee basis, of fresh fruits, vegetables and other products such as raw nuts, Christmas trees and flowers. The AMA provides that reasonable fees be collected from the users of the services to cover, as nearly as practicable, the costs of the services rendered. This proposed rule will amend the schedule for fees and charges for inspection services rendered to the fresh fruit and vegetable industry to reflect the costs necessary to operate the program.

AMS regularly reviews its user-fee programs to determine if the fees are adequate. While FPB continues to search for opportunities to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance (four months of costs) as called for by Agency policy (AMS Directive 408.1). Current revenue projections for destination market inspection work during FY 97 are $12.0 million with costs projected at $11.9 million and an end-of-year reserve of $3.0 million. However, FPB's trust fund balance for this program will be approximately $1.0 million under the four-month level of approximately $4.0 million. Further, FPB's costs of operating the destination market program are expected to increase to approximately $12.9 million during FY 98 and to approximately $13.2 million in FY 99. These cost increases (which are outlined below) will result from both inflationary increases with regard to current FPB operations and services and the need to improve or expand current services.

Employee salaries and benefits are major program costs that account for approximately 80 percent of FPB's total operating budget. A general and locality salary increase for Federal employees, ranging from 2.30 to 4.66 percent depending on locality, effective January 1997, significantly increased program costs. Another general and locality salary increase is expected to become effective in January 1998. In addition, inflation also impacts upon FPB's non-salary costs. These increases will increase FPB's costs of operating this program by approximately $300,000 per year.

Additional revenues are also needed to enable FPB to cover the costs of improving program integrity by mailing copies of all destination market certificates to the shippers of the products inspected. This is an essential step in FPB's ongoing effort to improve the integrity of the inspection process. This action will assist in preventing industry participants from using falsified inspection certificates to alter the terms of sales between shippers and receivers. In accordance with this effort, the regulations with regard to the disposition of inspection certificates in 7 CFR 51.21 are proposed to be revised to require that one copy of the certificate be provided to the shipper of the inspected product. FPB estimates that it will cost $200,000 per year for the postage, envelopes and additional staff time to send the approximately 275,000 inspection certificates it issues annually.

Additional revenues are also necessary in order that FPB may cover the costs of securing the additional staff ($200,000) needed to increase the timeliness of service delivery in several destination markets which are currently in need of additional staffing (e.g., Dallas, Texas). This action responds to industry feedback to FPB's FY 1996 Customer Service Survey which emphasized the importance of timeliness far more than cost containment.

Finally, FPB needs an additional $200,000 per year for three to four years to cover the costs of securing the equipment (e.g., digital imaging cameras and computers, inspector notebook computers and Agency-mandated information systems upgrades) needed to expand FPB's services and to make existing services more efficient in the future.

This proposed fee increase should result in an estimated $1.2 million in additional revenues per year (only $600,000 during FY 98 since any fee

[1] Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), requires that whenever the Secretary of Agriculture issues grade, size, quality or maturity regulations under domestic marketing orders for certain commodities, the same or comparable regulations on imports of those commodities must be issued. Import regulations apply only during those periods when domestic marketing order regulations are in effect.

Currently, there are 15 commodities subject to 8e import regulations: avocados, dates (other than dates for processing), filberts, grapefruit, kiwifruit, limes, olives (other than Spanish-style green olives), onions, oranges, Irish potatoes, prunes, raisins, table grapes, tomatoes and walnuts. A current listing of the regulated commodities can be found under 7 CFR Parts 944, 980 and 999. Section 999.600 establishes minimum quality, identification, certification and safeguard requirements for foreign produced farmers stock, shelled and cleaned in-shell peanuts presented for importation into the United States. Import requirements applicable to peanuts may be found under subparagraph (f)(2) of section 108B of the Agricultural Act of 1949 (7 U.S.C. 1445c–3), as amended November 28, 1990, and August 10, 1993, and section 155 of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7271).

increase would be effective on April 1, 1998) and should enable FPB to cover its costs while maintaining current program reserves. In order to reach a four month reserve, further increases in fees will be likely in future years.

Based on the aforementioned analysis of this program's increasing costs, AMS proposes to increase the fees for destination market inspection services. The following table compares current fees and charges with proposed fees and charges for fresh fruit and vegetable inspection as found in 7 CFR 51.38. Unless otherwise provided for by regulation or written agreement between the applicant and the Administrator, the charges in the schedule of fees as found in § 51.38 are:

Service	Current	Proposed
Quality and condition inspections of one to four products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
Over a half carlot equivalent of each product	$78	$86.
Half carlot equivalent or less of each product	65	72.
For each additional lot of the same product	13	14.
Condition only inspections of one to four products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
Over a half carlot equivalent of each product	65	72.
Half carlot equivalent or less of each product	60	66.
For each additional lot of the same product	13	14.
Quality and condition and condition only inspections of five or more products each in quantities of 51 or more packages and unloaded from the same land or air conveyance:		
For the first five products	277	305.
For each additional product	39	43.
For each additional lot of any of the same product	13	14.
Quality and condition and condition only inspections of products each in quantities of 50 or less packages unloaded from the same land or air conveyance:		
For each product	39	43.
For each additional lot of any of the same product	13	14.
Dock-side inspections of an individual product unloaded directly from the same ship:		
For each package weighing less than 15 pounds	1 cent	1.1 cents.
For each package weighing 15 to 29 pounds	2 cents	2.2 cents.
For each package weighing 30 or more pounds	3 cents	3.3 cents.
For each additional lot of any of the same product	13	14.
Minimum charge per individual product	78	86.
Inspections performed for other purposes (except for contract work) during the grader's regularly scheduled work week.	39 per hour	43 per hour.
Overtime or holiday premium rate (per hour additional) for all inspections performed outside the grader's regularly scheduled work week.	19.50 per hour	21.50 per hour.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and record keeping requirements, Trees, Vegetables.

For reasons set forth in the preamble, 7 CFR Part 51 is proposed to be amended as follows:

PART 51—[AMENDED]

1. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

2. Section 51.21 is revised to read as follows:

§ 51.21 Disposition of inspection certificates.

The original certificate, and not to exceed four copies (if requested by applicant prior to issuance), shall be delivered or mailed promptly to the applicant or to a person designated by him. One copy shall be delivered or mailed to the shipper of the inspected product. One copy shall be filed in the office of the inspector when the inspection is made by a Federal Government employee, otherwise, it shall be filed in the appropriate office of the cooperating Federal-State Inspection Agency. Unless otherwise directed by the Administrator, two copies of each official certificate issued on products received in destination markets shall be forwarded to the Administrator to be kept on file in Washington and no copies of official certificates issued at shipping point need be so forwarded. In the case of any product covered by a marketing agreement and/or order effective pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), at least one copy of each certificate covering the inspection of such product shall, on request, be delivered to the administrative agency established thereunder, subject to such terms and conditions as the Administrator may prescribe. Copies may be furnished to other interested parties as outlined in § 51.41.

3. Section 51.38 is revised to read as follows:

§ 51.38 Basis for fees and rates.

(a) When performing inspections of product unloaded directly from land or air transportation, the charges shall be determined on the following basis:

(1) For products in quantities of 51 or more packages:

(i) Quality and condition inspection of 1 to 4 products unloaded from the same conveyance:

(A) $86 for over a half carlot equivalent of an individual product.

(B) $72 for a half carlot equivalent or less of an individual product.

(C) $14 for each additional lot of the same product.

(ii) Condition only inspection of 1 to 4 products unloaded from the same conveyance:

(A) $72 for over a half carlot equivalent of an individual product.

(B) $66 for a half carlot equivalent or less of an individual product.

(C) $14 for each additional lot of the same product.

(iii) Quality and condition inspection and/or condition only inspection of 5 or more products unloaded from the same conveyance:

(A) $305 for the first 5 products.

(B) $43 for each additional product.

(C) $14 for each additional lot of any of the same product.

(2) For quality and condition inspection and/or condition only inspection of products in quantities of 50 or less packages unloaded from the same conveyance:

(i) $43 for each individual product.

(ii) $14 for each additional lot of any of the same product.

(b) When performing inspections of palletized products unloaded directly from sea transportation or when palletized product is first offered for inspection before being transported from the dock-side facility, charges shall be determined on the following basis:

(1) For each package inspected according to the following rates:

(i) 1.1 cent per package weighing less than 15 pounds;

(ii) 2.2 cents per package weighing 15 to 29 pounds; and,

(iii) 3.3 cents per package weighing 30 or more pounds.

(2) $14 for each additional lot of any of the same product.

(3) A minimum charge of $86 for each product inspected.

(c) When performing inspections of products from sea containers unloaded directly from sea transportation or when palletized products unloaded directly from sea transportation are not offered for inspection at dockside, the carlot fees in § 51.38(a) shall apply.

(d) When performing inspections for Government agencies, or for purposes other than those prescribed in the preceding paragraphs, including weight-only and freezing-only inspections, fees for inspection shall be based on the time consumed by the grader in connection with such inspections, computed at a rate of $43 an hour: *Provided,* That:

(1) Charges for time shall be rounded to the nearest half hour;

(2) The minimum fee shall be two hours for weight-only inspections, and one-half hour for other inspections; and

(3) When weight certification is provided in addition to quality and/or condition inspection, a one-hour charge shall be added to the carlot fee.

(4) When inspections are performed to certify product compliance for Defense Personnel Support Centers, the daily or weekly charge shall be determined by multiplying the total hours consumed to conduct inspections by the hourly rate. The daily or weekly charge shall be prorated among applicants by multiplying the daily or weekly charge by the percentage of product passed and/or failed for each applicant during that day or week. Waiting time and overtime charges shall be charged directly to the applicant responsible for their incurrence.

(e) When performing inspections at the request of the applicant during periods which are outside the grader's regularly scheduled work week, a charge for overtime or holiday work shall be made at the rate of $21.50 per hour or portion thereof in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Overtime or holiday charges for time shall be rounded to the nearest half hour.

(f) When an inspection is delayed because product is not available or readily accessible, a charge for waiting time shall be made at the prevailing hourly rate in addition to the carlot equivalent fee, package charge, or hourly charge specified in this subpart. Waiting time shall be rounded to the nearest half hour.

Dated: December 11, 1997

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 97–32813 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Parts 800 and 810

United States Standards for Rye

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) proposes to revise the United States Standards for Rye to certificate dockage to the nearest tenth of a percent. The current method of dockage certification rounds the actual dockage percentage down to the nearest whole percent. This method may result in understating the level of dockage up to 0.99 percent on the certificate. Certification of dockage to the nearest tenth of a percent is more precise than the current method and should enhance the marketability of U.S. Rye traded in the domestic and export markets. This change would also require the establishment of new inspection tolerances or breakpoints, as appropriate.

DATES: Comments must be submitted on or before February 17, 1998.

ADDRESSES: Written comments must be submitted to George Wollam, GIPSA, USDA, Room 0623–S, Stop 3649, Washington, D.C., 20250–3649; FAX (202) 720–4628; or E-mail gwollam@fgisdc.usda.gov.

All comments received will be made available for public inspection at Room 0623 South Building, 1400 Independence Avenue, SW, Washington, D.C., during regular business hours (7 CFR 1.27 (b)).

FOR FURTHER INFORMATION CONTACT: George Wollam, address as above, telephone (202) 720–0292.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

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

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The United States Grain Standards Act provides in Section 87g that no State or subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this proposed rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this proposed rule.

Regulatory Flexibility Act Certification

GIPSA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), because most users of the official inspection and weighing services and those entities that perform these services do not meet the requirements for small entities. Further, the regulations are applied equally to all entities.

The rye industry, including producers, handlers, exporters and processors, are the primary users of the U.S. Standards for Rye and utilize the official standards as a common trading language to market rye.

The rye industry in the United States is regional in nature, concentrated primarily in the upper midwest area. There are an estimated 10 processors of rye, utilizing a crop produced on approximately 355,000 acres in the United States. The average annual production of rye for the period 1988 through 1997 was 10,045,000 bushels. No rye has been officially inspected for export from the United States for several years.

The current method of dockage certification rounds the actual dockage percentage down to the nearest whole percent. This method may result in understating the level of dockage up to 0.99 percent on the certificate. Certification of dockage to the nearest tenth of a percent is more precise than the current method and should enhance the marketability of U.S. Rye traded in the domestic and potentially, the export markets. The potential benefits of revising the dockage certification procedure to report rye dockage to the nearest tenth of a percent include a more accurate description of the raw grain and the potential to improve pricing efficiency within the market. Certification to the nearest tenth of a percent would be more precise. A corresponding change would be made to the inspection tolerances or breakpoints, as appropriate.

Further, we understand that the rye industry already trades on dockage reported in tenths of a percent. Small entities, therefore, should experience no significant economic impact from these proposed changes.

Background

Certification of Dockage in Rye

Dockage consists primarily of dust, chaff, small weed seeds, very small pieces of broken rye, and coarse grains larger than rye. Domestic handlers and millers usually remove dockage during grain cleaning and may use it as animal feed. Foreign buyers use dockage in a variety of ways. Some use the dockage in animal feed, others mill the dockage with the rye, and some remove and discard the dockage.

In the current Official United States Standards for Grain (7 CFR part 810), the percentage of rye dockage is certified by rounding down to the nearest 1.0 percent (7 CFR 810.104 (b)). For example, for 0.0 to 0.99 percent, no dockage is reported on the certificate, 1.00 to 1.99 percent is reported as 1.0 percent dockage, 2.00 to 2.99 is reported as 2.0 percent dockage, and so forth. A domestic handler/processor has questioned the adequacy of the current dockage certification method asserting that the actual dockage is almost always understated. Further, the handler/processor suggested that the current U.S. Standards for Rye are not relevant, as the domestic rye industry trades on a dockage basis expressed in tenths of a percent and not whole percents.

Therefore, GIPSA is seeking industry comment for changing the current reporting and certification procedure to the nearest tenth percent on official inspection certificates to more accurately and precisely state dockage content in rye. Further, this action should also promote pricing efficiency.

Inspection Plan Tolerances

Shiplots, unit trains, and lash barge lots are inspected with a statistically based inspection plan. Inspection tolerances, commonly referred to as ''breakpoints,'' are used to determine acceptable quality. The proposed change requires the establishment of a new breakpoint that reflects the greater accuracy to which rye dockage is proposed to be calculated and reported.

Therefore, GIPSA proposes to change the current breakpoint for rye dockage which is listed in Table 14 of section 800.86(c)(2). Specifically, GIPSA proposes to change the breakpoint from 0.32 to 0.2.

Proposed Action

GIPSA proposes to revise § 800.86, Inspection of shiplot, unit train, and lash barge grain in single lots, paragraph (c)(2) Table 14, by changing the breakpoint for dockage in rye from 0.32 to 0.2.

GIPSA also proposes to amend the Official United States Standards for Grain, Subpart A—General Provisions, § 810.104, Percentages, by revising paragraph (b) Recording. This change would require rye dockage to be determined and reported in whole and tenths of a percent to the nearest tenth of a percent.

Comments, including data, views, and arguments are solicited from interested persons. Pursuant to Section 4(b)(1) of the United States Grain Standards Act, as amended (7 U.S.C. 76(b)(1)), upon request, such information concerning changes to the standards may be presented orally in an informal manner. Also, pursuant to this section, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless, in the judgement of the Secretary, the public health, interest, or safety require that they become effective sooner.

List of Subjects

7 CFR Part 800

Administrative practice and procedure, Exports, Grains.

7 CFR Part 810

Exports, Grains.

For reasons set out in the preamble, 7 CFR part 800 and 7 CFR part 810 are proposed to be amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for Part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.86(c)(2) is amended by revising the entry for ''Dockage'' in Table 14 to read as follows:

§ 800.86 Inspection of shiplot, unit train, and lash barge grain in single lots.

* * * * *

(c) * * *

(2) * * *

TABLE 14.—BREAKPOINTS (BP) FOR RYE SPECIAL GRADES AND FACTORS

Special grade or factor	Grade limit	Break-point
*	* * * *	*
Dockage ..	As specified by contract or load order grade.	0.2

* * * * *

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

3. The authority citation for Part 810 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867 as amended (7 U.S.C. 71 *et seq.*)

4. Section 810.104 is amended by revising the first three sentences of paragraph (b) to read as follows:

§ 810.104 Percentages.

* * * * *

(b) *Recording.* The percentage of dockage in flaxseed and sorghum is reported in whole percent with fractions of a percent being disregarded. Dockage in barley and triticale is reported in whole and half percent with a fraction less than one-half percent being disregarded. Dockage in wheat and rye is reported in whole and tenth percents to the nearest tenth percent. * * *

Dated: December 10, 1997.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 97–32780 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–EN–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–63A]

Peter G. Crane; Receipt of an Amended Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Amended petition for rulemaking: Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on an amended petition for rulemaking filed by Mr. Peter G. Crane. The amended petition has been docketed by the Commission and has been assigned Docket No. PRM–50–63A. The petitioner states, in this amendment to the earlier petition, that the rulemaking he seeks is to amend NRC's emergency planning regulations to require consideration of sheltering, evacuation, and the prophylactic use of potassium iodide for the general public in developing a range of emergency planning protective actions.

DATES: Submit comments by January 16, 1998. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except to those comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments 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.

For a copy of the petition, write: Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. A copy of the petition is also available for public inspection, and copying for a fee, in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael Jamgochian, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–6534, e-mail: MTJ1@nrc.gov; or Michael T. Lesar, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7163 or Toll Free: 1–800–368–5642, e-mail: MTL@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

The NRC received a petition for rulemaking dated September 9, 1995, submitted by Mr. Peter G. Crane on his own behalf. The petition was docketed as PRM–50–63 on September 12, 1995. The notice of receipt of this petition was published on November 27, 1995 (60 FR 58256). On November 12, 1997, the NRC received an amendment to this petition submitted by Mr. Crane in response to the Commission's invitation at a public meeting held on November 5, 1997, at which the petitioner spoke. The amended petition was assigned docket number PRM–50–63A. The amended petition revises the original petition by requesting that the NRC add one sentence to the planning standard in 10 CFR 50.47(b)(10) that refers to considering evacuation, sheltering, and the prophylactic use of potassium iodide for the general population in developing a range of emergency planning protective actions. In particular, as proposed, 10 CFR 50.47 (b)(10) would include the use of potassium iodide (KI) as one action to be considered in emergency situations under onsite and offsite emergency plans.

Potassium Iodide

The petitioner states that KI protects the thyroid gland, which is highly sensitive to radiation, from the radioactive iodide that could be released in extremely serious nuclear accidents; that by saturating the gland with iodide in a harmless form, KI can prevent inhaled or ingested radioactive iodide from lodging in the thyroid gland, where it could lead to thyroid cancer or other illnesses; and that KI itself has a long shelf life—at least five years—and causes negligible side effects.

The petitioner further states that, in addition to preventing deaths from thyroid cancer, KI prevents radiation-caused illnesses. The petitioner states that thyroid cancer, curable in 90–95 percent of cases, generally means surgery, radiation treatment, and a lifetime of medication and monitoring. The petitioner asserts that the changes in medication that go with periodic scans put many patients on a physiological and psychological roller coaster. The petitioner also states that hypothyroidism can cause permanent retardation in children and, if undiagnosed, can condemn adults to a lifetime of fatigue, weakness, and chills.

The Petitioner's Proposed Amendment

The petitioner initially requested that 10 CFR 50.47 be amended by revising paragraph (b)(10) to read as follows:

§ 50.47 Emergency plans.

* * * * *

(b) * * *

(10) A range of protective actions, including sheltering, evacuation, and prophylactic use of iodide, have been developed for the plume exposure pathway EPZ [emergency planning zone] for emergency workers and the public. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidelines, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

* * * * *

In the amended petition, the paragraph, as revised, would read as follows:

§ 50.47 Emergency plans.

* * * * *

(b) * * *

(10) A range of protective actions have been developed for the plume exposure EPZ for emergency workers and the public. In developing this range of actions, consideration has been given to evacuation, sheltering, and the prophylactic use of potassium iodide (KI), as appropriate. Guidelines for the choice of protective actions during an emergency, consistent with Federal guidelines, are developed and in place, and protective actions for the ingestion exposure pathway EPZ appropriate to the locale have been developed.

* * * * *

As part of the amended petition, the petitioner also attached a proposed Statement of Considerations and, as invited by the Commission, a draft mark-up of a document from the Federal Emergency Management Agency entitled ''Federal Policy on Distribution of Potassium Iodide Around Nuclear Power Sites for Use as a Thyroidal Blocking Agent.''

Dated at Rockville, Maryland, this 11th day of December, 1997.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 97–32879 Filed 12–16–97; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–080]

Drawbridge Operation Regulation; Beaufort Channel, Beaufort, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the North Carolina Department of Transportation, the Coast Guard is proposing a change to the regulations that govern the operation of the Greydon Paul Drawbridge on US 70 across Beaufort Channel, (also known as Gallant's Channel) mile 0.1, located in Beaufort, North Carolina eliminating drawbridge openings at 7:40 a.m., 8:40 a.m., 4:40 p.m., and 5:40 p.m., on weekdays only. All other provisions of the existing regulation for this bridge would remain the same. This proposed rule is intended to reduce motor vehicle traffic delays and congestion related to commuter traffic going to and from work in the mornings and evenings, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before February 17, 1998.

ADDRESSES: Comments should be mailed to Commander (Aowb), USCG Atlantic Area, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be hand-delivered to the same address between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6222. Comments will become a part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, USCG Atlantic Area, at (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, comments, or arguments, including the reason for each comment. Persons responding to this proposal should include their names and addresses and should identify this rulemaking (CGD05–97–080) and the specific section of this proposal to which each comment applies. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (Aowb) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a notice in the **Federal Register**.

Background and Purpose

The Greydon Paul Drawbridge, mile 0.1, across Beaufort Channel is currently required to open on signal except that from 6 a.m. to 10 p.m., the draw shall open on signal for all vessels waiting to pass every hour on the hour, twenty minutes past the hour and forty minutes past the hour.

The North Carolina Department of Transportation (NCDOT) has requested that openings of the Greydon Paul Drawbridge be further restricted during rush hours. This request to change the current regulation is based on heavy vehicular traffic traveling to and from the town of Beaufort during peak rush hour periods. The Greydon Paul Drawbridge is located on US Highway 70, which is the only corridor entering and exiting the town of Beaufort from Morehead City, North Carolina. During rush hour periods, drawbridge openings create long traffic backups often extending for 6 to 7 miles. The heavy congestion often results in vehicular accidents. NCDOT proposes that by eliminating one opening per hour during rush hours, vehicular traffic congestion on US Highway 70 will be reduced and highway safety will be increased. NCDOT provided statistical data which shows the number of openings and vessels passing through the Beaufort Bridge at 7:40 a.m., 8:40 a.m., 4:40 p.m. and 5:40 p.m., during August, 1997, which is one of the peak summer months for boating traffic for this area. The data revealed that only 42 out of a possible 120 drawbridge openings were required and a total of 65 vessels passed through the bridge. NCDOT contends that since the bridge was only required to open 35% of the time during these openings periods and there was minimal vessel traffic at these times, a reduction in the number of openings will not substantially impact navigational traffic. Overall, the Coast Guard believes that this proposed rule will reduce motor vehicle traffic delays and congestion related to rush hour traffic entering and exiting the town of Beaufort, North Carolina, while still providing for the reasonable needs of navigation.

Discussion of Proposed Amendments

The Coast Guard proposes to amend the regulations governing the Greydon Paul Drawbridge, across Beaufort Channel, mile 0.1, located in Beaufort North Carolina, by eliminating drawbridge openings at 7:40 a.m., 8:40 a.m., 4:40 p.m. and 5:40 p.m. on weekdays only, year-round. The regulation would state that from 6 a.m. to 10 p.m., the draw need only open every hour on the hour, twenty minutes past the hour and forty minutes past the hour; except that on weekdays the bridge need not open at 7:40 a.m., 8:40 a.m., 4:40 p.m., and 5:40 p.m. From 10 p.m. to 6 a.m. the bridge shall open on signal.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard reached this conclusion based on the fact that the proposed changes will not prevent mariners from transiting the bridge, but merely require mariners to plan their transits in accordance with the scheduled bridge openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the U.S. Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. ''Small entities'' include small independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as ''small business concerns'' under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant

economic impact on a substantial number of small entities.

Collection of Information

This proposal does not provide for a collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this proposed rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 449; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.822 is revised to read as follows:

§ 117.822 Beaufort Channel, NC.

The draw of the US 70 bridge, mile 0.1., at Beaufort, shall open as follows:

(a) From 6 a.m. to 10 p.m., the draw need only open every hour on the hour, twenty minutes past the hour and forty minutes past the hour; except that on weekdays the bridge need not open at 7:40 a.m., 8:40 a.m., 4:40 p.m. and 5:40 p.m.

(b) From 10 p.m. to 6 a.m., the bridge shall open on signal.

Dated: December 8, 1997.

Roger Rufe, Jr.,

Vice Admiral, U.S. Coast-Guard, Commander, Fifth Coast Guard District.

[FR Doc. 97–32886 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ017–0006; FRL–5935–4]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the Arizona State Implementation Plan (SIP) concerning the control of volatile organic compound (VOC) emissions from surface coating operations, Rule 336. The intended effect of proposing limited approval and limited disapproval of this rule is to regulate VOC emissions according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposal will incorporate this rule into the federally approved SIP. Using CAA provisions regarding EPA actions on SIP submittals and general rulemaking authority, EPA has evaluated this rule and is proposing a simultaneous limited approval and limited disapproval because, while strengthening the SIP, this revision does not fully meet the CAA provisions and regulatory Control Technique Guidelines regarding regulatory requirements for nonattainment areas.

DATES: Comments must be received on or before January 16, 1998.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA, 94105–3901.

Copies of Rule 336 and EPA's evaluation report of the rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3003 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Department, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for limited approval (and limited disapproval) into the Arizona SIP is Maricopa County Rule 336, Surface Coating Operations. This rule was submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on February 26, 1997.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included Maricopa County (see 43 FR 8964; 40 CFR 81.305). On March 19, 1979, EPA changed the name and modified the geographic boundaries of the ozone nonattainment area to the Maricopa Association of Governments (MAG) Urban Planning Area (see 44 FR 16391, 40 CFR 81.303). On February 24, 1984, EPA notified the Governor of Arizona, pursuant to section 110(a)(2)(H) of the pre-amended Act, that MAG's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call, see 49 FR 18827, May 3, 1984). On May 26, 1988, again EPA notified the Governor of Arizona that MAG's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's second SIP-Call, see 53 FR 34500, September 7, 1988). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (see Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.) In amended section 182(a)(2)(A) of the CAA, Congress adopted statutorily the requirement that nonattainment areas fix their deficient RACT rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the

date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The MAG Urban Planning Area is classified as serious[2]; therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of Arizona submitted RACT rule, Maricopa County, Rule 336—Surface Coating Operations, for incorporation into its SIP on February 26, 1997. This document addresses EPA's proposed action for Maricopa County's Rule 336, Surface Coating Operations. Maricopa County adopted Rule 336 on June 19, 1996. EPA found Rule 336 complete on June 5, 1997 pursuant to EPA's completeness criteria set forth in 40 CFR part 51 Appendix V[3]. Now, EPA proposes a limited approval and limited disapproval of Rule 336.

Rule 336, Surface Coating Operations, reduces volatile organic compound (VOC) emissions at industrial sites engaged in preparing and coating a variety of substrates such as metal, paper, film, fabric, vinyl, and plastic. The provisions of this rule apply to surface preparation and coating operations in the following industries: Metal can and coil, metal furniture, large appliances, miscellaneous metal parts and products, aerospace assembly items and other components, paper, film, fabric, vinyl, plastic, and other flexible parts and products. VOCs contribute to the production of ground-level ozone and smog. Rule 336 was adopted as part of Maricopa County's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. Rule 336 is a new rule adopted by Maricopa County to meet EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. EPA's evaluation and proposed action for Rule 336 follows below.

III. EPA Evaluation and Proposed Action

In reviewing a VOC rule for approval, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA's interpretation of these requirements, forming the basis for today's action, appears in the various EPA policy guidance documents listed in footnote one. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

To assist state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify presumptive norms defining RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents and other Agency policy for requiring States to ''fix-up'' their RACT rules (see section 182(a)(2)(A)). The following CTGs are applicable to Rule 336:

—''Control of Volatile Organic Emissions from Existing Stationary Sources Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light Duty Trucks,'' USEPA, May 1977, EPA–450/2–77–008;

—''Control of Volatile Organic Emissions from Existing Stationary Sources Volume III: Surface Coating of Metal Furniture,'' USEPA, December 1977, EPA–450/2–77-032;

—''Control of Volatile Organic Emissions from Existing Stationary Sources Volume V: Surface Coating of Large Appliances,'' USEPA, December 1977, EPA–450/2–77–034; and,

—''Control of Volatile Organic Emissions from Existing Stationary Sources Volume VI: Surface Coating of Miscellaneous Metal Parts and Products,'' USEPA, June 1978, EPA–450/2–78–015.

The following Alternative Control Techniques (ACT) document was consulted for its recommended emission limits and other applicable provisions:

—''Surface Coating of Automotive/Transportation and Business Machine Plastic Parts,'' USEPA, EPA 453/R–94–017.

Accordingly, Rule 336 was evaluated for consistency with the general RACT requirements of the Clean Air Act (CAA section 110 and part D). Further interpretations of EPA policy are found in the Blue Book, referred to in footnote one. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

There is no version of Rule 336—Surface Coating Operations in the SIP. The submitted rule includes the following provisions:

—A purpose statement,
—Definition of terms,
—Surface coating emission limits expressed in mass of VOC per unit volume of coating less water and non-precursor organic compounds,
—Emission control system, VOC clean-up, and VOC handling requirements,
—General and specific exemptions,
—Administrative requirements,
—Monitoring and record keeping requirements, and
—Compliance test methods.

Although Rule 336 strengthens the SIP, this rule contains deficiencies which were required to be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA. Rule 336's VOC emission limits conform to the respective CTG or ACT requirement and the rule contains adequate record keeping and test method provisions for monitoring the compliance of regulated facilities. However, several portions of the rule are unclear or contradict the subject CTG.

The following sections should be amended to be consistent with the applicable CTG and EPA policy:

—Section 306.4, Exemptions, Special Facilities/Operations,
—Section 306.5, Exemptions, Small Sources, and
—Section 402, Administrative Requirements, Minimal Use Days.

Sections 306.4 and 306.5 exempt some source categories in a manner inconsistent with their applicable CTG. Maricopa County should limit these exemptions to specific source categories consistent with their applicable CTG. Also, these sections are inconsistent with the Blue Book established applicability cut-off of three pounds per hour or fifteen pounds per day of VOC emissions. Two essential component concepts of the Blue Book's size cut-off policy are absent from the rule. First, a source's VOC emissions for comparison to the size cutoff should be determined

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document,'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing Control Technique Guidelines (CTGs).

[2] The MAG Urban Planning Area retained its designations of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). On November 6, 1997, EPA published a final rule reclassifying the MAG Urban Planning Area from moderate to serious (62 FR 60001). This reclassification became effective on December 8, 1997.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

assuming no add-on controls. Second, once a source's VOC emissions exceed the size cutoff, that source is subject to the emission control requirements of the rule, even if those emissions later fall below the cutoff limit. A more detailed discussion of the rule's deficiencies can be found in the technical support document for Rule 336 available at the U.S. EPA, Region 9 office.

Given these deficiencies, the rule is not approvable pursuant to the section 182(a)(2)(A) of the CAA. Also, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP.

The approval is limited because EPA's action also contains a simultaneous limited disapproval. To strengthen the SIP, EPA is proposing a limited approval of Maricopa County's submitted Rule 336 under sections 110(k)(3) and 301(a) of the CAA. At the same time, EPA is proposing a limited disapproval of this rule because it contains deficiencies that have not been corrected as required by section 182(a)(2)(A) of the CAA, and, as such, the rule does not fully meet the requirements of part D of the Act.

Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within eighteen months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and emission offsets. The eighteen month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Also, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this proposed rule making has been adopted by Maricopa County and is in effect. EPA's final limited disapproval action will not prevent Maricopa County, the State of Arizona, or EPA from enforcing this rule.

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

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air 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, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 5, 1997.

Felicia Marcus,

Regional Administrator.

[FR Doc. 97–32786 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TX–27–1–5945, FRL–5935–3]

Approval and Promulgation of Air Quality State Implementation Plans (SIP); Texas; Disapproval of Texas Clean Fuel Fleet Program Revision to the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of public comment period.

SUMMARY: The EPA is extending the public comment period from November 17, 1997, to January 16, 1998, on the proposed disapproval notice of the Texas Clean Fuel Fleet (CFF) SIP revision under the Clean Air Act. The proposed disapproval document was published in the **Federal Register** on

October 17, 1997. The extension to the public comment period is being granted by EPA in response to the State's request to have additional time to assess the proposal, analyze the alternative options available and submit comments reflecting this analysis. A similar request was also made by the National Association of Fleet Administrators. For additional information please refer to the proposed disapproval document published in the **Federal Register** on October 17, 1997 (62 FR 53997).

DATES: Comments on the proposed disapproval must be received in writing by January 16, 1998.

ADDRESSES: Written comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PD–L), at the EPA Regional Office listed below. Copies of the documents about this action are available for public inspection during normal business hours at the following locations. Persons interested in examining these documents should make an appointment with the appropriate office at least 24 hours before the visiting day:

Air and Radiation Docket and Information Center, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460.

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202.

Texas Natural Resource Conservation Commission, 12100 Park 35 Circle, Austin, Texas 78711–3087.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Scoggins, Air Planning Section (6PD–L), Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas, 75202, telephone (214) 665–7354.

Dated: December 4, 1997.

W.B. Hathaway,

Acting Regional Administrator.

[FR Doc. 97–32785 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 017–0004; FRL–5936–4]

Approval and Promulgation of Implementation Plans; Arizona State Implementation Plan Revision, Maricopa County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Arizona State Implementation Plan (SIP) that concern the control of volatile organic compound (VOC) emissions from solvent cleaning, petroleum solvent dry cleaning, rubber sports ball manufacturing, graphic arts, semiconductor manufacturing, vegetable oil extraction processes, wood furniture and fixture coating, wood millwork coating, and loading of organic liquids.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on these proposed rules will incorporate them into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before January 16, 1998.

ADDRESSES: Comments may be mailed to: Rulemaking Office, [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Arizona Department of Environmental Quality, 3003 North Central Avenue, Phoenix, AZ 85012

Maricopa County Environmental Services Department, 2406 S. 24th Street, Suite E–214, Phoenix, AZ 85034

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for approval into the Arizona SIP include: Maricopa County Environmental Services Department, Technical Services Division (MCESD) Rules 331—Solvent Cleaning, 333—Petroleum Solvent Dry Cleaning, 334—Rubber Sports Ball Manufacturing, 337—Graphic Arts, 338—Semiconductor Manufacturing, 339—Vegetable Oil Extraction Processes, 342—Coating Wood Furniture and Fixture, 346—Coating Wood Millwork, and 351—Loading of Organic Liquids. These rules were submitted by the Arizona Department of Environmental Quality (ADEQ) to EPA on February 4, 1993 (Rule 339), August 31, 1995 (Rule 351), February 26, 1997 (Rules 331, 333, 334, 336, and 338) and March 4, 1997 (Rules 342, 337, and 346) respectively.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), which included Maricopa County (43 FR 8964; 40 CFR 81.305). On March 19, 1979, EPA changed the name and modified the geographic boundaries of the ozone nonattainment area to the Maricopa Association of Governments (MAG) Urban Planning Area (44 FR 16391, 40 CFR 81.303). On February 24, 1984, EPA notified the Governor of Arizona, pursuant to section 110(a)(2)(H) of the pre-amended Act, that MAG's portion of the Arizona SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call, 49 FR 18827, May 3, 1984). On May 26, 1988, EPA again notified the Governor of Arizona that MAG's portion of the SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies relating to VOC controls and the application of reasonably available control technology (RACT) in the existing SIP be corrected (EPA's second SIP-Call, 53 FR 34500, September 7, 1988). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to appendix D of November 24, 1987 **Federal Register**

Continued

guidance to indicate the necessary corrections for specific nonattainment areas. The MAG Urban Planning Area is classified as serious;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of Arizona submitted several RACT rules for incorporation into its SIP on February 4, 1993, August 31, 1995, February 26, 1997 and March 4, 1997, including the rules being acted on in this document. This document addresses EPA's proposed action for MCESD Rules 331—Solvent Cleaning, 333—Petroleum Solvent Dry Cleaning, 334—Rubber Sports Ball Manufacturing, 337—Graphic Arts, 338—Semiconductor Manufacturing, 339 Vegetable Oil Extraction Processes, 342—Coating Wood Furniture and Fixtures, 346—Coating Wood Millwork , and 351—Loading of Organic Liquids. MCESD adopted Rules 331, 333, 334 and 338 on June 19, 1996; Rule 339 on November 16, 1992; Rules 337, 342 and 346 on November 20, 1996 and Rule 351 on February 15, 1995. These submitted rules were found to be complete on March 10, 1993 (Rule 339), October 25, 1995 (Rule 351) and June 5, 1997 (Rules 331, 333, 334, 337, 338, 342 and 346, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being proposed for approval into the SIP.

Rule 331 limits the emissions of volatile organic compounds (VOCs) from surface cleaning and degreasing operations, Rule 333 controls emissions of VOCs from petroleum solvent dry cleaning operations, Rule 334 limits emission of VOCs from natural and synthetic rubber adhesives used in the manufacture of non-inflatable rubber balls, Rule 337 limits emissions of VOCs from screen, gravure, letterpress, flexographic and lithographic printing processes, including related coating and laminating processes, Rule 338 limits emissions of VOCs from semiconductor manufacturing, Rule 339 limits the emissions of VOCs from the extraction of vegetable oil using solvents, Rule 342 controls the emissions of VOC's emanating from applying finishing materials to furniture or fixtures made of wood or wood derived materials, Rule 346 limits VOC emissions from the surface preparation and coating of wood millwork, such as shutters, doors, windows and their associated woodwork, and Rule 351 controls emissions of VOCs from organic liquid loading operations at bulk plants and bulk terminals. VOCs contribute to the production of ground-level ozone and smog. The rules were adopted as part of MCESD's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA amendments, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to ''fix-up'' their RACT rules. See section 182(a)(2)(A). The CTG applicable to Rule 331 is entitled, ''Control of Volatile Organic Emissions From Solvent Metal Cleaning,'' EPA–450/2–77–022; the CTG applicable to Rule 333 is entitled, ''Control of Volatile Organic Compound Emissions from Large Petroleum Dry Cleaners,'' EPA–450/3–82–009; the CTG applicable to Rule 337 is entitled, ''Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts—Rotogravure and Flexography,'' EPA–450/2–78–033; the CTG applicable to Rule 342 is entitled, ''Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations'' EPA–453/R–96–007; and the CTGs applicable to Rule 351 are entitled, ''Control of Volatile Organic Emissions from Bulk Gasoline Plants,'' EPA–450/2–77–035 and ''Control of Hydrocarbons from Tank Truck Gasoline Loading Terminals,'' EPA–450/2–77–026. Rules 334, 338, 339 and 346 control emissions from source categories for which EPA has not issued CTGs. Accordingly these rules were evaluated for consistency with the general RACT requirements of the Clean Air Act (CAA section 110 and part D). Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On February 1, 1996, EPA approved into the SIP a version of MCESD's Rule 331—Solvent Cleaning that had been adopted by MCESD on June 22, 1992. MCESD's submitted Rule 331—Solvent Cleaning includes the following changes from the current SIP:

- Increased the record retention time from 3 years to 5 years,
- Added the requirement to maintain a current list of solvents stating the VOC content in lbs/gal or g/l,
- Added the requirement to keep monthly records of make-up solvents added and other VOC containing materials used.

On February 1, 1996, EPA approved into the SIP a version of Rule 333—Petroleum Solvent Dry Cleaning that had been adopted by MCESD on June 22, 1992. MCESD's submitted Rule 333—Petroleum Solvent Dry Cleaning includes the following significant changes from the current SIP:

- Increased the record retention period from 3 years to 5 years,
- Requires the maintenance of a current list of solvents and any other VOC containing materials, including the VOC content of each in lbs/gal or g/l.
- Requires monthly records of the weight of clothing cleaned, the amount of solvent used, and the weight and type of any material disposed that contains any amount of cleaning solvents. The name of the company receiving such material must also be recorded.

On February 12, 1996, EPA approved into the SIP a version of Rule 334—Rubber Sports Ball Manufacturing, that had been adopted by MCESD on September 20, 1994. MCESD's submitted Rule 334—Rubber Sports Ball

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document'' (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The MAG Urban Planning Area retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA amendments. See 56 FR 56694 (November 6, 1991). On November 6, 1997 EPA published a final rule reclassifying the MAG Urban Planning Area from moderate to serious (FR 62 60001). This reclassification became effective on December 8, 1997.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

Manufacturing includes the following significant changes from the current SIP:

- Replaced daily cutoff of 300 lbs VOC with monthly cutoff of 8333 lbs,
- Increased the record retention period from 3 years to 5 years,
- Decreased frequency from daily to monthly for usage records of adhesives, solvents, and other VOC containing materials.

On September 5, 1995, EPA approved into the SIP a version of Rule 337—Graphic Arts that had been adopted by MCESD on April 6, 1992. MCESD's submitted Rule 337—Graphic Arts includes the following significant changes from the current SIP:

- Added a definition for capture efficiency,
- Establishes time phased lowering of VOC limits for fountain solutions and establishes VOC limits for fountain solutions refrigerated below 60°F,
- Establishes time phased lowering of vapor pressure of cleaning solutions,
- Allows monthly recordkeeping on presses which do not use alcohol in their fountain solution, provided they emit less than 25 tons of VOC per year,
- Increases the record retention period from 3 years to 5 years.

There is currently no version of MCESD's Rule 338—Semiconductor Manufacturing in the SIP. The submitted rule includes the following provisions:

- Requires facilities that emit more than 25 tons per year (tpy) of VOC from negative photoresist operations to vent the emissions to a control system with an overall control efficiency of at least 80%,
- Requires facilities that emit more than 50 tpy of VOC from positive photoresist operations to vent the emissions to a control system with an overall control efficiency of at least 80%,
- Provides an exemption for positive photoresist operations that use liquids that use less than 10% VOC by weight and never exceed a temperature of 104°F,
- Requires an operation and maintenance plan specifying key system operating parameters for the emission control system,
- Requires the use of closed containers for storing VOC containing material,
- Requires monthly usage records of all VOC containing material,
- Requires equipment operating records.

There is currently no version of MCESD's Rule 339—Vegetable Oil Extraction Processes in the SIP. The submitted rule includes the following provisions:

- Establishes a monthly VOC limit of 2.5 pounds per ton of processed seeds for any consecutive 30 day period of operation, and a weekly VOC limit of 3.0 pounds of VOC per ton of processed seeds for any 7 consecutive days of operation,
- Requires that VOC emissions from any extractor or desolventizer-toaster be controlled by a condenser and mineral-oil scrubber with an overall control efficiency of at least 90% by weight,
- Requires that the desolventizer-toaster discharge conveyor is vented to a mineral oil scrubber with an overall control efficiency of 90% by weight,
- Requires an operation and maintenance plan specifying key system operating parameters for the emission control system,
- Requires monthly inspection of equipment in solvent service for gaseous and liquid leaks and the keeping of a permanent leak detection and repair notebook,
- Requires daily recordkeeping.

There is currently no version of MCESD's Rule 342—Coating Wood Furniture and Fixture in the SIP. The submitted rule includes the following provisions:

- A purpose and applicability definition,
- Definition of terms,
- VOC standards consistent with the CTG expressed in grams per liter as well as pounds per pound of solids,
- A schedule of compliance for sources emitting in excess of 50 tpy,
- A limitation of conventional air-atomized spray and other spray methods,
- Process equipment operation and maintenance requirements,
- Procedures for the handling and disposing of VOC containing material,
- Labeling requirement of VOC containing storage containers,
- Monitoring and record keeping requirements,
- Compliance test methods,
- An appendix describing the averaging provisions.

There is currently no version of MCESD's Rule 346—Coating Wood Millwork in the SIP. The submitted rule includes the following provisions:

- A purpose and applicability definition,
- Definition of terms,
- VOC limits of coatings used on wood millwork,
- VOC trade-off options;

(1) lower VOC topcoat and unlimited VOC sealer

(2) lower VOC sealer and higher VOC topcoat

(3) single application finish,

- Allows alternative control by means of an emission control system,
- Allows an exemption for sources emitting less than 2 tons per year of VOC,
- A limitation of conventional air-atomized spray and other spray methods,
- Process equipment operation and maintenance requirements,
- Procedures for the handling and disposing of VOC containing material,
- Labeling requirement of VOC containing storage containers,
- Monitoring and record keeping requirements,
- Compliance test methods.

On April 6, 1992 EPA, approved into the SIP a version of MCESD's Rule 351—Loading of Organic Liquids that had been adopted by MCESD on April 6, 1992. MCESD's submitted Rule 351—Loading of Organic Liquids includes the following significant changes from the current SIP:

- Section 401 discussing equipment leak provisions has been reformatted, and a requirement to maintain a logbook for monthly leak inspections has been added,
- Section 503 now requires that all records be retained for 3 years.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, MCESD Rules 331—Solvent Cleaning Operations, 333—Petroleum Solvent Dry Cleaning, 334—Rubber Sports Ball Manufacturing, 337—Graphic Arts, 338—Semiconductor Manufacturing, 339 Vegetable Oil Extraction Processes, 342—Wood Furniture and Fixture Coating, 346—Wood Millwork Coating, and 351—Loading of Organic Liquids are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and Part D.

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

IV. Administrative Requirements

A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by a July 10, 1995 memorandum from Mary Nichols,

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

B. Regulatory Flexibility Act

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

SIP approvals under section 110 and subchapter I, part D of the Clean Air 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, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

C. Unfunded Mandates

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

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compound.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 9, 1997.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 97–32929 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–5933–7]

Approval and Promulgation of Implementation Plans; Colorado; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing corrections to the State Implementation Plan (SIP) for the State of Colorado. First, EPA is proposing corrections to its January 21, 1997 rulemaking in which EPA approved several Colorado new source review (NSR) SIP revisions. Specifically, pursuant to a December 17, 1996 request from the State of Colorado, EPA is proposing to remove from the approved SIP two sections of Colorado's prevention of significant deterioration (PSD) rules in Regulation No. 3. EPA is also proposing to disapprove a provision in the State's definition of ''federally enforceable'' in Regulation No. 3 that EPA inadvertently failed to disapprove in its January 21, 1997 rulemaking. Specifically, the provision in that definition states that provisions which are not required by the Federal Clean Air Act (Act) shall not be submitted as part of the SIP and shall not be federally enforceable. This provision is being proposed for disapproval because the Act provides that any provision approved by EPA as part of the SIP is federally enforceable unless and until the State requests, and EPA approves, a SIP revision removing such provision.

Second, EPA is proposing to correct an October 5, 1979 rulemaking in which EPA incorrectly listed Colorado House Bill 1109 as being approved as part of the Colorado SIP.

Last, EPA is proposing to correct a September 23, 1980 rulemaking, in which EPA mistakenly replaced a Colorado SIP approval in 40 CFR 52.320 with a Montana SIP approval.

DATES: Comments must be received in writing on or before January 16, 1998.

ADDRESSES: Written comments on this action should be addressed to Vicki Stamper, 8P2-A, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466. Copies of the documents relative to this action are available for inspection during normal business hours at the following location: Air Program, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, EPA Region VIII,(303) 312–6445.

SUPPLEMENTARY INFORMATION:

I. Corrections to January 21, 1997 Rulemaking

On January 21, 1997, EPA promulgated approval of five Colorado SIP revisions submitted on November 12, 1993, August 25, 1994, September 29, 1994, November 17, 1994, and January 29, 1996. (See 62 FR 2910–2914.) All of these SIP submittals contained revisions to the State's NSR and PSD provisions in Parts A and B of Colorado Regulation No. 3.

A. Correction to Exclude Sections V.B. and VII.A.5. of Part B of Colorado Regulation No. 3 From the SIP

The November 12, 1993 SIP submittal contained revisions to Regulation No. 3 that were adopted by the Colorado Air Quality Control Commission (AQCC) at a July 15, 1993 public hearing. The primary purpose of the State's July 1993 rulemaking was to adopt an operating permit program to address the requirements of title V of the Clean Air Act Amendments of 1990 and 40 CFR part 70. Concurrent with the adoption of its operating permit program, the State made revisions to its construction permit regulations, which are also in Regulation No. 3, to make the two programs work together and to allow for the implementation of certain title V operating permit provisions. At the same time, the State also completely restructured and renumbered the provisions in Regulation No. 3. While the majority of the provisions in the

State's construction permitting regulations were unchanged, the State's November 12, 1993 SIP submittal included the State's entire construction permitting regulations (including its PSD rules) because of the restructuring and renumbering of Regulation No. 3.

On December 17, 1996, the State submitted a request to exclude two sections of Part B of Regulation No. 3 from its November 12, 1993 SIP submittal, specifically Sections V.B. and VII.A.5. (referred to herein as Sections V.B. and VII.A.5. or as ''the two provisions.'') On January 21, 1997, EPA's approval of the State's November 12, 1993 SIP submittal was published (62 FR 2910). The approval did not exclude Sections V.B. and VII.A.5.

Section V.B. of Part B of Regulation No. 3 applies the Class I sulfur dioxide PSD increment to certain pristine areas in Colorado that are not designated Class I by the Federal PSD regulations. This is not required by the Act or Federal PSD regulations. Section VII.A.5. of Part B of Regulation No. 3 provides that no new major stationary source or major modification shall individually consume more than 75% of an applicable increment. No such provision (or similar provision) is required by the Act or Federal PSD regulations. Neither of the two provisions is necessary for the State to demonstrate attainment and/or maintenance of the National Ambient Air Quality Standards (NAAQS). Therefore, EPA believes that these two provisions may be removed from the SIP.

In this instance, EPA believes it is appropriate to remove the two provisions from the SIP pursuant to EPA's authority under section 110(k)(6) of the Act. Section 110(k)(6) of the Act provides as follows:

> Whenever the Administrator determines that the Administrator's action approving, disapproving, or promulgating any plan or plan revision (or part thereof), area designation, redesignation, classification, or reclassification was in error, the Administrator may in the same manner as the approval, disapproval, or promulgation revise such action as appropriate without requiring any further submission from the State. Such determination and the basis thereof shall be provided to the State and public.

The State submitted its request well before EPA's final approval of the State's November 12, 1993 SIP submittal was published in the **Federal Register** or was otherwise announced to the public. Thus, EPA had an opportunity to exclude the two provisions from the final published rule, but failed to do so.

Although there may be instances where a request to withdraw components of a SIP implicates the Act's requirement for State notice and hearing, EPA does not believe this is one of them. First, these two provisins had been part of the State's regulations for many years [1], but had been expressly excluded from the State's SIP submittals of prior PSD revisions and had been expressly excluded from EPA's rulemaking actions on those prior PSD rule revisions. (See 51 FR 31125, September 2, 1986, and 56 FR 12850, March 28, 1991.) Second, the State merely renumbered these two provisions at its July 15, 1993 hearing, and there was no indication that the State intended to change course and submit these two provisions to EPA for approval into the SIP. Presumably, if the State had intended such a change in course, the State would have focused its notice and public hearing on the two provisions prior to adopting the renumbering of Regulation No. 3 and submitting it to EPA. This did not occur, and the evidence suggests that submittal of these two provisions to EPA was merely an oversight. If EPA had reviewed the circumstances more carefully when it received the State's December 17, 1996 letter, EPA could have corrected its final rule before publication.

With respect to Section V.B., EPA also believes a correction is necessary because Section V.B. (which, as stated above, applies the Class I sulfur dioxide increment to certain pristine Class II areas in Colorado) is inconsistent with the requirements of EPA's PSD regulations. Specifically, 40 CFR 51.166(g) contains certain requirements for redesignating an area from Class II to Class I, and the State has not addressed those requirements for the areas listed in Section V.B. Thus, EPA erred in approving Section V.B. as part of the SIP. This position is consistent with EPA's prior rulemaking regarding this provision. In a September 2, 1986 action, EPA did not approve this provision into the SIP, explaining that the State had not followed the specific procedures outlined in 40 CFR 51.166(g) for redesignating an area from Class II to Class I. (See 51 FR 31125.)

For the reasons discussed above, EPA is correcting its January 21, 1997 SIP approval to remove Sections V.B. and VII.A.5. of Part B of Regulation No. 3 from the approved SIP.

[1] The AQCC originally adopted Section V.B. on March 10, 1983 and Section VII.A.5. on May 17, 1990.

B. Correction to Disapprove Provision in Definition of ''Federally Enforceable'' in Colorado Regulation No. 3

In the State's September 29, 1994 SIP submittal of revisions to Regulation No. 3, the State revised its definition of ''federally Enforceable'' in Section I.B.22. of Part A of Colorado Regulation No. 3. EPA's nonattainment NSR and PSD permitting regulations in 40 CFR 51.165 and 51.166, respectively, require this term to be defined in States' permitting programs, as it is used in various definitions and provisions of the Federal preconstruction permitting regulations.

Colorado's definition of ''federally enforceable'' basically mirrors the Federal definition in 40 CFR 51.165(a)(1)(xiv) and 51.166(b)(17). However, on August 18, 1994, the State revised this definition (among other things) to add a provision stating the following: ''Notwithstanding the foregoing, and except for the voluntarily accepted limitations and conditions described in the preceding sentence, any provision, standard, or regulation that is not required by the Federal Act or that is more stringent than the Federal Act is adopted under powers reserved to the State of Colorado pursuant to section 116 of the Federal Act, is not to be submitted to the EPA as a provision of the SIP and shall not be federally enforceable.'' According to the State, this revision was made to mirror the definition found in Section 25–7–105.1 of the Colorado Air Pollution Prevention and Control Act.

During the State's public comment period on this regulatory change, EPA stated in an August 12, 1994 letter that it could not approve the statement quoted above as part of the SIP. Any provision that has been submitted by the State and approved by EPA as part of the SIP is considered to be federally enforceable regardless of whether it is required by the Act or more stringent than the Act. Similarly, terms and conditions incorporated into a permit that is issued under an EPA-approved permitting program, such as new source review or title V operating permits, are also generally considered to be federally enforceable. [2] The only way a State can change the Federal enforceability of any provision that has been approved by EPA as part of the SIP is by submitting a request for revision to the SIP and by receiving EPA approval of the SIP

[2] States can designate certain provisions in a title V permit that have not been approved as part of the SIP or that are not otherwise federally enforceable or federally required as ''State-only'' in a title V operating permit, and those terms would not be considered federally enforceable. (See 40 CFR 70.6(b)(2).)

revision (through notice and comment rulemaking via the **Federal Register**).

EPA believes the statement in the State's definition of ''federally enforceable'' quoted above is thus misleading to the public and the regulated community.

In EPA's January 21, 1997 rulemaking, EPA approved the definition of ''federally enforceable'' into the SIP in its entirety. (See 62 FR 2914.) However, for the reasons discussed above and in EPA's August 12, 1994 letter to the State, EPA believes its approval of the above-quoted statement was made in error. Consequently, EPA is proposing to correct its January 21, 1997 rulemaking to disapprove the statement in the State's definition of ''federally enforceable'' which states that any provision, standard or regulation not required by the Act is not to be submitted as part of the SIP and shall not be federally enforceable. EPA is proposing this correction pursuant to section 110(k)(6) of the Act.

II. Correction of October 5, 1979 Rulemaking

On October 5, 1979, EPA approved several submittals from the State of Colorado, which were made pursuant to the 1977 revisions to the Act. (See 44 FR 57401–57411.) In that action, EPA listed House Bill 1109 in 40 CFR 52.320(c)(14)as one of the submittals being approved (see 44 FR 57409, October 5, 1979). House Bill 1109 repealed and reenacted the State's Air Quality Control Act. The bill was signed into law by the Governor on June 20, 1979 and submitted to EPA on July 23, 1979, along with House Bill 1090 (regarding burning of solid wastes) and Senate Bill 1 (regarding provisions for reducing motor vehicle emissions). In the preamble to the October 5, 1979 rulemaking, EPA discussed the State's July 23, 1979 submittal of the three bills. EPA indicated that it was taking no action on House Bill 1109 at that time and would propose action in the **Federal Register** at a future date to take public comment on the acceptability of the State's revised Air Quality Control Act (see 44 FR 57403). Since EPA clearly stated in the preamble that it was not taking action on House Bill 1109, EPA erred in listing House Bill 1109 as being approved as part of the SIP in 40 CFR 52.320(c)(14). Therefore, pursuant to section 110(k)(6) of the Act, EPA is proposing to amend the regulatory text regarding the State's July 23, 1979 submittal to remove the reference to House Bill 1109.[3]

Although EPA's October 5, 1979 rulemaking indicated that EPA would propose action on House Bill 1109 at a future date, EPA no longer believes it is necessary to take action on House Bill 1109 or any successor provisions in the State's Air Quality Control Act. Generally, EPA does not believe it is necessary to approve State authorizing legislation into the SIP. Instead, EPA needs to be satisfied that such authorizing legislation exists and that it shows that the State has adequate legal authority to adopt, implement, and enforce the SIP. Therefore, EPA will not be taking action on House Bill 1109.

III. Correction of September 23, 1980 Rulemaking

On September 23, 1980, EPA approved various SIP submittals from the State of Montana intended to address the 1977 revisions to the Act. In that action, EPA mistakenly revised 40 CFR 52.320, which identifies SIP approvals for the State of Colorado, to reflect approval of these various Montana SIP submittals (see 45 FR 62984). EPA's original intention with the September 23, 1980 rulemaking was to revise 40 CFR 52.1370(c)(8) for the State of Montana's plan, but EPA promulgated the language regarding Montana's SIP at 40 CFR 52.320(c)(8). On June 30, 1982, EPA partially corrected this error for Montana by promulgating the September 23, 1980 approval at 40 CFR 52.1370(c)(10). (See 47 FR 28373.) However, no correction was ever made to the ''Identification of Plan'' for Colorado at 40 CFR 52.320. Consequently, EPA is proposing to revise 40 CFR 52.320(c)(8) to reinstate the previous Colorado SIP approval promulgated at 52.320(c)(8), as it was last revised on March 2, 1976 (see 41 FR 8958).

IV. Proposed Action

EPA is proposing to revise 40 CFR 52.320(c)(72)(I)(D) to exclude Sections V.B. and VII.A.5. of Part B of Regulation No. 3, which pertain to the State's PSD program, from the approved SIP.

EPA is proposing to correct its January 21, 1997 approval of Section I.B. of Part A of Regulation No. 3 (as in effect on September 30, 1994) to disapprove the last sentence in the definition of ''federally enforceable'' which states that any provision, standard or regulation not required by the Act is not to be submitted as part of the SIP and shall not be federally enforceable.

EPA is proposing to amend 40 CFR 52.320(c)(15) to remove the reference to House Bill 1109, which was incorrectly listed as being approved in EPA's October 5, 1979 Colorado rulemaking (see 44 FR 57409).

Last, EPA is proposing to amend 40 CFR 52.320(c)(8) to reinstate the Colorado SIP approval promulgated on March 2, 1976 (see 41 FR 8958) that was incorrectly replaced in a September 23, 1980 rulemaking (45 FR 62984).

EPA is making these corrections pursuant to section 110(k)(6) of the Act.

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 a 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 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. 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.

The proposed corrections would remove certain requirements from the SIP. However, regardless of EPA's final action, these requirements will still apply as a matter of State law. Thus, the proposed corrections would not alter the impact of these requirements on small entities, and EPA certifies that the removal of such requirements from the SIP would not have a significant economic impact on a substantial number of small entities.

The proposed corrections would also result in a disapproval of certain language in the State's definition of federally enforceable in its permitting regulations. Disapproval of this language would not create any new requirements and would not alter requirements that the State is already imposing. Therefore, EPA certifies that this disapproval would not have a significant economic impact on a substantial number of small entities.

[3] Note that the provision in 40 CFR 52.320(c)(10) promulgated on October 5, 1979 was renumbered as 40 CFR 52.320(c)(15) on June 27, 1980. See 45 FR 43411.

C. Unfunded Mandates

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

EPA has determined that the proposed corrections do 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 would impose no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, would result from this action.

List of Subjects in 40 CFR Part 52

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

Dated: November 17, 1997.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.

[FR Doc. 97–32926 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD–FRL–5936–2]

RIN: 2060–AE–83

National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; Extension of public comment period.

SUMMARY: The EPA is announcing a 30-day extension of the public comment period for the proposed ''National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.'' As initially published in the **Federal Register** on November 10, 1997 (62 FR 60565), written comments on the proposed rule were to be submitted to the EPA on or before January 9, 1998 (a 60-day public comment period). The public comment period is being extended for 30 days and will now end on February 9, 1998.

DATES: Comments must be received on or before February 9, 1998.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–95–20, U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. The EPA requests that a separate copy also be sent to the contact person listed under the **FOR FURTHER INFORMATION CONTACT** section. Comments and data may also be submitted electronically by following the instructions provided in the **SUPPLEMENTARY INFORMATION** section. No Confidential Business Information (CBI) should be submitted through electronic mail.

FOR FURTHER INFORMATION CONTACT: Mr. Lalit Banker; Organic Chemicals Group, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5420.

SUPPLEMENTARY INFORMATION: Electronic Filing. Electronic comments can be sent directly to the EPA at: a-and-r-docket@epamail.epa.gov. Electronic comments and data must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1 or 6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number A–95–20. Electronic comments may be filed online at many Federal Depository Libraries.

Discussion. On November 10, 1997, at 62 FR 60565, the EPA published the proposed National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production and provided a 60-day public comment period. Requests have been received to extend the public comment period beyond the 60 days originally provided. These requests have been made by businesses that will be affected by the rule. Their request for this extension is primarily based on the fact that Thanksgiving and Christmas holidays occur during the comment period which would cause hardship on their ability to provide timely and useful comments. In consideration of these concerns, the EPA is extending the comment period by 30 days (until February 9, 1998), in order to give all interested persons the opportunity to comment fully.

Dated: December 9, 1997.

Richard D. Wilson,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 97–32928 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 971208290–7290–01; I.D. 112097C]

RIN 0648–AK51

Fisheries Off West Coast States and in the Western Pacific; Northern Anchovy Fishery; Control Date

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; consideration of a control date.

SUMMARY: The Pacific Fishery Management Council (Council) is developing an amendment to the Northern Anchovy Fishery Management Plan (FMP) that may place small coastal pelagic species under Federal management along with northern anchovy. Proposed management options include limiting effort by controlling the number and/or capacity of vessels harvesting coastal pelagic resources off Washington, Oregon, and California. This notice is intended to notify fishermen that anyone entering the coastal pelagics fishery after November 5, 1997, may not be eligible to continue participating in the fishery under the new amendment.

DATES: Comments must be submitted by January 16, 1998.

ADDRESSES: Submit comments to the Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Mr. James J. Morgan, (562) 980–4036, or Mr. Svein Fougner, Acting Chief, Fisheries Management Division, (562) 980–4034.

SUPPLEMENTARY INFORMATION: The current draft of the amendment to the FMP would add the following species to the management unit: Pacific mackerel

(*Scomber japonicus*), jack mackerel (*Trachurus symmetricus*), Pacific sardine (*Sardinops sagax*), market squid (*Loligo opalescen*), Pacific saury (*Cololabis saira*), and Pacific bonito (*Sarda chiliensis*). One of the management options to be considered in the amendment is controlling fishing effort by limiting the number and/or capacity of vessels harvesting coastal pelagics to levels that are economically efficient. If too many vessels enter a fishery, the profit for each fisherman dwindles, management and enforcement becomes more difficult and costly, the private investment needed by each fisherman to maintain an adequate share of the harvest rises, and the pressure to raise harvest levels increases. To keep harvesting capacity in line with the resources available, various limited access systems will be analyzed.

The first step in evaluating a system by which the number of participants can be limited is to identify the current participants. Although the decision has not been made on whether vessels, vessel operators, or owners of vessels will be considered ''current participants,'' the Council, at its meeting in Portland, OR, on November 5, 1997, adopted the control date of November 5, 1997, for defining participants in the fishery. Therefore, a fisherman would have to have landed coastal pelagic species on or before November 5, 1997, to be considered a current participant in this fishery. Fishermen are put on notice that anyone entering the coastal pelagics fishery after this date might not be issued a permit to continue participating in the fishery if a limited access option is adopted for coastal pelagic resources. This decision by the Council rescinds the earlier control date for this fishery of November 13, 1991, which was published in the **Federal Register** on January 16, 1992 (57 FR 1899).

The control date does not commit the Council or NMFS to any particular management regime or criteria for entry into the coastal pelagics fishery. Fishermen are not guaranteed future participation in this fishery, regardless of their entry date or intensity of participation before or after the control date. The Council may subsequently choose a different control date or it may choose a management regime that does not make use of such a date. Other qualifying criteria, such as documentation of commercial landings and sales, may be necessary for entry.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 10, 1997.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 97–32865 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 62, No. 242

Wednesday, December 17, 1997

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of upcoming meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee will meet on January 29, 1998, in the River Room at Campbell's Conference Center, 104 W. Woodin, Chelan, Washington. The meeting will begin at 9:00 and end at 3:00 p.m. This meeting will focus on Forest Plan monitoring, management of Late Successful Reserves, and management of noxious weeds. All Eastern Washington Cascades Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: December 3, 1997.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 97–32855 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of upcoming meeting.

SUMMARY: The Yakima Provincial Advisory Committee will meet on January 28, 1998, at the Cle Elum Ranger District office, 803 W. 2nd Street, Cle Elum, Washington. The meeting will begin at 9:00 a.m. and end at 3:00 p.m. The meeting will focus on watershed restoration, Snoqualmie Pass Adaptive Management Area, and an update on Naches Ranger District projects. All Yakima Province Advisory Committee meetings are open to the public. Interested citizens are welcome to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Paul Hart, Designated Federal Official, USDA, Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–662–4335.

Dated: December 3, 1997.

Sonny J. O'Neal,

Forest Supervisor, Wenatchee National Forest.

[FR Doc. 97–32856 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation for the Northeast Indiana Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: GIPSA announces the designation of Northeast Indiana Grain Inspection (Northeast Indiana) to provide official services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: January 1, 1998.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the August 21, 1997, **Federal Register** (62 FR 44439), GIPSA asked persons interested in providing official services in the Northeast Indiana area, currently assigned to East Indiana Grain Inspection, Inc., to submit an application for designation. There was one applicant: Northeast Indiana Grain Inspection, a proposed organization to be established by Steve Walker to be located at Hoagland, Indiana, applied for designation to provide official services in the Northeast Indiana region.

In the November 3, 1997, **Federal Register** (62 FR 59340), GIPSA asked for comments on the applicant for the Northeast Indiana region. Comments were due by December 2, 1997. GIPSA received no comments by the deadline.

GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(l)(A) of the Act and, according to Section 7(f)(l)(B), determined that Northeast Indiana is able to provide official services in the Northeast Indiana area.

Effective January 1, 1998, and ending December 31, 2000, Northeast Indiana is designated to provide official services in the geographic area specified in the August 21, 1997, **Federal Register**.

Interested persons may obtain official services by contacting Northeast Indiana at 219–639–6390.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: December 10, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–32901 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Opportunity for Designation in the Eastern Iowa (IA) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations will end not later than triennially and may be renewed. The designation of Eastern Iowa Grain Inspection and Weighing Service, Inc. (Eastern Iowa), will end July 31, 1998, according to the Act. GIPSA is asking persons interested in providing official services in the Eastern Iowa area to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before January 15, 1998.

ADDRESSES: Applications must be submitted to USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647–S, 1400 Independence Avenue, S.W., Washington, DC 20250–3604. Applications may be submitted by FAX on 202–690–2755. If an application is submitted by FAX, GIPSA reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, S.W., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, at 202–720–8525.

SUPPLEMENTARY INFORMATION: This Action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this Action.

Section 7(f)(1) of the Act authorizes GIPSA's Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services. GIPSA designated Eastern Iowa, main office located in Davenport, Iowa, to provide official inspection services under the Act on August 1, 1995.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in Section 7(f) of the Act. The designation of Eastern Iowa ends on July 31, 1998, according to the Act.

Pursuant to Section 7(f)(2) of the Act, the following geographic area, in the States of Illinois and Iowa, is assigned to Eastern Iowa.

The Southern Area

Bounded on the North, in Iowa, by Interstate 80 from the western Iowa County line east to State Route 38; State Route 38 north to State Route 130; State Route 130 east to Scott County; the western and northern Scott County lines east to the Mississippi River;

Bounded on the East, from the Mississippi River, in Illinois, by the eastern Rock Island County line; the northern Henry and Bureau County lines east to State Route 88; State Route 88 south; the southern Bureau County line; the eastern and southern Henry County lines; the eastern Knox County line;

Bounded on the South by the southern Knox County line; the eastern and southern Warren County lines; the southern Henderson County line west to the Mississippi River; in Iowa, by the southern Des Moines, Henry, Jefferson, and Wapello County lines; and

Bounded on the West by the western and northern Wapello County lines; the western and northern Keokuk County lines; the western Iowa County line north to Interstate 80.

The Northern Area

Bounded on the North, in Iowa, by the northern Delaware and Dubuque County lines; in Illinois, by the northern Jo Daviess, Stephenson, Winnebago, Boone, McHenry, and Lake County lines;

Bounded on the East by the eastern Illinois State line south to the northern Will County line; the northern Will County line west to Interstate 55; Interstate 55 southwest to the southern Dupage County line;

Bounded on the South by the southern Dupage, Kendall, Dekalb, and Lee County lines; and

Bounded on the West by the western Lee and Ogle County lines; by the southern Stephenson and Jo Daviess County lines; in Iowa, by the southern Dubuque and Delaware County lines; and the western Delaware County line.

Eastern Iowa's assigned geographic area does not include the export port locations inside Eastern Iowa's area which are serviced by GIPSA.

Interested persons, including Eastern Iowa, are hereby given the opportunity to apply for designation to provide official services in the geographic area specified above under the provisions of Section 7(f) of the Act and section 800.196(d) of the regulations issued thereunder. Designation in the Eastern Iowa is for the period beginning August 1, 1998, and ending May 31, 2001. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 et seq.).

Dated: December 10, 1997.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 97–32902 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–EN–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to the Natural Resources Conservation Service's Field Office Technical Guide (FOTG)

AGENCY: Natural Resources Conservation Service (NRCS) in North Dakota, U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of FOTG in North Dakota for review and comment.

SUMMARY: It is the intention of NRCS in North Dakota to issue a series of new and revised conservation practice standards in Section IV of the FOTG. These new standards include Cross Wind Stripcropping (589B); Residue Management, No-till and Strip Till (329A); Prescribed Grazing (528A); and Wildlife Watering Facility (648).

The revised standards are Field Border (386) and Riparian Forest Buffer (391A).

DATES: Comments will be received on or before January 30, 1998.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Myron P. Senechal, State Resource Conservationist, Natural Resources Conservation Service (NRCS), PO Box 1458, Bismarck, ND 58502–1458. Copies of these standards will be made available upon written request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in North Dakota will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS of North Dakota regarding disposition of those comments and a final determination of changes will be made.

Dated: December 11, 1997.

Scott Hoag, Jr.,

State Conservationist, Bismarck, North Dakota.

[FR Doc. 97–32864 Filed 12–16–97; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of revocation of Export Trade Certificate of Review No. 83–00034.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Micro Products Company. Because this certificate holder has failed to file an annual report as required by law, the Secretary is revoking the certificate. This notice summarizes the notification letter sent to Micro Products Company.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5/3/. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (''the Act'') (Pub. L. No. 97–290, 15 U.S.C. 4011–21) authorizes the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III (''the Regulations'') are found at 15 CFR part 325 (1997). Pursuant to this authority, a certificate of review was issued on April 12, 1984 to Micro Products Company.

A certificate holder is required by law to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate (Section 308 of the Act, 15 U.S.C. 4018, Section 325.14 (a) of the Regulations, 15 CFR 325.14 (a)). The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review (Sections 325.14 (b) of the Regulations, 15 CFR 325.14 (b)). Failure to submit a complete annual report may be the basis for revocation (Sections 325.10(a) and 325.14(c) of the Regulations, 15 CFR 325.10(a) (3) and 325.14(c)).

On April 3, 1997, the Department of Commerce sent to Micro Products Company a letter containing annual report questions with a reminder that its annual report was due on May 28, 1997. Additional reminders were sent on August 7, 1997 and on September 12, 1997. The Department has received no written response from Micro Products Company to any of these letters.

On November 6, 1997, and in accordance with Section 325.10 (c) (1) of the Regulations, (15 CFR 325.10 (c) (1)), the Department of Commerce sent a letter by certified mail to notify Micro Products Company that the Department was formally initiating the process to revoke its certificate for failure to file an annual report. In addition, a summary of this letter allowing Micro Products Company thirty days to respond was published in the **Federal Register** on November 12, 1997 at 62 FR 60690. Pursuant to 325.10(c) (2) of the Regulations (15 CFR 325.10(c) (2)), the Department considers the failure of Micro Products Company to respond to be an admission of the statements contained in the notification letter.

The Department has determined to revoke the certificate issued to Micro Products Company for its failure to file an annual report. The Department has sent a letter, dated December 12, 1997, to notify Micro Products Company of its determination. The revocation is effective thirty (30) days from the date of publication of this notice. Any person aggrieved by this decision may appeal to an appropriate U.S. district court within 30 days from the date on which this notice is published in the **Federal Register** (325.10(c) (4) and 325.11 of the Regulations, 15 CFR 324.10(c) (4) and 325.11 of the Regulations, 15 CFR 325.10(c) (4) and 325.11).

Dated: December 12, 1997.

Morton Schnabel,

Acting Director, Office of Export Trading, Company Affairs.

[FR Doc. 97–32881 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 121197A]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications for scientific research permits (1060, 1065, 1068, 1069, 1107).

SUMMARY: Notice is hereby given that the Simpson Timber Company (STC), in Korbel, CA, Humboldt Fish Action Council (HFAC), in Eureka, CA, the U.S. Fish and Wildlife Service (FWS), in Arcata, CA, Rellim Redwood Company (RRC), in Crescent City, CA, and Dr. Isaac Wirgin from the Institute of Environmental Medicine - New York University Medical Center have applied in due form for permits authorizing takes or possession of listed species for scientific research purposes.

DATES: Written comments or requests for a public hearing on any of these applications must be received on or before January 16, 1998.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 1060, 1065, 1068, and 1069: Protected Species Division, NMFS, 777 Sonoma Avenue, Room 325, Santa Rosa, CA 95404–6528 (707 575–6066).

For permit 1107: Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930–2298 (508–281–9250).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401)

FOR FURTHER INFORMATION CONTACT: For permits 1060, 1065, 1068, and 1069: Thomas Hablett, Protected Resources Division, (707–575–6066).

For permit 1107: Terri Jordan, Office of Protected Resources, (301–713–1401)

SUPPLEMENTARY INFORMATION: STC, HFAC, FWS, RRC, and Dr. Isaac Wirgin request permits under the authority of section 10 of the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing ESA-listed fish and wildlife permits (50 CFR parts 217–227).

STC (1060) requests a five-year permit for takes of juvenile, threatened, southern Oregon/northern California coast (SONNC) coho salmon (*Oncorhynchus kisutch*) associated with STC ownership monitoring projects in Humboldt and Del Norte County coastal streams within the Evolutionarily Significant Unit (ESU). The studies consist of coho salmon distribution and abundance surveys for which ESA-listed fish are proposed to be taken. ESA listed fish will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed salmon indirect mortalities associated with the research are also requested.

HFAC (1065) requests a five-year permit for takes of adult and juvenile, threatened, SONNC coho salmon (*Oncorhynchus kisutch*) associated with fish population studies in the Freshwater Creek drainage within the ESU. The studies consist of coho salmon abundance and spawner surveys for which ESA-listed fish are proposed to be taken. ESA-listed fish will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed salmon indirect

mortalities associated with the research are also requested.

FWS (1068) requests a five-year permit for takes of juvenile and adult, threatened, southern Oregon/northern California coast (SONNC) coho salmon (*Oncorhynchus kisutch*) associated with monitoring projects in the Klamath and Trinity River watersheds within the Evolutionarily Significant Unit (ESU). The studies consist of juvenile coho salmon distribution and abundance surveys, and spawner surveys for adults, for which ESA-listed fish are proposed to be taken. ESA-listed juveniles will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed adults will be observed, and carcasses will be handled. ESA-listed juvenile indirect mortalities associated with the research are also requested.

RRC (1069) requests a five-year permit for takes of juvenile, threatened, SONNC coho salmon (*Oncorhynchus kisutch*) associated with fish population and habitat studies on RRC ownership properties in the Smith River Basin within the ESU. The studies consist of coho salmon distribution and abundance surveys for which ESA-listed fish are proposed to be taken. ESA-listed fish will be captured, anesthetized, handled (identified and measured), allowed to recover from the anesthetic, and released. ESA-listed salmon indirect mortalities associated with the research are also requested.

Dr. Isaac Wirgin (1107) requests authorization to conduct research on shortnose sturgeon using tissue samples (fin clips, barbels, blood) to isolate DNA. The purpose of the research is to determine if genetic differences exist among populations of shortnose sturgeon that span the species' entire range along the Atlantic coast.

Those individuals requesting a hearing on these requests for permits should set out the specific reasons why a hearing would be appropriate (see **ADDRESSES**). The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the above application summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Dated: December 11, 1997.

Joseph Blum,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–32947 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 120897C]

Marine Mammals; Scientific Research Permit (PHF# 350–1434)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Brendan Kelly, University of Alaska Fairbanks, Juneau, Alaska 99801, has applied in due form for a permit to take ringed seals (*Phoca hispida*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before January 16, 1998.

ADDRESSES: The application 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 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7721).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by email or other electronic media. Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The purpose of the proposed research is to investigate the behavioral responses of ringed seals to noise disturbances, the role of sound in ringed seal navigation, the under-ice foraging behavior of ringed seals, and improvements to methods for enumerating ringed seals. The study will take place between 15 January and 1 July each year in 1998–2002 in U.S. waters of the Bering, Chukchi, and/or Beaufort Sea, depending on ice conditions and appropriate overlap with aerial surveys conducted by other agencies.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: December 9, 1997.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 97–32866 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

December 9, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Helen L. LeGrande, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Macau and exported during the period January 1, 1998 through December 31, 1998 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

Pursuant to the provisions of the ATC, the second stage of the integration commences on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). Accordingly, certain previously restrained categories may have been modified or eliminated. Integrated products will no longer be subject to quota. CITA has informed Macau of its intent to continue the bilateral visa arrangement for those products.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1998 limits. The limits for certain categories have been reduced for carryforward applied to the 1997 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 17, 1996). Also see 62 FR 51832, published on October 3, 1997. Information regarding the 1998 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 9, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1998, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Macau and exported during the twelve-month period beginning on January 1, 1998 and extending through December 31, 1998, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
Levels in Group I	
219	2,954,722 square meters.
225	10,341,527 square meters.
313	7,386,805 square meters.
314	1,231,134 square meters.
315	3,693,403 square meters.
317	7,386,805 square meters.
326	2,954,722 square meters.
333/334/335/833/834/835.	290,585 dozen of which not more than 153,070 dozen shall be in Categories 333/335/833/835.
336/836	66,619 dozen.
338	353,663 dozen.
339	1,481,367 dozen.
340	336,030 dozen.
341	215,902 dozen.
342	97,673 dozen.
345	59,725 dozen.
347/348/847	837,111 dozen.
350/850	68,874 dozen.
351/851	78,140 dozen.
359–C/659–C [1]	390,694 kilograms.
359–V [2]	130,232 kilograms.
611	2,954,722 square meters.
625/626/627/628/629	7,386,805 square meters.
633/634/635	581,749 dozen.
638/639/838	1,811,583 dozen.
640	136,242 dozen.
641/840	234,164 dozen.
642/842	136,426 dozen.
645/646	319,364 dozen.
647/648	644,254 dozen.
659–S [3]	137,250 kilograms.
Group II	
400–431, 433–438, 440–448, 459pt. [4] and 469pt. [5], as a group.	1,477,266 square meters equivalent.
Sublevel in Group II	
445/446	78,669 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.9030, 6104.12.0040, 6104.19.8040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.9044, 6110.90.9046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.9030, 6204.12.0040, 6204.19.8040, 6211.32.0070 and 6211.42.0070.

[3] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[4] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1997 shall be charged to the applicable category limits for that year (see directive dated December 20, 1996) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

Products for integration in 1998 listed in the **Federal Register** notice published on May 1, 1995 (60 FR 21075) which are exported during 1997 shall be charged to the applicable limits to the extent of any unfilled balances. After January 1, 1998, should those unfilled balances be exhausted, such products shall no longer be charged to any limit, due to integration of these products into GATT 1994.

CITA has informed Macau of its intent to continue the bilateral visa arrangement for those products. An export visa will continue to be required, if applicable, for products integrated on and after January 1, 1998, before entry is permitted into the United States.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32893 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of an Import Restraint Level for Certain Cotton and Man-Made Textile Products Produced or Manufactured in Mexico

December 12, 1997

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a level.

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist,

Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Government of the United States has agreed to increase the 1997 consultation level for Categories 347/348/647/648 to 690,000 dozen.

This level does not apply to NAFTA (North America Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, this consultation level does not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 61 FR 66263, published on December 20, 1996). Also see 61 FR 54986, published on October 23, 1996.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 12, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 17, 1996, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1997 and extending through December 31, 1997. The levels established in that directive do not apply to NAFTA (North America Free Trade Agreement) originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of NAFTA or to goods assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

Effective on December 17, 1997, you are directed to increase the level for Categories 347/348/647/648 to 690,000 dozen [1], pursuant to exchange of letters dated December 5, 1997 and provisions of the NAFTA (North America Free Trade Agreement).

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32900 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States; Changes to the 1997 Correlation

December 11, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Changes to the 1997 Correlation

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Correlation: Textile and Apparel Categories based on the Harmonized Tariff Schedule of the United States (1997) presents the harmonized tariff numbers under each of the cotton, wool, man-made fiber, silk blend and other vegetable fiber categories used by the United States in monitoring imports of these textile products and in the administration of the textile program. The Correlation should be amended to include the following changes:

Changes to the 1997 Correlation

The following changes for certain discharged printed cotton fabrics were effective on October 1, 1997:

Category 313

Delete 5208.52.3040.

Add 5208.52.3035—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, plain weave, weighing more than 100 g/m2, of number 42 or lower number, sheeting, discharge printed.

Add 5208.52.3045—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, plain weave, weighing more than 100 g/m2, of number 42 or lower number, sheeting, other than discharge printed.

Delete 5208.52.4040.

Add 5208.52.4035—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, plain weave, weighing more than 100 g/m2, of numbers 43 to 68, sheeting, discharge printed.

Add 5208.52.4045—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, plain weave, weighing more than 100 g/m2, of numbers 43 to 68, sheeting, other than discharge printed.

Delete 5209.51.6030.

Add 5209.51.6032—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, plain weave, sheeting, not napped, discharge printed.

Add 5209.51.6035—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, plain weave, sheeting, not napped, other than discharge printed.

Category 314

Delete 5209.51.6020.

Add 5209.51.6015—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, plain weave, poplin or broadcloth, discharge printed.

Add 5209.51.6025—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, plain weave, poplin or broadcloth, other than discharge printed.

Category 315

Delete 5208.52.4060.

Add 5208.52.4055—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, plain weave, weighing more than 100 g/m2, of numbers 43 to 68, printcloth, discharge printed.

Add 5208.52.4065—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, plain weave, weighing more than 100 g/m2, of numbers 43 to 68, printcloth, other than discharged printed.

Category 317

Delete 5208.59.2090.

Add 5208.59.2085—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m2, other fabrics, satin weave or twill weave, other than sateens, discharged printed.

Add 5208.59.2095—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m2, other fabrics, satin weave or twill weave, other than sateens, other than discharged printed.

Category 326

Delete 5208.59.2020.

[1] The level has not been adjusted to account for any imports exported after December 31, 1996.

Changes to the 1997 Correlation

Add 5208.59.2015—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m2, other fabrics, satin weave or twill weave, sateens, discharged printed.
Add 5208.59.2025—Woven fabrics of cotton, containing 85 percent or more by weight of cotton, weighing not more than 200 g/m2, other fabrics, satin weave or twill weave, sateens, other than discharge printed.
Delete 5209.59.0020.
Add 5209.59.0015—Woven fabrics, containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, printed, other fabrics, satin weave or twill weave, sateens, discharge printed.
Add 5209.59.0025—Woven fabrics, containing 85 percent or more by weight of cotton, weighing more than 200 g/m2, printed, other fabrics, satin weave or twill weave, sateens, other than discharge printed.
Delete 5211.59.0020.
Add 5211.59.0015—Woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibers, weighing more than 200 g/m2, printed, other fabrics, satin weave or twill weave, sateens, discharge printed.
Add 5211.59.0025—Woven fabrics of cotton, containing less than 85 percent by weight of cotton, mixed mainly or solely with man-made fibers, weighing more than 200 g/m2, printed, other fabrics, satin weave or twill weave, sateens, other than discharge printed.

The following changes were effective on August 1, 1997:

Category 622
Delete 7019.40.4000.
Add 7019.40.4030—Other woven fiberglass fabrics, not colored, silica filament fabric of filaments with a silica content greater than 93 percent.
Add 7019.40.4060—Other woven fiberglass fabrics, not colored, other than silica filament fabric of filaments with a silica content greater than 93 percent.
Delete 7019.40.9000.
Add 7019.40.9030—Other colored woven fiberglass fabrics, silica filament fabric of filaments with a silica containing greater than 93 percent.
Add 7019.40.9060—Other colored woven fiberglass fabrics, other than silica filament fabric of filaments with a silica containing greater than 93 percent.

Category 359
Delete 6117.80.9010.
Replace with 6117.80.9510—definition remains unchanged.
Delete 6217.10.9010.
Replace with 6217.10.9510—definition remains unchanged.

Category 459
Delete 6117.80.9020.
Replace with 6117.80.9520—definition remains unchanged.
Delete 6117.80.9030.
Replace with 6117.80.9530—definition remains unchanged.

Changes to the 1997 Correlation

Delete 6217.10.9020.
Replace with 6217.10.9520—definition remains unchanged.

Category 659
Delete 6117.80.9040.
Replace with 6117.80.9540—definition remains unchanged.
Delete 6217.10.9030.
Replace with 6217.10.9530—definition remains unchanged.

Category 859
Delete 6117.80.9070.
Replace with 6117.80.9570—definition remains unchanged.
Delete 6217.10.9050.
Replace with 6217.10.9550—definition remains unchanged.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32895 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Availability of the Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 1998

December 12, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Committee for the Implementation of Textile Agreements (CITA) announces that the 1998 Correlation, based on the Harmonized Tariff Schedule of the United States, will be available either in December 1997 or January 1998 as part of the Office of Textiles and Apparel (OTEXA) CD-Rom of publications.

The CD-Rom may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room H3100, Washington, DC 20230, ATTN: Barbara Anderson, at a cost of $25. Checks or money orders should be made payable to the U.S. Department of Commerce.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32899 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Extension of Temporary Amendment to the Requirements for Participating in the Special Access Progam for Caribbean Basin Countries

December 11, 1997.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs extending amendment of requirements for participation in the Special Access Program for a temporary period.

EFFECTIVE DATE: December 23, 1997.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice and letter to the Commissioner of Customs published in the **Federal Register** on July 2, 1997 (62 FR 35788) announced the temporary amendment to the foreign origin exception for findings and trimmings under the Special Access Program. By date of export, the foreign origin exception for findings and trimmings, including elastic strips of less than one inch in width, under the Special Access Program was temporarily amended to include non-U.S. formed, U.S. cut interlinings for the period June 23, 1997 through December 22, 1997 for women's and girls' suit jackets and suit-type jackets in Categories 435, 444, 635 and 644. This amendment is being extended for a one-year period beginning on December 23, 1997 and extending through December 22, 1998 for women's and girls' suit jackets and suit-type jackets entered under the Special Access Program (9802.00.8015) provided they are cut in the United States and are of a type described below:

(1) A chest type plate, ''hymo'' piece or ''sleeve header'' of woven or welf-inserted warp knit construction of

coarse animal hair or man-made filaments used in the manufacture of women's or girls' tailored suit jackets and suit-type jacksts;

(2) A woven fabric which contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of women's or girls' tailored suit jackets and suit-type jackets.

Note that the amendment is not being extended for weft-inserted warp knit fabric which contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachement by fusing with a thermo-plastic adhensive to the coat-front, side body or back of women's or girls' tailored suit jackets and suit-type jackets. These interlinings must be formed and cut in the United States.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 11, 1997.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends but does not cancel the directive issued to you on June 26, 1997, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns the foreign origin exception for findings and trimmings under the Special Access Program.

Effective on December 23, 1997, by date of export, you are directed to extend, for the one-year period December 23, 1997 through December 22, 1998, the amendment to treat non-U.S. formed, U.S.-cut interlinings, further described below, for women's and girls' wool and man-made fiber suit jackets and suit-type jackets in Categories 435, 444, 635 and 644 as qualifying for the exception for findings and trimmings, including elastic strips less than one inch in width, created under the Special Access Program established effective September 1, 1986 (see 51 FR 21208). In the aggregate, such interlinings, findings and trimmings must not exceed 25 percent of the cost of the components of the assembled article.

The amendment implemented by this directive shall be of a temporary nature. With respect to women's and girls' suit jackets and suit-type jackets in Categories 435, 444, 635 and 644, the amendment will terminate on December 22, 1998, by date of export of the assembled article.

As described above, non-U.S. formed, U.S.-cut interlinings may be used in imports of women's or girls' suit jackets and suit-type jackets entered under the Special Access Program (9802.00.8015) provided they are cut in the United States and of a type described below:

(1) A chest plate, ''hymo'' piece or ''sleeve header'' of woven or weft-inserted warp knit construction of coarse animal hair or man-made filaments used in the manufacture of women's or girls' tailored suit jackets and suit-type jackets;

(2) A woven fabric which contains and exhibits properties of resiliency which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of women's or girls' tailored suit jackets and suit-type jackets.

This amendment is not being extended for weft-inserted warp knit fabric which contains and exhibits properties of elasticity and resilience which render the fabric especially suitable for attachment by fusing with a thermo-plastic adhesive to the coat-front, side body or back of women's or girls' tailored suit jackets and suit-type jackets. These interlinings must be formed and cut in the United States.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 97–32896 Filed 12–16–97; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Satellite Reconnaissance

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Open Systems will meet in closed session on December 17–18, 1997 and January 27–28, 1998 at Strategic Analysis, Inc., 4001 N. Fairfax Drive, Arlington, Virginia. In order for the Task Force to obtain time sensitive classified briefings, critical to the understanding of the issues, this meeting is scheduled on short notice.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine the benefits of, criteria for, and obstacles to the application of an open systems approach to weapon systems, and to make recommendations on revisions to DoD policy, practice, or investment strategies that are required to obtain maximum benefit from adopting open systems. The Task Force should examine application to new defense programs, to those that have already made substantial investments in a design, and to those that are already fielded, across the spectrum of weapon systems, not just those heavily dependent on advanced computers and electronics.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1994)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1994), and that accordingly these meetings will be closed to the public.

Dated: December 12, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 97–32951 Filed 12–16–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing; Notice

Pursuant to Public Law 92–463, notice is hereby given that a meeting of the Defense Advisory Committee on Military Personnel Testing is scheduled to be held from 8:30 a.m. to 4:30 p.m. on February 26, 1998 and from 8:30 a.m. to 4:30 p.m. on February 27, 1998. The meeting will be held at The Delta King Hotel, Sacramento, California. The purpose of the meeting is to review planned changes and progress in developing paper-and-pencil and computerized enlistment tests as well as renorming of those tests. Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian, Assistant Director for Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271, no later than January 23, 1998.

Dated: December 11, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison, Department of Defense

[FR Doc. 97–32870 Filed 12–16–97; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board Meeting

The Air and Space Command & Control Agency (ASC2A) Advisory Group Panel Meeting in support of the HQ USAF Scientific Advisory Board will meet at Langley Air Force Base, VA on January 13–14, 1998 from 8:00 a.m. to 5:00 p.m.

The purpose of the meeting is to gather information and receive briefings.

The meeting will be closed to the public in accordance with Section 552b of Title 5, United States Code, specifically subparagraphs (1) and (4) thereof.

For further information, contact the HQ USAF Scientific Advisory Board Secretariat at (703) 697–8404.

Barbara A. Carmichael,

Alternate Air Force Federal Register Liaison Officer.

[FR Doc. 97–32854 Filed 12–16–97; 8:45 am]

BILLING CODE 3910–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Final Environmental Impact Statement (FEIS) on the Disposal and Reuse of the Evans Subpost Fort Monmouth, New Jersey

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: The proposed action evaluated by this FEIS is the disposal of the Evans Subpost Fort Monmouth, New Jersey, in accordance with the Defense Base Closure and Realignment Act of 1990, Public Law 101–510, as amended. The FEIS addresses the environmental consequences of the disposal and subsequent reuse of the 215 acres. Three alternative methods of disposal are analyzed: encumbered disposal, unencumbered disposal and retention of the property in a caretaker status (i.e., the no action alternative). The Army's preferred alternative for disposal of the Evans Subpost is encumbered disposal, which involves conveying the property with conditions imposed on historic resources, remedial activities, special easements and restrictive covenants to create or maintain buffer zones between sensitive areas or adjoining parcels. The FEIS concludes that the alternatives analyzed will have both long-term adverse and short-term adverse effects and that the significant adverse effects will result under the medium and high intensity reuse scenarios. The FEIS identifies mitigation measures that can be taken in the future to avoid or reuse any adverse impacts from reuse.

DATES: The public review period for this document ends 30 days after the date of publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**.

ADDRESSES: Copies of the FEIS are available for review at the Wall Township Public Library, 2700 Allaire Road, Wall, New Jersey 07719. Copies of the FEIS may also be obtained by writing to Dr. Susan Rees, U.S. Army Engineer District, ATTN: CESAM–PD–E, P.O. Box 2288, Mobile, Alabama 36628–0001 or by telephone at (334) 694–4141 or telefax (334) 690–2721.

SUPPLEMENTARY INFORMATION: The Draft EIS (DEIS) was made available for public review and comment. A notice of availability (NOA) of the DEIS was published in the **Federal Register** (61 FR 22058) on May 13, 1996. The Army conducted a public meeting on May 29, 1996, to receive public input on the DEIS. Display advertisements informing the public were taken out in the local newspaper.

Dated: December 4, 1997.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I,L&E).

[FR Doc. 97–32944 Filed 12–16–97; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army.

ACTION: Notice to amend systems of records.

SUMMARY: The Department of the Army is amending two systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on January 16, 1998 unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records systems being amended are set forth below followed by the notices, as amended, published in their entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: December 11, 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0001 DAPE–ARI

SYSTEM NAME:

Professional Staff Information File *(February 22, 1993, 58 FR 10025).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry '5 U.S.C. 301, Departmental Regulations'.

* * * * *

A0001 DAPE–ARI

SYSTEM NAME:

Professional Staff Information File.

SYSTEM LOCATION:

Headquarters, U.S. Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of the Army civilian psychologists, engineers, economists, sociologists, and other professional staff members employed by the Army Research Institute who voluntarily supply information for release and military officers assigned to the Army Research Institute who voluntarily provide information for release.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain names of individuals and their curricula vitae, including data and information on the qualifications, expertise, experience and interests of the professional staff of the Army Research Institute. Data include name, grade or rank, Institute assignment,

education, prior professional experience, professional activities and development, lists of awards and recognitions, extra-government professional activities and significant professional publications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and 10 U.S.C. 3013.

PURPOSE(S):

To establish and maintain a professional staff directory which is used to consider staff members with special expertise for special duty assignments and to produce evidence of professional staff qualifications during Institute peer reviews and similar independent evaluations.

Records are also used as basis for summary statistical reports concerning professional qualifications.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information is stored on a personal computer.

RETRIEVABILITY:

Information is retrieved by the surname of professional person. Categorical data is retrieved by keyword.

SAFEGUARDS:

Records are accessible only to designated individuals having official need-to-know in the performance of assigned duties.

RETENTION AND DISPOSAL:

Information will be maintained during the tenure of the person and deleted upon permanent departure from the Institute.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Research Institute for the Behavioral and Social Sciences, ATTN: PERI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, U.S. Army Research Institute for the Behavioral and Social Sciences, ATTN: PERSI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, U.S. Army Research Institute for the Behavioral and Social Sciences, ATTN: PERSI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 430–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals employed by or assigned to the Army Research Institute who voluntarily submit requested information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0602 DAPE–ARI

SYSTEM NAME:

Behavioral and Social Sciences Research Project Files *(February 22, 1993, 58 FR 10150).*

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013 and 2358; and E.O. 9397 (SSN).'

* * * * *

STORAGE:

Delete entry and replace with 'Paper records in file folders, CD ROM; computer disks, and magnetic tape.'

* * * * *

A0602 DAPE–ARI

SYSTEM NAME:

Behavioral and Social Sciences Research Project Files.

SYSTEM LOCATION:

U.S. Army Research Institute for the Behavioral and Social Sciences, 5001 Eisenhower Avenue, Alexandria, VA 22333–5600 and field offices located at Fort Benning, GA; Boise, ID; Mannheim, Germany; Naval Training Center, Orlando, FL; Fort Hood, TX; Fort Knox, KY; Fort Leavenworth, KS; Fort Bragg, NC; and Fort Rucker, AL. Official mailing addresses are published as an appendix to the Army's compilation or record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former officer, warrant officer, and enlisted military personnel, including Army Reservists and National Guard; family members of the above service members; civilian employees of Department of Defense; and samples of civilians from the general U.S. population who are surveyed to determine why people do or do not consider military service as a career or a short-term employment option.

CATEGORIES OF RECORDS IN THE SYSTEM:

Service member: Individual's name and Social Security Number, Army personnel records and questionnaire-type data relating to service member's pre-service education, work experience and social environment and culture, learning ability, physical performance, combat readiness, discipline, motivation, attitude about Army life, and measures of individual and organizational adjustments; test results from Armed Services Vocational Aptitude Battery and Skill Qualification Tests.

Non-service member: Individual's name and Social Security Number, and questionnaire type data relating to non-service member's education, work experience, motivation, knowledge of and attitude about the Army. When records show military service or marriage to a service member, the appropriate non-service records will be linked to the service record.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013 and 2358; and E.O. 9397 (SSN).

PURPOSE(S):

To research manpower, personnel, and training dimensions inherent in the recruitment, selection, classification, assignment, evaluation, and training of military personnel; to enhance readiness effectiveness of the Army by developing personnel management methods, training devices, and testing of weapons methods and systems aimed at improved group performance. (No decisions affecting an individual's rights or benefits are made using these research records).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders, CD ROM; computer disks, and magnetic tape.

RETRIEVABILITY:

By individual's name and/or Social Security Number. For research purposes, the data are usually retrieved and analyzed with respect to relative times of entry into service, training performance, and demographic values. Scheduled data for follow-up data collections however, are retrieved by month of scheduled follow-up and by name.

SAFEGUARDS:

Access to records is restricted to authorized personnel having official need therefor. Automated data are further protected by controlled system procedures and code numbers governing access.

RETENTION AND DISPOSAL:

Information is retained until completion of appropriate study or report, after which it is destroyed by shredding or erasing.

SYSTEM MANAGER(S) AND ADDRESS:

Director, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Director, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide the full name, Social Security Number, current address, subject area, and the year of survey, if known.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, U.S. Army Research Institute for Behavioral and Social Sciences, ATTN: PERI-AS (Privacy Act Officer), 5001 Eisenhower Avenue, Alexandria, VA 22333–5600.

Individual should provide the full name, Social Security Number, current address, subject area, and the year of survey, if known.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained form the system manager.

RECORD SOURCE CATEGORIES:

From the individual, his or her peers, or, in the case of ratings and evaluations, from supervisors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–32871 Filed 12–16–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF DEFENSE

DEPARTMENT OF THE NAVY

Record of Decision for the Disposal and Reuse of Naval Station Puget Sound at Sand Point, Seattle, Washington

SUMMARY: The Department of the Navy (Navy), pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), 42 U.S.C. 4332(2)(C), and the regulations of the Council on Environmental Quality that implement NEPA procedures, 40 CFR Parts 1500–1508, hereby announces its decision to dispose of Naval Station Puget Sound at Sand Point, Seattle, Washington, (Sand Point).

Navy intends to dispose of the property in a manner that is consistent with the City of Seattle Community Preferred Reuse Plan for Sand Point (Reuse Plan) that was submitted in November 1993 by the City of Seattle, the Local Redevelopment Authority (LRA) for the base, as modified by certain revisions endorsed by the City Council in June 1997 and designated as Options to the City's 1993 Reuse Plan. The 1993 Reuse Plan and the 1997 Options are described in the Final Environmental Impact Statement (FEIS) as the Preferred Alternative. The Preferred Alternative proposes a mixed land use consisting of educational facilities, community facilities, arts and cultural facilities, open space and recreational areas, residential areas, and institutional land uses.

In deciding to dispose of Sand Point in a manner consistent with the Preferred Alternative, Navy has determined that this mixed land use will enhance community and cultural resources, provide housing for the homeless, limit adverse environmental impacts, and ensure land uses that are compatible with surrounding properties. This Record Of Decision (ROD) does not mandate a specific mix of land uses. Rather, it leaves selection of the particular means to achieve the mixed use redevelopment to the acquiring entity and the local zoning authority.

Background:

Sand Point is located in King County, Washington, and lies within the limits of the City of Seattle. The base occupies 152 acres on the western shore of Lake Washington, about 6 miles northeast of downtown Seattle.

Under the Defense Authorization Amendments and Base Closure and Realignment Act of 1988, Pub. L. 100–526, the Defense Secretary's Commission on Base Realignment and Closure recommended ''closing the portion of Naval Station Puget Sound (Sand Point) whose mission is to serve fleet units at Naval Station Puget Sound (Everett).'' The Commission's recommendation was approved by the Secretary of Defense and accepted by the One Hundred First Congress in April 1989. In 1991, under the Defense Base Closure and Realignment Act of 1990, Pub. L. 101–510, the Defense Base Closure and Realignment Commission recommended the complete closure of Sand Point. This recommendation was approved by President Bush and accepted by the One Hundred Second Congress in September 1991. On September 28, 1995, Navy ceased operations at Sand Point and placed the property in caretaker status.

Two Federal agencies, the Department of Commerce's National Oceanic and Atmospheric Administration (NOAA) and the Department of the Interior's U.S. Geological Survey (Biological Resources Division) requested interagency transfers of base closure property at Sand Point. Navy will transfer to NOAA Building 27 and Building 409 and about 10 acres of land in the northern part of the base adjacent to NOAA's Sand Point area facilities, as well as the access road that covers about 1.2 acres. Navy will transfer Building 61 and about 5 acres of land at the southeast corner of the base to Interior for use as the National

Fisheries Research Center. Navy declared the remaining property surplus to the needs of the Federal Government in the Notice published in the **Federal Register** on October 11, 1995.

Navy published a Notice of Intent in the **Federal Register** on November 19, 1993, announcing that Navy would prepare an Environmental Impact Statement (EIS) that would analyze the impacts of disposal and reuse of the land, buildings, and infrastructure at Sand Point. Navy conducted the public scoping process between November 19, 1993 and January 14, 1994. A public scoping meeting was held at NOAA's Building 9 Theater, adjacent to the base, on December 16, 1993.

On November 8, 1996, Navy distributed a Draft Environmental Impact Statement (DEIS) to Federal, State, and local agencies, elected officials, the Muckleshoot Indian Tribe, and interested persons. Navy held a public hearing on December 2, 1996, at the Eckstein Middle School in Seattle. The forty-five day public comment period on the DEIS expired on December 23, 1996, but was extended to January 17, 1997, to permit submission of additional comments.

Federal and State agencies, local governments, community groups and associations, and the general public submitted comments on the DEIS. The Muckleshoot Indian Tribe did not submit comments on the DEIS. These comments and Navy's responses were incorporated in the Final Environmental Impact Statement, which was distributed to the public on October 24, 1997, for a review period that concluded on November 24, 1997. Navy received two letter comments on the FEIS.

Alternatives

NEPA requires Navy to evaluate a reasonable range of alternatives for the disposal and reuse of this Federal property. In the NEPA process, Navy analyzed the environmental impacts of various proposed land uses that could result from disposal of the Sand Point property. Navy also evaluated a ''No action'' alternative that would leave the property in a caretaker status with Navy maintaining the physical condition of the property, providing a security force, and making repairs essential to safety. For its analysis, Navy relied upon the reuse and redevelopment plan proposed by the City of Seattle and a redevelopment plan proposed by the Muckleshoot Indian Tribe.

The City of Seattle presented its Reuse Plan to the Department of the Navy in November 1993. In a letter to the Navy dated February 22, 1996, the City set forth several revisions to the 1993 Reuse Plan. These changes, endorsed by the City Council in June 1997, were designated in the FEIS as Options to the City Plan.

The 1993 Reuse Plan proposed a mixed use of the Sand Point property that divided the base into six activity areas: (1) A waterfront park in the northern part of the base known as the north shore recreation area; (2) the education and community activities area in the western part of the base composed of educational and community activity buildings, a firefighter training facility, and a commercial film studio; (3) the Magnuson Park Arts, Culture and Community Center in the eastern part of the base composed of an indoor community center and an outdoor amphitheater for community events; (4) the Magnuson Park open space/recreation expansion area, composed of public parkland, athletic fields, pedestrian paths, bicycle paths and expanded bus routes in the southeastern part of the base adjacent to Magnuson Park, a new entrance to Magnuson Park at the intersection of Sand Point Way and Northeast 65th Street, and wetland restoration at the former Mud Lake in the southeastern part of the base; (5) the residential area composed of 50 low income housing units in a barracks building and 200 transitional housing units for the homeless in the southwestern part of the base; and (6) institutional uses reflected in the activities of the Federal agencies that will occupy property at Sand Point.

The 1997 Options to the City Plan eliminated the 50 low income housing units and instead proposed to use the former barracks building for educational classrooms and school administrative spaces. The Options proposed to use other facilities to train City employees such as police officers and to provide an activity center for senior citizens. The Options also proposed expanding the boundaries of the north shore recreation area to include Buildings 2 and 67. The Options would eliminate the fire training center that the 1993 Reuse Plan intended for Building 67 and replace it with a cultural and community activities center. The Options would also eliminate the film studio initially planned for Building 2 and instead use the building as an indoor athletic facility.

The Preferred Alternative in the FEIS is a combination of the 1993 Reuse Plan and the 1997 Options to the City Plan. This alternative also reflects the 1997 discussions between the City of Seattle and the University of Washington that resulted in the LRA's proposal to use certain facilities at Sand Point for classrooms and administrative activities.

In June 1993, the Muckleshoot Indian Tribe submitted a draft plan to Navy proposing reuse of the entire 152-acre base. The FEIS refers to this proposal as the Muckleshoot Plan. In a letter dated July 26, 1993, the Department of the Interior's Bureau of Indian Affairs (BIA) submitted a request on behalf of the Muckleshoot Indian Tribe under the Federal Property and Administrative Services Act of 1949, 40 U.S.C 471, seeking an interagency transfer of 85 acres of base closure property in the northern part of Sand Point. On September 7, 1995, BIA withdrew its request for transfer of the 85-acre Sand Point property. Nevertheless, Navy analyzed the Muckleshoot Plan in the FEIS as a reasonable alternative under NEPA.

The Muckleshoot Plan proposed a mixed use of the Sand Point property that included: (1) a commercial marina in the northern part of the base that would accommodate tribal fishing vessels and activities, fishing net storage, fisheries research, and recreational activities; (2) light industrial and warehousing activities in the north central part of the base; (3) social services, including a drug and alcohol treatment facility, a health clinic, a senior citizens center, and a student counseling facility in the central part of the base; (4) a vocational technical school for 5,000 to 7,000 Native American students with housing for the school's staff and approximately 600 students in the south central part of the base; (5) commercial activities in the southern part of the base; and (6) a new entrance to Magnuson Park at the intersection of Sand Point Way and Northeast 65th Street.

Environmental Impacts

Navy analyzed the potential impacts of the Preferred Alternative, the Muckleshoot Plan, and the ''No action'' alternative for each alternative's effects on land use, historic and cultural resources, socioeconomics (including demographics, housing, the local economy, social services, schools, and environmental justice), recreation, transportation, noise, public services and utilities, public health and safety, soils, biological resources and endangered species, water quality, and air quality. This Record Of Decision (ROD) focuses on the impacts that would likely result from implementing the Preferred Alternative.

In the FEIS, Navy used existing land uses as a basis for assessing the impact of the land uses proposed by the Preferred Alternative, the Muckleshoot

Plan, and the ''No action'' alternative. Navy also considered the compatibility of the proposed land uses with the current uses of property adjacent to Sand Point.

The Preferred Alternative would result in a substantial increase in recreational and educational activity on the Sand Point property and a decrease in administrative and commercial activity as compared with the activities that Navy conducted on the base. These increased recreational and educational uses would not likely have a significant impact on the property or on the surrounding neighborhoods.

While the Preferred Alternative would result in an increase in residential use of the Sand Point property, this land use is similar in nature to the single family and multifamily residential community adjacent to Sand Point. The increase would not likely have an adverse impact on the surrounding area.

Several structures at Sand Point are eligible for listing on the National Register of Historic Places. Since the Preferred Alternative proposes to use these buildings for purposes similar to Navy's use of the buildings, their historic integrity will be maintained, as will that of the proposed historic district on the base. Although Navy did not discover any surface archeological resources at Sand Point, those resources could be present in undisturbed areas under the surface. If discovered, they will be protected by restrictions incorporated in documents conveying the property.

The Preferred Alternative proposes to consider demolition and modification of certain buildings within the proposed education and community activities area, if renovation and reuse are not feasible within 10 years. Either of these could have an adverse impact on buildings within the historic district. Thus, Navy entered into a Programmatic Agreement (PA) with the State Historic Preservation Officer (SHPO) on October 29, 1997, that was accepted by the Advisory Council on Historic Preservation (ACHP) on November 20, 1997. This PA would protect the historic district and its constituent elements after conveyance of the Sand Point property. The PA requires the incorporation of restrictive covenants in the conveyance documents to ensure protection of the historic properties and any subsurface archeological resources that may be discovered after conveyance.

Navy's consideration of the socioeconomic impacts of disposal and reuse examined the potential effects on demographics, housing, the local economy, social services, schools, and environmental justice. The Preferred Alternative would cause an increase in population in the Sand Point area of about 2 percent and an increase in homeless assistance housing units of about 2 percent. It would not have a significant impact on employment or social services in the region.

The Preferred Alternative would not have a significant impact on the regional economy. Navy's appraisal of its impact on property values, set forth in Appendix G of the FEIS (the Property Value Study), concluded that reuse of the southwestern part of the base along Sand Point Way for transitional multifamily housing should not result in a diminution in the value of nearby properties.

Children living in the transitional housing would continue to attend the same schools that they attended before occupying this housing, using transportation provided by the Seattle School District. Thus, the Preferred Alternative would not have an impact on schools in the Sand Point area.

Navy also analyzed the impacts on low-income and minority populations pursuant to Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, reprinted in 42 U.S.C. 4321 note. There would be no disproportionately high and adverse human health or environmental effects on minority and low-income populations. The Preferred Alternative would, in fact, benefit minority and low-income populations by providing increased housing, social services and educational opportunities.

The Preferred Alternative would increase the amount of property available for recreational use by 160 percent, from 30 acres to 78 acres. This increase would be reflected in additional indoor and outdoor recreational facilities.

Navy's evaluation of the impacts on transportation considered current traffic conditions and transportation systems, transit routes, high occupancy vehicle routes, bicycle and pedestrian traffic, traffic volumes, traffic safety, and parking. The Preferred Alternative would generate about 9,050 average daily trips, compared with 7,600 such trips when the base was active in 1993. Although not a significant impact, the Preferred Alternative's housing and educational uses would result in an increase in bus ridership. Similarly, because it increases access to the property, this alternative would also result in an increase in the use of existing bicycle and pedestrian routes. In light of the availability of space on the base, parking and construction-related traffic would not likely cause adverse impacts in the Sand Point area.

The noise associated with the Preferred Alternative would emanate from four sources: (1) Traffic (both on and off site); (2) construction; (3) heating, ventilating, and other mechanical equipment; and (4) other sources (people, activities, and equipment). With the exception of noise generated by outdoor music concerts at the proposed amphitheater, the Preferred Alternative would not cause any significant impact. The noise generated by these concerts, however, could cause a significant impact on the surrounding area.

The Preferred Alternative would not cause any significant impact on public services (*i.e.*, water, wastewater and sanitary sewer, stormwater and solid waste) and utilities. Similarly, it would not have a significant impact on public health and safety (*i.e.*, crime and law enforcement, fire protection, emergency and medical services, and environmental health) in the Sand Point area.

The environmental remediation required by the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. 9601, *et seq.* (CERCLA), and Washington's Model Toxics Control Act, RCW 70.105D, WAC 173–340 (MTCA), has been completed. Those areas on the base that still contain contaminants are not likely to cause an impact if left undisturbed. The Washington State Department of Ecology concurs that with proper notification to future users of the property and deed restrictions limiting use of the property, no further action is necessary. However, unless adequately mitigated, the disturbance of asbestos-containing materials and lead-based paint during demolition and remodeling could have an impact on human health.

The Preferred Alternative would not cause any significant impact on soils, geology, and topography. This alternative would have only minimal and insignificant impacts on vegetation, wildlife, endangered species, and wetlands. It would increase the amount of wetlands by restoring a wetland habitat at the former Mud Lake.

Bald eagles, which are on the Federal and State lists of threatened species, are present in the vicinity of Lake Washington and Sand Point. Peregrine falcons, which are on the Federal and State lists of endangered species, are also present in this area. The Preferred Alternative would not affect either the bald eagle or the peregrine falcon because it would not affect their critical

habitats or the species upon which they prey.

The Preferred Alternative would result in a decrease of 30 acres in the amount of paved surface on the property. This decrease would occur largely at the southeastern end of the base where the Mud Lake wetlands and grassy recreational areas would be restored. The conversion of impervious surface to wetlands and grassy fields, however, would not have an adverse impact on surface water in Lake Washington and may result in less pollutants draining into the lake.

There would not be any impact on air quality from implementation of the Preferred Alternative. This alternative, however, could result in the temporary and intermittent release of pollutants during demolition and construction activities. The Puget Sound Air Pollution Control Agency (PSAPCA) regulations governing demolition and construction activities (Washington Clean Air Act RCW T. 70 Ch. 94) will ensure consistency with applicable air quality standards. The increases in carbon monoxide that would result from the increased traffic would not exceed applicable regional standards.

Section 176 of the Clean Air Act, 42 U.S.C. 7506, as amended, requires Federal agencies to review their activities to ensure that they do not hamper local efforts to control air pollution. This statute prevents Federal agencies from conducting activities that do not conform to an approved implementation plan but recognizes certain categorically exempt activities. The conveyance of real property, regardless of the method, is such a categorically exempt activity. Accordingly, disposal of the Sand Point property does not require Navy to conduct a conformity analysis.

Mitigation

Implementation of the decision to dispose of Sand Point does not require Navy to perform any mitigation measures beyond those discussed here. Navy will include appropriate restrictive covenants in the deeds for any parcels where hazardous substances remain and for the historic properties in accordance with applicable Federal and State laws.

These restrictive covenants will limit the use of certain property and notify future users of the property's condition. In accordance with the Programmatic Agreement that Navy entered into with the SHPO and the Advisory Council, restrictive covenants in the deed conveying the property will protect both historic and archeological resources and establish a process for preserving the historic district and its constituent elements.

Navy's FEIS identified and discussed those actions that would be necessary to mitigate impacts associated with the reuse and redevelopment of Sand Point. The acquiring entity, under the direction of Federal, State, and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

The fact that the Preferred Alternative conforms to the City of Seattle's Comprehensive Plan, Zoning Code, and Physical Development Management Plan provides assurance that the property will be redeveloped in a controlled manner. Additionally, the City of Seattle is developing a Transportation Management Program and a Construction Management Program for Sand Point that will mitigate the effects caused by increased traffic volumes and construction activities. The City's Design Guidelines will be applied to control Sand Point's reuse and preserve the property's unique and historic character.

Comments Received on the FEIS

Navy received comments from a community group and an individual. They expressed concern about the proposed reuse of certain Sand Point facilities by the University of Washington for educational activities. Their comments did not raise any new issues or problems concerning implementation of the Reuse Plan or propose any mitigation measures.

Navy's consideration in the FEIS of the impacts arising out of the City's educational proposal was sufficient to ascertain the impacts of the particular uses advanced by the University of Washington and proposed by the LRA after conclusion of the FEIS. Navy determined that the educational uses advanced by the University of Washington fall within the scope of impacts analyzed in the FEIS and that no further consideration is required.

Regulations Governing the Disposal Decision

Since the proposed action contemplates a disposal action under the Defense Base Closure and Realignment Act of 1990 (DBCRA), Pub. L. 101–510, 10 U.S.C. 2687 note, selection of the City of Seattle's 1993 Reuse Plan and 1997 Options as the Preferred Alternative was based upon the environmental analysis in the FEIS and application of the standards set forth in DBCRA, the Federal Property Management Regulations (FPMR), 41 CFR Part 101–47, and the Department of Defense Rule on Revitalizing Base Closure Communities and Community Assistance (DoD Rule), 32 CFR Parts 90 and 91.

Section 101–47.303–1 of the FPMR requires that the disposal of Federal property benefit the Federal government and constitute the highest and best use of the property. Section 101–47.4909 of the FPMR defines the ''highest and best use'' as that use to which a property can be put that produces the highest monetary return from the property, promotes its maximum value, or serves a public or institutional purpose. The ''highest and best use'' determination must be based upon the property's economic potential, qualitative values inherent in the property, and utilization factors affecting land use such as zoning, physical characteristics, other private and public uses in the vicinity, neighboring improvements, utility services, access, roads, location, and environmental and historical considerations.

After Federal property has been conveyed to non-Federal entities, the property is subject to local land use regulations, including zoning and subdivision regulations and building codes. Unless expressly authorized by statute, the disposing Federal agency cannot restrict the future use of surplus Government property. As a result, the local community exercises substantial control over future use of the property. For this reason, local land use plans and zoning affect determination of the highest and best use of surplus Government property.

The DBCRA directed the Administrator of the General Services Administration (GSA) to delegate to the Secretary of Defense authority to transfer and dispose of base closure property. Section 2905(b) of DBCRA directs the Secretary of Defense to exercise this authority in accordance with GSA's property disposal regulations, set forth at Sections 101–47.1 through 101–47.8 of the FPMR. By letter dated December 20, 1991, the Secretary of Defense delegated the authority to transfer and dispose of base closure property closed under DBCRA to the Secretaries of the Military Departments. Under this delegation of authority, the Secretary of the Navy must follow FPMR procedures for screening and disposing of real property when implementing base closures. Only where Congress has expressly provided additional authority for disposing of base closure property, *e.g.*, the economic development conveyance authority established in 1993 by Section 2905(b)(4) of DBCRA, may Navy apply

disposal procedures other than the FPMR's prescriptions.

In Section 2901 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, Congress recognized the economic hardship occasioned by base closures, the Federal interest in facilitating economic recovery of base closure communities, and the need to identify and implement reuse and redevelopment of property at closing installations. In Section 2903(c) of Pub. L. 103–160, Congress directed the Military Departments to consider each base closure community's economic needs and priorities in the property disposal process. Under Section 2905(b)(2)(E) of DBCRA, Navy must consult with local communities before it disposes of base closure property and must consider local plans developed for reuse and redevelopment of the surplus Federal property.

The Department of Defense's goal, as set forth in Section 90.4 of the DoD Rule, is to help base closure communities achieve rapid economic recovery through expeditious reuse and redevelopment of the assets at closing bases, taking into consideration local market conditions and locally developed reuse plans. Thus, the Department has adopted a consultative approach with each community to ensure that property disposal decisions consider the Local Redevelopment Authority's reuse plan and encourage job creation. As a part of this cooperative approach, the base closure community's interests, *e.g.*, reflected in its zoning for the area, play a significant role in determining the range of alternatives considered in the environmental analysis for property disposal. Furthermore, Section 91.7(d)(3) of the DoD Rule provides that the Local Redevelopment Authority's plan generally will be used as the basis for the proposed disposal action.

The Federal Property and Administrative Services Act of 1949, 40 U.S.C. 484, as implemented by the FPMR, identifies several mechanisms for disposing of surplus base closure property: by public benefit conveyance (FPMR Sec. 101–47.303–2); by negotiated sale (FPMR Sec. 101–47.304–9); and by competitive sale (FPMR Sec. 101–47.304–7). Additionally, in Section 2905(b)(4), the DBCRA established economic development conveyances as a means of disposing of surplus base closure property. The selection of any particular method of conveyance merely implements the Federal agency's decision to dispose of the property. Decisions concerning whether to undertake a public benefit conveyance or an economic development conveyance, or to sell property by negotiation or by competitive bid are committed by law to agency discretion. Selecting a method of disposal implicates a broad range of factors and rests solely within the Secretary of the Navy's discretion.

Conclusion

The City of Seattle's proposed reuse of the Sand Point property, which consists of the City's 1993 Reuse Plan and its 1997 Options and is embodied in the Preferred Alternative, is consistent with the prescriptions of the FPMR and Section 90.4 of the DoD Rule. The LRA has determined in its Reuse Plan that the property should be used for several purposes, including educational and community facilities, arts and cultural facilities, open space and recreational areas, residential areas, and institutional land uses. The property's location, physical characteristics, and existing infrastructure as well as the current uses of adjacent property make it appropriate for the proposed uses.

Although the ''No action'' alternative has less potential for causing adverse environmental impacts, this alternative would not take advantage of the property's location, physical characteristics and infrastructure or the current uses of adjacent property. Additionally, it would not foster local redevelopment of the Sand Point property.

The acquiring entity, under the direction of Federal, State and local agencies with regulatory authority over protected resources, will be responsible for implementing necessary mitigation measures.

Accordingly, Navy will dispose of Naval Station Puget Sound at Sand Point in a manner that is consistent with the City of Seattle's 1993 and 1997 plans for the property.

Dated: December 8, 1997.

William J. Cassidy, Jr.,

Deputy Assistant Secretary of the Navy (Conversion And Redevelopment).

[FR Doc. 97–32938 Filed 12–16–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearings for the Draft Environmental Impact Statement (DEIS) for Development of Facilities to Support Basing U.S. Pacific Fleet F/A–18E/F Aircraft on the West Coast of the United States

AGENCY: Department of the Navy, DoD.

ACTION: Announcement of public hearings.

SUMMARY: The Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for development of facilities to support basing U.S. Pacific Fleet F/A–18E/F aircraft on the West Coast of the United States. Two public hearings will be held for the purpose to receive oral and written comment on the DEIS. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing.

DATES: Hearing dates are as follows:

1. January 7, 1998, 7:00 p.m., Lemoore, CA.

2. January 8, 1998, 7:00 p.m., El Centro, CA.

ADDRESSES: Hearing locations are:

1. Lemoore—Lemoore City Council Chamber, 429 C Street, Lemoore, California.

2. El Centro—Imperial County Board of Supervisors Chambers, 940 West Main Street, El Centro, California.

FOR FURTHER INFORMATION CONTACT: Mr. Surinder Sikand, (650) 244–3020.

SUPPLEMENTAL INFORMATION: Pursuant to the Council on Environmental Quality regulations (40 CFR Parts 1500–1508), implementing the procedural provisions of the National Environmental Policy Act, the Department of the Navy has prepared and filed with the U.S. Environmental Protection Agency a Draft Environmental Impact Statement (DEIS) for development of facilities to support basing U.S. Pacific Fleet F/A–18E/F aircraft on the West Coast of the United States.

A Notice of Intent (NOI) to prepare the DEIS was published in the **Federal Register** on 7 April 1997 (62 FR 16563). Public scoping meetings for the proposed project were held on Monday, April 28, 1997, at the Lemoore High School Cafeteria, Lemoore, California; on Tuesday, April 29, 1997, at the Imperial County Board of Supervisors Office, El Centro, California; and on Wednesday, April 30, 1997, in the Bougainvillea Room, Orchid Professional Building, Camarillo, California.

The proposed action includes siting 164 F/A–18E/F aircraft, locating associated military personnel and family members, and providing associated training functions at the receiving installation. The two installations considered in detail for the West Coast base are Naval Air Station (NAS) Lemoore and Naval Air Facility (NAF) El Centro. NAS Lemoore is the preferred alternative evaluated in the

EIS. For NAS Lemoore, where F/A–18C/D strike fighter squadrons are currently based, the proposed action would result in an increase of 92 aircraft because 72 of the 164 aircraft would replace existing F/A–18 aircraft. Basing the aircraft at NAF El Centro, which does not have existing strike fighter squadrons, would result in an increase of 164 aircraft at the installation.

The DEIS analyzes potential environmental impacts to land use and airspace, visual resources, socioeconomics, cultural resources, traffic and circulation, air quality, noise, biological resources, water resources, utilities and services, public health and safety, and hazardous materials and waste. Potentially significant, but mitigable, environmental impacts include impacts to land use and airspace and biological resources at NAF El Centro, schools (socioeconomics) at NAS Lemoore, and traffic, air quality, and hazardous materials and storage at both installations. Significant, and not mitigable, impacts related to noise have been identified at NAF El Centro.

No decision on the proposed action will be made until the National Environmental Policy Act process has been completed.

The DEIS has been distributed to various federal, state, and local agencies, local groups, elected official, special interest groups, and individuals. The DEIS is also available for review at the following public libraries: Lemoore, Hanford, Fresno, Avenol, El Centro, and Brawely.

The 2 public hearings will be held for the purpose to receive oral and written comment on the DEIS. The first hearing will be held on Wednesday, January 7, 1998, at 7:00 p.m., at the Lemoore City Council Chamber, 429 C Street, Lemoore, California. The second hearing will be held on Thursday, January 8, 1998, at 7:00 p.m., at the Imperial County Board of Supervisors Chambers, 940 West Main Street, El Centro, California. Federal, state and local agencies, and interested individuals are invited to be present or represented at the hearing. Oral comments will be heard and transcribed by a court recorder. To assure accuracy of the record, all comments should be submitted in writing. All comments, both oral and written, will become part of the public record in the study. In the interest of available time, each speaker will be asked to limit oral comments to three minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to Mr. Surinder Sikand (Code 70311), Engineering Field Activity West, Naval Facilities Engineering Command, 900 Commodore Drive, San Bruno, California 94066, FAX (650) 244–3206. Written comments are requested not later than January 26, 1998.

Electronic Filing Address—comments and data may be submitted by electronic mail (e-mail) to: sssikand@efawest.navfac.navy.mil.

Dated: December 12, 1997.

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 97–32939 Filed 12–16–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Availability of Government Owned Invention for Licensing

AGENCY: Department of the Navy, DoD.

ACTION: Notice of Availability of Government Owned Invention for Licensing.

SUMMARY: U.S. Patent Number 4,906,879, entitled ''Terbium-Dysprosium Magnetostrictive High Power Transducers,'' is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the patent cited or further information should be directed to Mr. Dick Bloomquist, Director, Technology Transfer, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Blvd., West Bethesda, MD 20817–5700, telephone number: (301) 227–4299.

(Authority: 35 U.S.C. 207; 37 CFR part 404; 32 CFR part 746)

Michael I. Quinn,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 97–32908 Filed 12–16–97; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Navy proposes to alter a record system in its inventory of system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration consists of adding a routine use to permit the disclosure of personnel information to private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

DATES: The action will be effective without further notice on January 16, 1998 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The complete inventory of the Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 9, 1997, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

The specific changes to the record system being altered are set forth below followed by the notice, as altered, published in its entirety.

Dated: December 11 , 1997.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01070–3

SYSTEM NAME:

Navy Personnel Records System *(September 9, 1996, 61 FR 47483).*

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add a new paragraph 'To governmental entities or private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.'

* * * * *

N01070–3

SYSTEM NAME:

Navy Personnel Records System.

SYSTEM LOCATION:

Active duty records are located at the Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; Naval Reserve Personnel Center, New Orleans, LA 70149–7800; and local activity to which individual is assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

Secondary systems are located at the Department of the Navy Activities in the chain of command between the local activity and the headquarters level; Federal Records Storage Centers; National Archives. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Navy military personnel: officers, enlisted, active, inactive, reserve, fleet reserve, retired, midshipmen, officer candidates, and Naval Reserve Officer Training Corps personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel service jackets and service records, correspondence and records in both automated and non-automated form concerning classification, assignment, distribution, promotion, advancement, performance, recruiting, retention, reenlistment, separation, training, education, morale, personal affairs, benefits, entitlements, discipline and administration of naval personnel.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To assist officials and employees of the Navy in the management, supervision and administration of Navy personnel (officer and enlisted) and the operations of related personnel affairs and functions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the National Research Council in Cooperative Studies of the National History of Disease; of Prognosis and of Epidemiology. Each study in which the records of members and former members of the naval service are used must be approved by the Chief of Naval Personnel.

To officials and employees of the Department of Health and Human Services, Department of Veteran Affairs, and Selective Service Administration in the performance of their official duties related to eligibility, notification and assistance in obtaining benefits by members and former members of the Navy.

To officials and employees of the Department of Veteran Affairs in the performance of their duties relating to approved research projects.

To officials and employees of Navy Relief and the American Red Cross in the performance of their duties relating to the assistance of the members and their dependents and relatives, or related to assistance previously furnished such individuals, without regard to whether the individual assisted or his/her sponsor continues to be a member of the Navy.

To duly appointed Family Ombudsmen in the performance of their duties related to the assistance of the members and their families.

To state and local agencies in the performance of their official duties related to verification of status for determination of eligibility for Veterans Bonuses and other benefits and entitlements.

To officials and employees of the Office of the Sergeant at Arms of the United States House of Representatives in the performance of their official duties related to the verification of the active duty naval service of Members of Congress.

Information as to current military addresses and assignments may be provided to military banking facilities who provide banking services overseas and who are reimbursed by the Government for certain checking and loan losses. For personnel separated, discharged or retired from the Armed Forces information as to last known residential or home of record address may be provided to the military banking facility upon certification by a banking facility officer that the facility has a returned or dishonored check negotiated by the individual or the individual has defaulted on a loan and that if restitution is not made by the individual the United States Government will be liable for the losses the facility may incur.

To federal, state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

Information relating to professional qualifications of chaplains may be provided to civilian certification boards and committees, including, but not limited to, state and federal licensing authorities and ecclesiastical endorsing organizations.

To governmental entities or private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records may be stored on magnetic tapes, disc, and drums. Manual records may be stored in paper file folders, microfiche or microfilm.

RETRIEVABILITY:

Automated records may be retrieved by name and Social Security Number. Manual records may be retrieved by name, Social Security Number, enlisted service number, or officer file number.

SAFEGUARDS:

Computer facilities and terminals are located in restricted areas accessible only to authorized persons that are properly screened, cleared and trained. Manual records and computer printouts are available only to authorized personnel having a need-to-know.

RETENTION AND DISPOSAL:

Records are retained one year past retirement, removal, or resignation of the member and then transferred to the National Personnel Records Center (Military Personnel Records), 9700 Page Avenue, St. Louis, MO 63132–5101 for permanent retention. An exception is made for copies of officer fitness

reports, enlisted evaluations, and officer and enlisted counseling forms which may be maintained by the member's commanding officer or command for a period not to exceed five years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001; Commanding Officers, Officers in Charge, and Heads of Department of the Navy activities. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel, Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, or contact the personnel officer where assigned. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

The letter should contain full name, Social Security Number (and/or enlisted service number/officer file number), rank/rate, designator, military status, address, and signature of the requester.

The individual may visit the Chief of Naval Personnel (Pers 06), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5001, for assistance with records located in that building; or the individual may visit the local activity to which attached for access to locally maintained records. Proof of identification will consist of Military Identification Card for persons having such cards, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence; educational institutions; federal, state, and local court documents; civilian and military investigatory reports; general correspondence concerning the individual; official records of professional qualifications; Navy Relief and American Red Cross requests for verification of status.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 97–32872 Filed 12–16–97; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

[CFDA No.: 84.194Q]

Office of Bilingual Education and Minority Languages Affairs; Bilingual Education: State Grant Program

Notice extending the closing date for transmittal of applications for new awards for fiscal year (FY) 1998.

Deadline for Transmittal of Applications: The deadline date for transmittal of applications is extended from January 9, 1998, to January 30, 1998.

On December 2, 1997, the Secretary published in the **Federal Register** (62 FR 63780) a notice inviting applications for new awards for fiscal year 1998 under the Bilingual Education: State Grant Program.

The purpose of this notice is to extend the deadline date for transmittal of applications. This action is taken to increase the amount of time applicants have to prepare applications.

Deadline for Intergovernmental Review: March 31, 1998.

For Applications: The notice published in the **Federal Register** on December 2, 1997 (62 FR 63780), was a complete application package, including all of the information, selection criteria, application forms, and instructions needed to apply for an award under this program.

FOR FURTHER INFORMATION CONTACT: Luis A. Catarineau, U.S. Department of Education, 600 Independence Avenue, S. W., room 5623, Switzer Building, Washington, D.C. 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 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

To use the pdf you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the pdf, call the U.S. Government Printing Office toll free at 1–888–293–6498.

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. 7454.

Dated: December 11, 1997.

Delia Pompa,

Director, Office of Bilingual Education and Minority Languages Affairs.

[FR Doc. 97–32898 Filed 12–16–97; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–421–000]

Cinergy Services, Inc.; Notice of Filing

December 11, 1997.

Take notice that on December 9, 1997, Cinergy Services, Inc. (''Services'') made

an amendment to its October 31, 1997 filing in the above-captioned docket. Services' October 31 filing petitioned the Commission for acceptance of Rate Schedules Nos. 1–5; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates, and the waiver of certain commission regulations. Services has amended its filing to request only the approvals needed for Rate Schedule No. 1 for CinCap IV, LLC, a Delaware limited liability company which is a wholly-owned subsidiary of Cinergy Capital and Trading, Inc. Services has requested a January 1, 1998 effective date for Rate Schedule No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 22, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32846 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–117–000]

Columbia Gas Transmission Corporation; Notice of Request Under Blanket Authorization

December 11, 1997.

Take notice that on December 4, Columbia Gas Transmission Corporation (Columbia), 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146, filed in Docket No. CP98–117–000 a request pursuant to Sections 157.205, and 157.211, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.211) for authorization to construct and operate four delivery points under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia requests authorization to construct and operate four delivery points in West Virginia and Ohio. Columbia states that the there is no impact on Columbia's existing design day and annual obligation. The estimated cost to install the taps is $150.00 per tap.

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32836 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–4586–001]

De Pere Energy L.L.C.; Notice of Filing

December 11, 1997.

Take notice that on November 7, 1997, De Pere Energy L.L.C. tendered for filing its compliance filing pursuant to the Commission's October 31, 1997 order issued in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 23, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32845 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–114–000]

K N Interstate Gas Transmission Co.; Notice of Request Under Blanket Authorization

December 11, 1997.

Take notice that on December 4, 1997, K N Interstate Gas Transmission Co. (Applicant), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP98–114–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate thirteen new delivery taps, under blanket certificate issued in Docket No. CP83–140–000, *et al.*,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Applicant proposes to construct thirteen new delivery taps located in Adams, Antelope, Buffalo, Custer, Pierce, and Sherman Counties, Nebraska and Kearny County, Kansas, which will be added as delivery points under an existing transportation agreement between Applicant and K N Energy Inc. (KNE). These proposed delivery points will be used by KNE to facilitate the delivery of natural gas to direct retail sales customers.

Applicant certifies that (1) the volumes of gas which will be delivered at these proposed delivery points will be within the current maximum transportation quantities set forth in Applicant's transportation service agreement with KNE; (2) the addition of the proposed delivery points is not prohibited by Applicant's existing FERC Gas Tariff; and (3) the addition of the proposed delivery points will not have any adverse impact, on a daily or annual basis, upon Applicant's existing customers.

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

[1] *See*, 22 FERC ¶ 62,330 (1983).

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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32833 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–120–000]

KN Interstate Gas Transmission Co.; Notice of Request Under Blanket Authorization

December 11, 1997.

Take notice that on December 5, 1997, K N Interstate Gas Transmission Co. (Applicant), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP98–120–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act for authorization to construct and operate two new delivery taps, under blanket certificate issued in Docket No. CP98–140–000, *et al.*,[1] all as more fully set forth in the request for authorization on file with the Commission and open for public inspection.

Applicant states that Kearny County Gas Irrigators has requested the installation of two new delivery points under a transportation service agreement with Applicant. Applicant proposes to construct and operate the two new delivery taps which will be located in Kearny County, Kansas. These proposed delivery points would be located on Applicant's main transmission system and would facilitate the delivery of natural gas for irrigation purposes for members of Kearny County Gas Irrigators.

Applicant certifies that (1) the volumes of gas which will be delivered at these proposed delivery points will be within the current maximum transportation quantities set forth in Applicant's transportation service agreement with Kearny County Gas Irrigators; (2) the addition of the proposed delivery points is not prohibited by Applicant's existing FERC Gas Tariff; and (3) the addition of the proposed delivery points will not have any adverse impact, on a daily or annual basis, upon Applicant's existing customers.

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 not 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32838 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

[1] *See*, 22 FERC ¶ 62,330 (1983).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–589–000]

Logan Generating Company, L.P.; Notice of Filing

December 11, 1997.

Take notice that on October 31, 1997, Logan Generating Company, L.P. tendered for filing its quarterly report regarding transactions entered into during the quarter ending September 30, 1997.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 22, 1997. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32847 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–125–000]

MIGC, Inc.; Notice of Application

December 11, 1997.

Take notice that on December 9, 1997, MIGC, Inc. (MIGC), 12200 N. Pecos Street, Denver, Colorado 80234, filed in Docket No. CP98–125–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity to install and operate compression, and related appurtenant facilities at the Hilight Processing Plant in Campbell County, Wyoming and at the Platte River Compressor Station in Converse County, Wyoming. MIGC states that due to the urgent need for additional capacity on MIGC's mainline, authorization is requested on an expedited basis, in early February of 1998, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

MIGC states that the installation and operation of these facilities will serve to alleviate an existing capacity constraint on MIGC's system and by so doing will enable MIGC to increase throughout on the 75.4-mile section of MIGC's system which runs south from the Hilight Processing Plant to the systems of Colorado Interstate Gas Company and KN Interstate Transmission Company from an existing level of 90,000 Mcf per day to a level of 130,000 Mcf per day. MIGC states that the cost of the proposed project is estimated to be $5.67 million.

MIGC further states that in order to substantiate the need for additional capacity on its system, MIGC posted a notice on its Electronic Bulletin Board and commenced a three-week open season running from August 18, 1997 through September 5, 1997. It is stated that such open season resulted in the execution of a binding Precedent Agreement by which one party has agreed to subscribe to the entire 40,000 Mcf per day of additional capacity on a firm basis for a term of 20 years, at MIGC's current maximum rate under Rate Schedule FTS–1.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before December 22, 1997, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protesters 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 filing it makes with the Commission to every other intervenor in the proceeding, as well as 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 jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for MIGC to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32843 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–116–000]

National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization

December 11, 1997.

Take notice that on December 4, 1997, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP98–116–000, a request, pursuant to Sections 157.205 and 157.214 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.214), for authorization to increase the storage capacity at its Keelor Storage Field in McKean County, Pennsylvania, under its blanket certificate issued in Docket No. CP83–4–000, 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.

National Fuel requests authorization to increase the storage capacity from 3.3 Bcf (with 1.8 Bcf working gas) to 3.9 Bcf (with 2.4 Bcf of working gas). National Fuel asserts that the new capacity resulting from this proposal will support storage service to be offered to its shippers. National Fuel states that the increase in capacity at the Keelor Storage Field will not require additional facilities within the meaning of the Commission's regulations. National Fuel indicates that the current and requested maximum storage pressures are 625 psig.

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 therefore, 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.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32835 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–113–000]

Southern Natural Gas Company; Florida Gas Transmission Company; Notice of Application

December 11, 1997.

Take notice that on December 4, 1997, Southern Natural Gas Company (Southern) P.O. Box 2563, Birmingham, Alabama, 35202–2563, and Florida Gas Transmission Company (FGT) (jointly referred to as Applicants) filed in Docket No. CP98–113–000 an abbreviated application pursuant to Section 7(b) of the Natural Gas Act, as amended, and Sections 157.7 and 157.18 of the Federal Energy Regulatory Commission's Regulations thereunder, for permission and approval to abandon from interstate service a natural gas exchange service by and between Applicant, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicants state that the natural gas exchange agreement dated June 28, 1972, was originally authorized in Docket No. CP73–14. Applicants further state that the agreement provided for the exchange of natural gas by and between themselves, up to 50,000 Mcf per day, at a point of interconnection between their respective pipeline systems in Washington Parish, Louisiana. Applicants assert that the abandonment

proposed herein will not result in the abandonment of any facilities, nor will it result in any disadvantage to any of Applicants' customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32844 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–121–000]

Tennessee Gas Pipeline Company; Notice of Application

December 11, 1997.

Take notice that on December 5, 1997, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, pursuant to Sections 5 and 7(b) of the Natural Gas Act, filed in Docket No. CP98–121–000 an application to replace a no-fee gas transportation service performed on behalf of Southern Natural Gas Company (Southern) with service under Tennessee's generally applicable Part 284 tariff. The no-fee service was certificated in 1979 in Docket No. CP78–267–000 in connection with the Bear Creek Storage Company (Bear Creek) venture between Tennessee and Southern.

Tennessee states that under the no-fee service it provides storage-related transportation services for Southern for Southern's injections and withdrawals from Bear Creek, and that Southern does not provide any corresponding services for Tennessee. Tennessee further states that Southern does not nominate the no-fee services, that the services disrupt operations under Tennessee's open access tariff and that the certificated service is a carryover from the era of bundled pipeline sales that is no longer in the public interest. Tennessee proposes that the Commission grant authorization to replace the certificated no-fee transportation service with firm Part 284 service under Tennessee's Rate Schedule FT–A, at a level consistent with Southern's requirements and at Southern's election. Tennessee states that its proposal would maintain Southern's continued use of, and access to, the Bear Creek storage facility under terms and conditions applicable to all other Rate Schedule FT–A shippers on Tennessee.

Tennessee proposes to credit to its customers all firm revenues received from Southern under the replacement transportation service until the effectiveness of Tennessee's next rate case.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 2, 1998, file with Federal Energy Regulatory Commission, Washington D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or 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 Tennessee to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32839 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–119–000]

Williams Natural Gas Company; Notice of Application To Amend Certificate

December 11, 1997.

Take notice that on December 5, 1997, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed an application pursuant to section 7(c) of the Natural Gas Act, to amend Williams' Elk City Storage Field certificate, issued on September 24, 1958, in Docket No. G–10956 (20 FPC 390), by allowing an expansion of the Elk City storage facilities, all as more fully set forth in the application, which is on file with the Commission and open to public inspection.

The certificate issued in Docket No. G–10956 authorized Williams (formerly: Cities Service Gas Company) to construct and operate the Elk City Storage Field, in Elk, Chautauqua, and Montgomery Counties, Kansas, as an underground gas storage field.

Williams' application in Docket No. CP98–119–000 has been filed to comply with a November 13, 1996 order that the Commission issued in Docket No. CP96–311–000. The November 13 order authorized Williams to expand its buffer zone by 1,460 acres, and required Williams to conduct a detailed reservoir

engineering/operational study and develop a new operational plan for the Elk City Storage Field, designed to prevent storage reservoir expansion and gas migration, and (to the maximum extent possible) to establish and maintain confinement of its Elk City storage gas within the original certificated storage field boundaries, i.e., south of the new 1,460 acre buffer zone. The Commission further instructed Williams' that its operating plan had include:

(1) Include the proper storage reservoir boundary requirement;

(2) Include the maximum storage volumetric operating capacity (without gas loss);

(3) Include the maximum working and cushion gas volumes;

(4) Include the maximum injection/withdrawal rates;

(5) Include the proper shut-in reservoir pressure requirement for the Elk City Storage Field;

(6) Detail all operational changes actually implemented by Williams as of November 30, 1997, and explain how those changes have affected the capacity and deliverability of the storage field and Williams' storage services; and

(7) Detail Williams' progress toward confining its storage gas within the original certificated storage field boundaries, or any alternative boundaries that Williams may propose.

Williams filed its reservoir engineering/operational study and its new operational plan for the Elk City Storage Field on November 26, 1997, and it is on file with the Commission and open to public inspection.

Williams now requests the Commission to authorize Williams to acquire gas storage rights (by lease, purchase, or the exercise of eminent domain under the Natural Gas Act) for the west half of Section 2, T31S, R13E, in Montgomery County, Kansas, and all of Section 3 and the east half of Section 4 in T31S, R13E, in Elk County, Kansas, and the south half of Section 34 in T30S, R13E, in Elk County, Kansas. The proposed increase in the storage area will add approximately 1,600 acres to the Elk City Storage Field, for a buffer zone, adjacent to the northern boundary of the storage leasehold interests previously authorized in Elk County, Kansas.

Williams also requests the Commission to authorize it to increase the maximum operating pressure of the storage field to 595 psig, wellhead (630 psia, reservoir), and to establish a maximum inventory level of 30.7 Bcf at 14.73 psia (30.9 Bcf at 14.65 psia). Williams further seeks to establish a range of working and cushion gas levels, and connect three storage observation wells to the storage field's injection/withdrawal system. Specifically, Williams seeks to connect the BH&W #15–1 well in Section 15, T31S, R13E, the BH&W #10–4 well in Section 10, T31S, R13E, and the Kimzey #10–5 well, in Section 10, T31S, R13E, by adding approximately 4,500 feet of 4-inch pipeline and approximately 1,500 feet of 6-inch pipeline to the existing system. Williams also proposes to install a check valve on the existing 6-inch lateral in the northeast quarter of Section 15, T13S, R13E, in Elk County, Kansas, just north of the Elk #1 well, to ensure that the Elk #60, Elk #61, BH&W #15–1, BH&W #10–4, Kimzey #10–5 wells will only be operated as withdrawal wells.

Williams asserts that the proposed changes are reasonable and required by the present and future public convenience and necessity.

Any person desiring to be heard, or to make any protest with reference to said application should, on or before January 2, 1998, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding, or to participate as a party in any hearing therein, must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application, if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or 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 Williams to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32837 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–115–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

December 11, 1997.

Take notice that on December 4, 1997, Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, filed a request with the Commission in Docket No. CP98–115–000, pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to utilize an existing tap to effectuate natural gas transportation deliveries to Montana-Dakota Utilities Co. (Montana-Dakota) authorized in blanket certicate issued in Docket Nos. CP98–487–000, *et al.*, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin proposes to add both right-of-way grantor and non right-of-way grantor and end-use customers to an existing transmission line tap at Station No. 9388+45 on Williston Basin's Belle Fourche-Rapid City pipeline in Meade County, South Dakota, at the request of Montana-Dakota. The estimated additional volume to be delivered is 600 Mcf per year. The existing tap was never connected by Montana-Dakota to the right-of-way grantor's residence and no service was ever provided through this facility. Williston Basin plans to provide natural gas transportation deliveries to Montana-Dakota for ultimate use by additional customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed

and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32834 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–741–000, et al.]

Wisconsin Electric Power Company, et al., Electric Rate and Corporate Regulation Filings

December 10, 1997.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. ER98–741–000]

Take notice that on November 20, 1997, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Notice of Cancellation of Service Schedule G (Presque Isle Power) sold by Wisconsin Electric to Upper Peninsula Power Company (UPPCO) under the interconnection agreement between the parties (Supplement No. 17 to Wisconsin Electric's FERC Rate Schedule No. 45).

Wisconsin Electric requests that this cancellation become effective January 1, 1998.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

2. Consumers Energy Company

[Docket No. ER98–742–000]

Take notice that on November 20, 1997, Consumers Energy Company (Consumers), tendered for filing two service agreements for Non-Firm Point-to-Point Transmission Service pursuant to the Joint Open Access Transmission Tariff filed on December 31, 1996, by Consumers and The Detroit Edison Company (Detroit Edison). The four transmission customers are Wabash Valley Power Association, Inc., and Electric Clearinghouse, Inc. A copy of the filing was served on the Michigan Public Service Commission, Detroit Edison and the transmission customers.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

3. South Carolina Electric & Gas Company

[Docket No. ER98–743–000]

Take notice that on November 20, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing TransCanada Energy Ltd (TCEL), CNG Power Services Corporation (CNG), and Oglethorpe Power Corporation (OPC) as customers under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon TCEL, CNG, OPC, and the South Carolina Public Service Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

4. South Carolina Electric & Gas Company

[Docket No. ER98–744–000]

Take notice that on November 20, 1997, South Carolina Electric & Gas Company (SCE&G), submitted service agreements establishing Ohio Edison Company (OEC), Arkansas Electric Cooperative Corporation (AECC), American Electric Power Service Corporation (AEPSC), and Delhi Energy Services, Inc. (DESI), as customers under the terms of SCE&G's Negotiated Market Sales Tariff.

SCE&G requests an effective date of one day subsequent to the filing of the service agreements. Accordingly, SCE&G requests waiver of the Commission's notice requirements. Copies of this filing were served upon OEC, AECC, AEPSC, DESI, and the South Carolina Public Service Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

5. Commonwealth Electric Company; Cambridge Electric Light Company

[Docket No. ER98–745–000]

Take notice that on November 20, 1997, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers): NP Energy Inc., SCANA Energy Marketing, Inc.

These Service Agreements specify that the Customers have signed on to and have agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement and Notice of Cancellation.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

6. Cinergy Services, Inc.

[Docket No. ER98–746–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Etna Green (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Etna Green, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER98–747–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Walkerton (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Walkerton, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER98–748–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Chalmers (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Chalmers, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER98–749–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Winamac (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Winamac, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER98–750–000]

Take notice that on November 21, 1997, on behalf of its operating companies, The Cincinnati Gas & Electric Company and PSI Energy, Inc., Cinergy Services, Inc. (Cinergy), tendered for filing a Service Agreement between Cinergy and the Town of Kingsford Heights (Customer).

Cinergy and Customer have requested an effective date of February 1, 1998.

Copies of the filing were served upon the Town of Kingsford Heights, Northern Indiana Public Service Company and the Indiana Utility Regulatory Commission.

Comment date: December 24, 1997, in accordance with Standard Paragraph E at the end of this notice.

11. Panther Creek Partners

[Docket No. QF87–59–010]

On December 5, 1997, Panther Creek Partners (Applicant) of 1001 Industrial Road, Nesquehoning, Pennsylvania 18240 submitted for filing an amendment to its application for recertification of a facility as a qualifying small power production facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The amendment provides information requested by Commission staff in support of the original submittal and also requests certification of additional sources of waste fuel not identified in the original application.

Comment date: December 29, 1997, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 97–32892 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for New License

December 11, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of filing: Notice of Intent to File Application for New License.

b. Project No.: 719.

c. Date filed: October 14, 1997.

d. Submitted By: Trinity Conservancy, Inc.

e. Name of Project: Trinity Power Project.

f. Location: On Phelps and James Creeks in Chelan County, Washington.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Expiration date of original license: November 1, 2002.

i. The facilities under this license consist of small diversion dams on Phelps and James Creeks and flumes and penstocks leading to a powerhouse with a total installed capacity of 240 kilowatts.

j. Pursuant to 18 CFR 16.7, information on the project is available by contacting: Reid L. Brown, President, Trinity Conservancy, Inc., 3139 E. Lake Sammamish, Issaquah, WA 98029.

k. FERC contact: Héctor M. Pérez, (202) 219–2843.

l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by November 1, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32840 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis

December 11, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: New Major License.

b. Project No.: 1991–09.

c. Date filed: April 1, 1996.

d. Applicant: City of Bonners Ferry.

e. Name of Project: Moyie River Hydroelectric.

f. Location: On the Moyie River in Boundary County, Idaho.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. § § 791(a)–825(r).

h. Applicant Contact: Mike Woodward, P.E., City of Bonners Ferry, 7232 Main Street, Bonners Ferry, ID 83805, 208 267–3105.

i. FERC Contact: Tim Looney at (202) 219–2852.

j. The project would consist of: (1) a 92-foot-concrete dam, impounding a 450-acre-foot reservoir, (2) a combination penstock/pressure tunnel about 990 feet long, (3) three powerhouses with a total installed capacity of 3,950 kilowatts, (4) a 1.3-mile-long, 13.8-kilovolt transmission line, and (5) appurtenant facilities.

k. Status of Environmental Analysis: This application is now ready for

environmental analysis—see attached paragraph D9.

l. Deadline for comments, recommendations, terms and conditions, and prescriptions: See paragraph D9.

m. This notice also consists of the following standard paragraphs: A4 and D9.

n. Available Locations of Application: A copy of the application, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address shown in item h above.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

D9. Filing and Service of Responsive Documents:—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title ''COMMENTS'', ''REPLY COMMENTS'', ''RECOMMENDATIONS,'' ''TERMS AND CONDITIONS,'' or ''PRESCRIPTIONS;'' (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32841 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Intent to File Application for New License

December 11, 1997.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of filing: Notice of Intent to File Application for New License.

b. Project No.: 2031.

c. Date filed: December 15, 1997.

d. Submitted By: Springville City Corporation.

e. Name of Project: Hobble Creek Project.

f. Location: On Hobble Creek in Utah County, Utah.

g. Filed Pursuant to: Section 15 of the Federal Power Act, 18 CFR 16.6 of the Commission's regulations.

h. Expiration date of original license: September 3, 2002.

i. The facilities under this license consist of the Upper Bartholomew Power Plant with an installed capacity of 200 kilowatts (kW), the New Bartholomew Power Plant with an installed capacity of 1,000 kW, the Original Bartholomew Power Plant with an installed capacity of 500 kW, and the Hobble Creek Power Plant with an installed capacity of 300 kW.

j. Pursuant to 18 CFR 16.7, information on the project is available by contacting: Delora P. Bertelsen, Mayor, Springville City Corporation, 50 South Main, Springville, UT 84663, (801) 489–2700.

k. FERC contact: Héctor M. Pérez, (202) 219–2843.

l. Pursuant to 18 CFR 16.9(b)(1) each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by September 3, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 97–32842 Filed 12–16–97; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[AD–FRL–5934–6]

Approval and Promulgation of State Implementation Plans; Call for Carbon Monoxide SIP Revisions for Kalispell, Montana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Information notice.

SUMMARY: EPA hereby gives notice that it notified the Governor of Montana on August 1, 1997 that the Montana State Implementation Plan (SIP) for the Kalispell area is substantially inadequate to attain and maintain the carbon monoxide (CO) National Ambient Air Quality Standards (NAAQS) and must be revised.

DATES: A SIP revision for the Kalispell area is due within 18 months of the date that EPA notified the Governor.

FOR FURTHER INFORMATION CONTACT: Sara L. Laumann, Air Program, 999 18th Street, Suite 500, Denver, Colorado 80202–2466, (303) 312–6443.

SUPPLEMENTARY INFORMATION:

I. Background

On September 13, 1985, EPA promulgated NAAQS for CO under section 109 of the Act (50 FR 37501). The primary NAAQS for carbon monoxide is a 9 ppm 8-hour nonoverlapping average not to be exceeded more than once per year. On March 15, 1996, the Montana Department of Environmental Quality (DEQ) notified EPA that CO NAAQS exceedances were recorded in Kalispell, Montana on January 8, 1996 with an eight-hour average of 11.1 ppm and on January 18, 1996 with an eight-hour average of 11.4 ppm. The Montana DEQ

requested EPA delay in taking action for one year in order to determine the geographical extent and severity of the CO problem. EPA agreed to this request.

According to the Montana DEQ, data from the Idaho and Main CO monitoring site in conjunction with the results from the CO saturation study suggested the CO problem was a traffic corridor problem extending six- to eight-blocks in either direction along Idaho and Main. Montana DEQ determined that the CO saturation study did not sufficiently look at the effects of CO in the surrounding neighborhoods. Therefore, an additional CO monitoring site was installed next to Laser School, a residential site located one block north of Highway 2 and approximately five blocks north and east of the Idaho and Main site. Data collection at Laser School began on November 1, 1996.

II. Finding of Inadequacy

On January 10, 1980 (45 FR 2036), EPA approved Montana's plans for the attainment and maintenance of the national standards under section 110 of the Clean Air Act. EPA now finds [1] the SIP inadequate based on the reported exceedances of the CO NAAQS in Kalispell.

III. Call for SIP Revision

This finding of SIP inadequacy requires Montana to submit a SIP revision no later than 18 months from the date of EPA's letter to the Governor. To ensure that the SIP deadline is met, EPA requested the State to submit an action plan for the development of the SIP revision within 60 days from receipt of EPA's letter to the Governor. The State submitted an action plan to EPA on September 9, 1997. Any control strategies adopted and implemented as part of this SIP revision must provide for attainment and maintenance of the CO NAAQS within 5 years from the date of EPA's letter to the Governor. (See, e.g., section 110(n)(2) of the Act.)

IV. Final Action

This finding of inadequacy does not constitute a final agency action that is ripe for judicial review. EPA's action is a first step in an administrative process that will not be sufficiently concrete for judicial resolution until additional action is taken by EPA on a plan submittal by the State of Montana.

The 60-day time period for filing a petition for review under section 307(b) of the CAA is tolled until EPA makes the finding ripe by taking additional action in reliance on it, such as imposing sanctions on the State of Montana for failure to submit a SIP revision or promulgating approval of a SIP revision. A time limitation on petitions for judicial review can only run against challenges ripe for review.

A technical support document (TSD) is available from the contact person listed above. The TSD discusses in more detail the ambient standard and its health effects, the SIP call and legal authority, and the SIP revision schedule.

Authority: Sections 101, 107, 110, 116 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7401, 7407, 7410, 7416 and 7610(a)].

Dated: November 17, 1997.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 97–32931 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[PF–781; FRL–5758–3]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–781, must be received on or before January 16, 1998.

ADDRESSES: By mail submit written comments 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 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 ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
James Tompkins (PM 25).	Rm. 265, CM #2, 703–305–7801, e-mail:tompkins.james@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Elizabeth Haeberer	Rm. 207, CM #2, 703–308–2891, e-mail: haeberer.elizabeth@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–781]

[1] The finding is made pursuant to sections 110(a)(2)(H) and 110(k)(5) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H) and 7410(k)(5).

(including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number PF-781 and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 4, 1997

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Bayer Corporation

PP 5F4480

EPA has received a pesticide petition (PP 5F4480) from Bayer Corporation, 8400 Hawthorn Rd., P.O. Box 4913, Kansas City, MO 64120-0013. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of imidacloprid in or on the raw agricultural commodity pecans at 0.05 parts per million (ppm). The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by high performance liquid chromatography using UV detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of imidacloprid in plants is adequately understood for the purposes of these tolerances. The residues of concern are combined residues of imidacloprid and its metabolites containing the 6-chloro-pyridinyl moiety, all calculated as imidacloprid.

2. *Analytical method*. The analytical method is a common moiety method for imidacloprid and its metabolites containing the 6-chloropyridinyl moiety using a permanganate oxidation, silyl derivatization, and capillary GC-MS selective ion monitoring. This method has successfully passed a petition method validation in EPA labs. There is a confirmatory method specifically for imidacloprid and several metabolites utilizing GC/MS and HPLC-UV which has been validated by the EPA as well. Imidacloprid and its metabolites are stable for at least 24 months in the commodities when frozen.

3. *Magnitude of residues*. Field studies were conducted to determine imidacloprid residues on pecans following treatment with either a single soil or two foliar applications. Seven field studies were conducted using a single soil application of 0.5 lb active ingredient per acre. 5–field studies were conducted using two foliar applications at a rate of 0.17 lb active ingredient per acre, with a 10–day interval. After the final foliar application or the soil application, samples were collected at earliest harvest which ranged from 4 to 21–days for the foliar application or 99 to 150 days for the soil application. Maximum residues, in pecans, detected following either 2 foliar applications or 1 soil application were >0.05 ppm. Therefore, a tolerance of 0.05 ppm of pecans is being proposed with a preharvest interval defined as earliest harvest (shuck split). CBTS has concluded that existing poultry meat and egg tolerances are adequate to support the proposed new uses of imidacloprid.

B. Toxicological Profile

1. *Acute toxicity*. The acute oral LD_{50} values for imidacloprid technical ranged from 424 - 475 milligrams/kilogram/bodyweight (mg/kg/bwt) in the rat. The acute dermal LD_{50} was greater than 5,000 mg/kg in rats. The 4–hour rat inhalation LC_{50} was >69 mg/m^3 air (aerosol). Imidacloprid was not irritating to rabbit skin or eyes. Imidacloprid did not cause skin sensitization in guinea pigs.

2. *Genotoxicty*. Extensive mutagenicity studies conducted to investigate point and gene mutations, DNA damage and chromosomal aberration, both using *in vitro* and *in vivo* test systems show imidacloprid to be non-genotoxic.

3. *Reproductive and developmental toxicity*. A 2–generation rat reproduction study gave a no-observed-effect level (NOEL) of 100 ppm (8 mg/kg/bwt). Rat and rabbit developmental toxicity studies were negative at doses up to 30 mg/kg/bwt and 24 mg/kg/bwt, respectively.

4. *Subchronic toxicity*. 90–day feeding studies were conducted in rats and dogs. The NOEL's for these tests were 14 milligrams/kilogram/bodyweight/day (mg/kg/bwt/day) (150 pm) 5 mg/kg/bwt/day (200 ppm) for the rat and dog studies respectively.

5. *Chronic toxicity*. A 2–year rat feeding/carcinogenicity study was negative for carcinogenic effects under the conditions of the study and had a NOEL of 100 ppm (5.7 mg/kg/bwt in male and 7.6 mg/kg/bwt female) for noncarcinogenic effects that included decreased body weight gain in females at 300 ppm and increased thyroid lesions in males at 300 ppm and females at 900 ppm. A 1–year dog feeding study indicated a NOEL of 1,250 ppm (41 mg/kg/bwt). A 2–year mouse carcinogenicity study that was negative for carcinogenic effects under conditions of the study and that had a NOEL of 1,000 ppm 208 milligrams/kilogram/day (mg/kg/day).

Imidacloprid has been classified under ''Group E'' (no evidence of carcinogenicity) by EPA's OPP/HED's Reference Dose (RfD) Committee. There is no cancer risk associated with exposure to this chemical. The reference dose (RfD) based on the 2–year rat feeding/carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/bwt. The theoretical maximum residue contribution (TMRC) from published uses is 0.008187 mg/kg/bwt/day utilizing 14.4% of the RfD.

6. *Animal metabolism*. The metabolism of imidacloprid in animals

is adequately understood. The residues of concern are combined residues of imidacloprid and its metabolites containing the 6-chloro-pyridinylmoiety, all calculated as imidacloprid.

C. Aggregate Exposure

Imidacloprid is a broad-spectrum insecticide with excellent systemic and contact toxicity characteristics with both food and non-food uses. Imidacloprid is currently registered for use on various food crops, tobacco, turf, ornamentals, buildings for termite control, and cats and dogs for flea control.

1. *Dietary exposure*. The EPA has determined that the reference dose (RfD) based on the 2–year rat feeding/ carcinogenic study with a NOEL of 5.7 mg/kg/bwt and 100-fold uncertainty factor, is calculated to be 0.057 mg/kg/ bwt.

2. *Food*. The theoretical maximum residue contribution (TMRC) from this proposed use on Pecans as well as all published uses and pending uses is 0.008149 mg/kg/bwt/day utilizing 14.3% of the RfD for the general population. For the most highly exposed subgroup in the population, children (1–6 years), the TMRC for the all uses is 0.018367 mg/kg/day. This is equal to 32.2% of the RfD. Therefore, dietary exposure from the existing uses including the currently proposed tolerance will not exceed the reference dose for any subpopulation (including infants and children).

3. *Drinking water*. Although the various imidacloprid labels contain a statement that this chemical demonstrates the properties associated with chemicals detected in ground water, the Registrant is not aware of imidacloprid being detected in any wells, ponds, lakes, streams, etc. from its use in the U.S. In studies conducted in 1995, imidacloprid was not detected in 17 wells on potato farms in Quebec, Canada. In addition, ground water monitoring studies are currently underway in California and Michigan. Therefore, contributions to the dietary burden from residues of imidacloprid in water would be inconsequential.

4. *Non-dietary exposure*— i. *Residential turf*. Bayer has conducted an exposure study to address the potential exposures of adults and children from contact with imidacloprid treated turf. The population considered to have the greatest potential exposure from contact with pesticide treated turf soon after pesticides are applied is young children. Margins of safety (MOS) of 7,587 - 41,546 for 10–year–old children and 6,859 - 45,249 for 5–year–old children were estimated by comparing dermal exposure doses to the imidacloprid no-observable effect level of 1,000 mg/kg/ day established in a 15–day dermal toxicity study in rabbits. The estimated safe residue levels of imidacloprid on treated turf for 10–year–old children ranged from 5.6 - 38.2 g/cm^2 and for 5–year–old children from 5.1 - 33.5 g/cm^2. This compares with the average imidacloprid transferable residue level of 0.080 g/cm^2 present immediately after the sprays have dried. These data indicate that children can safely contact imidacloprid-treated turf as soon after application as the spray has dried.

ii. *Termiticide*. Imidacloprid is registered as a termiticide. Due to the nature of the treatment for termites, exposure would be limited to that from inhalation and was evaluated by EPA's Occupational and Residential Exposure Branch (OREB) and Bayer. Data indicate that the Margins of Safety for the worst case exposures for adults and infants occupying a treated building who are exposed continuously (24 hours/day) are 8.0×10^7 and 2.4×10^8, respectively - and exposure can thus be considered negligible.

iii. *Tobacco smoke*. Studies have been conducted to determine residues in tobacco and the resulting smoke following treatment. Residues of imidacloprid in cured tobacco following treatment were a maximum of 31 ppm (7 ppm in fresh leaves). When this tobacco was burned in a pyrolysis study only 2% of the initial residue was recovered in the resulting smoke (main stream plus side stream). This would result in an inhalation exposure to imidacloprid from smoking of approximately 0.0005 mg per cigarette. Using the measured subacute rat inhalation NOEL of 5.5 mg/m^3, it is apparent that exposure to imidacloprid from smoking (direct and/or indirect exposure) would not be significant.

iv. *Pet treatment*. Human exposure from the use of imidacloprid to treat dogs and cats for fleas has been addressed by EPA's OREB who have concluded that due to the fact that imidacloprid is not an inhalation or dermal toxicant and that while dermal absorption data are not available, imidacloprid is not considered to present a hazard via the dermal route.

D. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions described above and based on the completeness and reliability of the toxicity data, it can be concluded that total aggregate exposure to imidacloprid from all current uses including those currently proposed will utilize little more than 15% of the RfD for the U.S. population. EPA generally has no concerns 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. Thus, it can be concluded that there is a reasonable certainty that no harm will result from aggregate exposure to imidacloprid residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of imidacloprid, the data from developmental studies in both rat and rabbit and a 2–generation reproduction study in the rat have been considered. The developmental toxicity studies evaluate potential adverse effects on the developing animal resulting from pesticide exposure of the mother during prenatal development . The reproduction study evaluates effects from exposure to the pesticide on the reproductive capability of mating animals through two generations, as well as any observed systemic toxicity.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post- natal effects and the completeness of the toxicity database. Based on current toxicological data requirements, the toxicology database for imidacloprid relative to pre- and post-natal effects is complete. Further for imidacloprid, the NOEL of 5.7 mg/kg/bwt from the 2–year rat feeding/ carcinogenic study, which was used to calculate the RfD (discussed above), is already lower than the NOELs from the developmental studies in rats and rabbits by a factor of 4.2 to 17.5 times. Since a 100-fold uncertainty factor is already used to calculate the RfD, it is surmised that an additional uncertainty factor is not warranted and that the RfD at 0.057 mg/kg/bwt/day is appropriate for assessing aggregate risk to infants and children.

Using the conservative exposure assumptions described above, it can be concluded that the TMRC from use of imidacloprid from published and pending uses is 0.008149 mg/kg/bwt/ day utilizing 14.3% of the RfD for the general population. For the most highly exposed subgroup in the population, children (1–6 years), the TMRC for the published tolerances is 0.018367 mg/kg/ day. This is equal to 32.2% of the RfD. Therefore, dietary exposure from the existing uses including the currently proposed tolerances will not exceed the reference dose for any subpopulation (including infants and children).

E. International Tolerances

No CODEX Maximum Residue Levels (MRL's) have been established for residues of Imidacloprid on any crops at this time. (Elizabeth Haeberer)

2. E. I. Du Pont de Nemours & Company

PP 5F4545

EPA has received a pesticide petition (PP 5F4545) from E. I. Du Pont de Nemours & Company (DuPont), P.O. Box 80038, Wilmington, DE 19880-0038. proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for quizalofop (2-[4-(6-chloroquinoxalin-2-yl)oxy) phenoxy]) - propanoic acid], and quizalofop ethyl [ethyl-2- [4-(6-chloroquinoaxalin-2-yl)oxy) phenoxy) propanoat in or on the raw agricultural commodities canola seed and canola meal . The proposed analytical method involves homogenization, filtration, partition and cleanup with analysis by high performance liquid chromatography using UV detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Quizalofop-p ethyl ester is metabolized by cleavage at three sites as follows:

(i) Primary pathway is hydrolysis of the ethyl ester to form the quizalofop-p acid, then (ii) Cleavage of the enol ether linkage in the acid, between the phenyl and quinoxalinyl rings, to form phenols, and (iii) Cleavage of the ether linkage between the isopropanic group and the phenyl ring to form a phenol.

The plant metabolism data show that quizalofop-p ethyl ester does not translocate, but is rapidly hydrolyzed to the corresponding acid; then the phenols conjugate with the plant sugars. Metabolism studies in soybeans using the racemic mixture quizalofop ethyl ester and the resolved D+ isomer show nearly identical pathways.

The nature of the quizalofop-p ethyl ester residue in plants is adequately understood. The residues of concern are quizalofop-p ethyl ester and its acid metabolite, quizalofop-p, and the *S* enantiomers of both the ester and the acid, all expressed as quizalofop-p ethyl ester.

2. *Analytical method*. An adequate analytical methodology (high-pressure liquid chromatography using either ultraviolet or fluorescence detection) is available for enforcement purposes in Vol. II of the Food and Drug Administration Pesticide Analytical Method (PAM II, Method I).

Adequately validated residue analytical methods, LAN-1 and LAN-3, were used to gather the magnitude of the quizalofop-p, its acid metabolite, phenols 1, 2, and 4, residue data on canola and canola processed commodities.

3. *Magnitude of residues*. Dupont proposes establishing tolerances for the combined residues of quizalofop (2-[4-(6-chloroquinoaxalin-2-yl)oxy) phenoxy])-propionic acid], and quizalofop ethyl [ethyl-2- [4-(6-chloroquinoxalin-2-yl)oxy) phenoxy) propanoat for the raw agricultural commodities canola seed at 1.0 parts per million (ppm) and canola meal at 1.5 ppm.

B. Toxicological Profile

1. *Acute toxicity*. Several acute toxicology studies were conducted and the overall results placed technical grade quizalofop ethyl in toxicity Category III. These include the following studies in Category III: acute oral toxicity (LD_{50}s 1,480 and 1,670 for female and male rats, respectively) and eye irritation (mild effects; reversible within 4–days). Dermal toxicity (LD_{50} > 5,000 mg/kg; rabbit), inhalation toxicity (LC_{50} > 5.8 mg/L; rat) and dermal irritation were classified within Category IV. Technical quizalofop ethyl was not a dermal sensitizer.

2. *Genotoxicty*. Technical quizalofop ethyl was negative in the following genotoxicity tests: bacterial gene mutation assays with *E. coli* and *S. typhimurium*; gene mutation assays in Chinese hamster ovary(CHO) cells ; *in vitro* DNA damage assays with B. subtillis and in rat hepatocytes; and an *in vitro* chromosomal aberration test in CHO cells.

3. *Reproductive and developmental toxicity*. Studies supporting the registration include: A developmental toxicity study in rats administered dosage levels of 0, 30, 100, and 300 milligrams/kilogram/day (mg/kg/day) highest dose tested (HDT). The maternal toxicity no-observed effect level (NOEL) was 30 mg/kg/day and a developmental toxicity NOEL was greater than 300 mg/kg/day (HDT). The maternal NOEL was based on reduced food consumption and increased liver weights. A developmental toxicity study in rabbits administered dosage levels of 0, 7, 20, and 60 mg/kg/day with no developmental effects noted at 60 mg/kg/day (HDT). The maternal toxicity NOEL was 20 mg/kg/day based on decreases in food consumption and body weight gain at 60/mg/kg/day (HDT). A 2-generation reproduction study in rats fed diets containing 0, 25, 100 or 400 ppm (or approximately 1, 1.25, 5, and 20 mg/kg/day, respectively) with a developmental (systemic effects) NOEL of 1.25 mg/kg/day for F_{2B} weanlings based on increased liver weights and increased incidence of eosinophilic changes in the livers at 5.0 mg/kg/day. These liver changes were considered to be physiological or adaptive changes to compound exposure among weanlings. When access to the mother's feed is available, it is a common observation that young rats will begin consuming chow prior to complete weaning at 21–days of age. Consumption could not be quantified; therefore, the maternal consumption was assumed as the NOEL (if normalized on a body weight basis, exposures to the weanling rats were likely higher). The parental NOEL of 5.0 mg/kg/day was based on decreased body weight and premating weight gain in males at 20 mg/kg/day (HDT).

4. *Subchronic toxicity*. A 90-day study was conducted in rats fed diets containing 0, 40, 128, 1,280 ppm (or approximately 0, 2, 6.4 and 64 mg/kg/day, respectively). The NOEL was 2 mg/kg/day. This was based on increased liver weights at 6.4 mg/kg. A 90–day feeding study in mice was conducted with diets that contained 0, 100, 316 or 1,000 ppm (or approximately 0, 15, 47.4, and 150 mg/kg/day, respectively). The NOEL was > 15 mg/kg/day lowest dose tested (LDT) based on increased liver weights and reversible histopathological effects in the liver at the LDT. A 6-month feeding study in dogs was conducted with diets that contained 0, 25, 100 or 400 ppm (or approximately 0, 0.625, 2.5, and 10 mg/kg/day, respectively). The NOEL was 2.5 mg/kg/day based on increased blood urea nitrogen at 10 mg/kg/day. A 21–day dermal study was conducted in rabbits at doses of 0, 125, 500 or 2,000 mg/kg/day. The NOEL was 2,000 mg/kg/day (HDT).

5. *Chronic toxicity*. An 18–month carcinogenicity study was conducted in CD-1 mice fed diets containing 0, 2, 10, 80 or 320 ppm (or approximately 0, 0.3, 1.5, 12, and 48 mg/kg/day, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 12 mg/kg/day. A marginal increase in the incidence of hepatocellular tumors was observed at 48 mg/kg/day, the (HDT) which exceeded the maximum tolerated

dose (MTD). (Please see the discussion by the EPA HED Carcinogenicity Peer Review Committee.)

A 2–year chronic toxicity/carcinogenicity study was conducted in rats fed diets containing 0, 25, 100 or 400 ppm (or 0, 0.9, 3.7, and 15.5 mg/kg/day for males and 0, 1.1, 4.6, and 18.6 mg/kg/day for females, respectively). There were no carcinogenic effects observed under the conditions of the study at levels up to and including 18.6 g/kg/day (HDT). The systemic NOEL was 0.9 mg/kg/day based on altered red cell parameters and slight/minimal centrilobuler enlargement of the liver at 3.7 mg/kg/day.

A 1–year feeding study was conducted in dogs fed diets containing 0, 25, 100 or 400 ppm (or approximately 0, 0.625, 2.5, and 10 mg/kg/day, respectively). The NOEL was 10 mg/kg/day (HDT).

The Carcinogenicity Peer Review Committee (CPRC) of HED has evaluated the rat and mouse cancer studies on quizalofop along with other relevant short-term toxicity studies, mutagenicity studies, and structure activity relationships. The CPRC concluded, after three meetings and an evaluation by the OPP Science Advisory panel, that the classification should be a Category D (not classifiable as to human cancer potential). No new cancer studies were required.

The first CPRC review tentatively concluded that quizalofop should be classified as a Category B2 (probable human carcinogen). That classification was based on liver tumors in female rats, ovarian tumors in female mice, and liver tumors in male mice. This classification was downgraded to a Category C (possible human carcinogen) at a second CPRC review. The change in classification was due to a reexamination of the liver tumors in female rats and ovarian tumors in female mice. The first peer review had found a statistically significant positive trend for liver carcinomas in female rats. Subsequent to this conclusion the tumor data was reevaluated, and the revaluation showed a reduced number of carcinomas. Although there remained a statistically significant positive trend for carcinomas in the study, the CPRC concluded that the carcinomas were not biologically significant given the few carcinomas identified (one at the mid-dose and two at the high dose). Noting that this level of carcinomas was within historical levels, the CPRC concluded that administration of quizalofop did not appear to be associated with the liver carcinomas.

As to the ovarian tumors in female mice, the CPRC had first attached importance to the fact that these tumors were statistically significant at the high dose as compared to historical control values although statistically significant when compared to concurrent controls. However, review of further historical control data showed that the level of ovarian tumors in the quizalofop study was similar to the background rate in several other studies. Given this information and that the quizalofop study showed no hyperplasia of the ovary, no signs of endocrine activity related to ovarian function, and no dose response relationship, the CPRC concluded that the ovarian tumors were probably not compound-related.

The findings of the second CPRC review were presented to EPA's Scientific Advisory Panel (SAP). The SAP concurred with the CPRC conclusion that the liver tumors in female rats and the ovary tumors in female mice showed no evidence of carcinogenicity. However, the SAP disagreed with CPRC's classification of quizalofop as a Category C based on the liver tumors in male mice. The SAP concluded that the mouse liver tumors did not support such a classification because the tumors occurred at a dose above the MTD and because they were not statistically significant if a ''p'' value of less than 0.05. The SAP believed that such greater statistical rigor was appropriate for variable tumor endpoints such as male mouse liver tumors.

Following the SAP review, the CPRC changed the classification for quizalofop to Category D. The Category D classification is based on an approximate doubling in the incidence of male mice liver tumors between controls an the high dose. This finding was not considered strong enough to warrant the finding of a Category C (possible human carcinogen) since the increase was of marginal statistical significance, occurred at a high dose which exceeded the predicted MTD, and occurred in a study in which the concurrent control for liver tumors was somewhat low as compared to the historical controls, while the high dose control group was at the upper end of previous historical control-groups.

EPA has found the evidence on the carcinogenicity of quizalofop-p ethyl ester in animals to be equivocal and therefore concludes that quizalofop-p ethyl ester does not induce cancer in animals within the meaning of the Delaney clause. Important to this conclusion was the following evidence: (1) The only statistically significant tumor response that appears compound-related was seen at a single dose in a single sex in a single species; (2) the response was only marginally statistically significant; (3) the response was only significant when benign and malignant tumors were combined; (4) the tumors were in the male mouse liver; (5) the tumors were within historical controls; and (6) the mutagenicity studies were negative. Although in some circumstances a finding of animal carcinogenicity would be made despite any one, or even several, of the six factors noted, the combination of all of these factors here cast sufficient doubt on the reproducibility of the response in the high dose male mouse that EPA concludes the evidence on carcinogenicity is equivocal.

6. *Animal metabolism*. The metabolism of quizalofop ethyl in animals (rat, goat and poultry) is well understood. ^{14}C-phenyl and ^{14}C-quinoxaline quizalofop ethyl ester metabolism studies have been conducted in each species. There are similarities among these species with respect to metabolism. Quizalofop ethyl is rapidly and extensively metabolized and rapidly excreted by rats. The principal metabolites were the quizalofop-p acid and two dechlorinated hydroxylated forms of the acid. Tissue residues were minimal and there was no evidence of accumulation of quizalofop ethyl or its metabolites in the rat.

The primary pathway in ruminants is hydrolysis of the ethyl ester to form the quizalofop-p methyl ester. In poultry, the primary metabolic pathway is also the hydrolysis of the ethyl ester to form the quizalofop-p acid, then the methyl esterification to form the quizalofop methyl ester becomes a minor pathway.

The nature of the quizalofop ethyl ester residue in livestock is adequately understood. The residues of concern are quizalofop ethyl, quizalofop methyl, and quizalofop, all expressed as quizalofop ethyl.

7. *Metabolite toxicology*. There is no evidence that the metabolites of quizalofop ethyl as identified as either the plant or animal metabolism studies are of any toxicological significance.

C. Aggregate Exposure

1. *Dietary exposure*. Quizalofop ethyl is a herbicide with proposed use on canola. The only potential for non-occupational aggregate exposure would come from dietary intake.

An analysis of chronic dietary risk was conducted to determine the impact of the possible addition of canola to the Assure label. A Reference Dose (RfD) of 0.009 mg/kg/day was used in the analyses. Consumption data for canola

had to be estimated using various production and usage statistics.

2. *Food*. The first step in the analysis was to run the TAS (Tolerance Assessment System) program using current tolerances with an RfD of 0.009 mg/kg/day. The Theoretical Maximum Residue Concentration (TMRC), based on the current tolerances, was 0.000288 mg/kg/day for the U.S. population (48 states) and 0.000759 mg/kg/day for the population subgroup with the highest estimated exposure (non-nursing infants > 1–yr. old). For the U.S. population subgroup this represents approximately 3.2% of the RfD while for the most exposed population this represents approximately 8.4% of the RfD. Based on the risk estimates arrived at in this analysis, chronic dietary risk from the current uses of Assure is minimal.

Unfortunately the 1977–1979 food consumption database does not contain any consumption data for canola oil. At the time the survey was conducted, canola oil was not a significant part of the U.S. diet. Since 1977 more canola oil is used in U.S. homes, although total production and usage are still minor as compared to soybean oil. Conservative assumptions were used to estimate canola consumption in the U.S. The USDA's Oilseed Analysis Division indicated that an average of 1.1 billion pounds of canola oil was used in the U.S. annually over the past 5–years. The dietary exposures that might occur by way of consumption of canola oil can be estimated by taking the average annual consumption of canola oil in the U.S. (includes both domestically produced and imported canola oils) and dividing it by the approximate U.S. population of 266.3 million people. This gives a per-capita consumption estimate for the general population. To calculate exposure, this number is divided by the average number of days in a year and the average body weight of a person (60 kg). (This weight is the same that was used by EPA as part of their ''Food Factor'' system that predated the current Tolerance Assessment System). This value is also supported by taking the average weight of children between the ages of 6–months to 19–years (36 kg) and the average weight of adults (70 kg), and assuming that an average person lives to be 69–years old (Review Draft of the Exposure Factors Handbook, U.S. EPA). Using these assumptions, canola oil consumption was calculated to be 0.088 g/kg bw/day.

While this method provides a useful estimate of exposure, it is clearly a conservative estimate for risk assessment purposes, since this estimate assumes that all the canola oil used in the U.S. is indeed ingested. In reality some percentage of any commodity is lost between production and consumption. In addition, oil may be used in cooking activities such as deep-fat frying where most of the oil is not actually eaten but is discarded or recycled. With the understanding that the dietary analysis will be very conservative, the consumption data for canola used in the DRES analysis for all population subgroups was set at 0.088 g/kg bw/day. This was done by entering a consumption estimate of 0.088 for ''rapeseed'' for all population subgroups (there is no agricultural commodity in TAS for canola oil).

When a tolerance for canola (1.0 ppm) was added to the current tolerances, the TMRC was 0.000376 mg/kg/day for the U.S. population (48 states) and 0.000847 mg/kg/day for the highest population subgroup (non-nursing infants >1–yrs. old). When expressed as a percentage of the RfD, the U.S. population (48 states) was approximately 4.2% and the highest population subgroup was approximately 9.4%. These results indicate that predicted chronic exposure after the addition of a canola tolerance is well below the RfD even with the conservative (high) nature of the assumptions that were made in calculating consumption.

3. *Drinking water.* Another potential source of dietary exposure to pesticides is residues in drinking water. There is no established Maximum Concentration Level (MCL) for quizalofop ethyl in water. Based on the low use rate of quizalofop ethyl, and a use pattern that is not widespread (since the current and proposed uses are on minor crops), DuPont does not anticipate residues of quizalofop in drinking water and exposure from this route is unlikely.

4. *Non-dietary exposure*. Quizalofop ethyl is not registered for any use which could result in non-occupational, non-dietary exposure to the general population.

D. Cumulative Effects

There is no evidence to indicate or suggest that quizalofop p-ethyl has any toxic effects on mammals that would be cumulative with those of any other chemicals.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions described above and based on the most sensitive species chronic NOEL of 0.9 mg/kg and a reference dose (RfD) of 0.009 mg/kg/day, the existing tolerances and proposed use of quizalofop ethyl on canola are expected to utilize 4.2% of the RfD for the general U.S. population. Generally, exposures below 100% of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose risk to human health. Thus, there is a reasonable certainty that no harm will result from aggregate exposure to quizalofop ethyl resulting from proposed agricultural use on canola.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of quizalofop ethyl, data were considered from developmental toxicity studies in the rat and rabbit, and a multi-generation reproduction study in rats. There were no developmental effects observed in the absence of maternal toxicity in the rat and rabbit developmental studies. Minimal adaptive or physiological effects were observed in livers of weanlings in the 2–generation rat reproduction study described earlier. However, this effect was only observed at a dose that far exceeds any expected human exposure. Further, the NOEL of 0.9 mg/kg/day from the 2–year rat study with quizalofop ethyl which was used to calculate the RfD (discussed above), is already lower than any of the NOEL's defined in the developmental and reproductive toxicity studies with quizalofop ethyl.

As mentioned previously, canola oil is a very minor component of the diet, and thus had not been included as part of the 1977–79 food survey used in EPA's DRES system. DuPont is not aware of specific food survey data concerning consumption of canola oil by infants and children. However, the 1977–79 food survey database does provide consumption data for other edible oils for each of the population subgroups, including infants and children. This data indicates that non-nursing infants consume more soybean and coconut oil than any of the other 22 population subgroups, specifically consuming 4.2 times more soybean oil and 49.1 times more coconut oil than the consumption by the general U.S. population. The data also show that children 1–6 consume more corn, cottonseed, peanut, and sunflower oil than any other subgroup listed, to a maximum of 2 times more than the general U.S. population. Using this data and making the most conservative assumption to extrapolate to canola oil, we can estimate that infants and children consume 49 times more canola oil than does the U.S. population, and calculate an approximate daily consumption of 4.3 grams canola oil/kg body weight. If we use the additional conservative assumptions that all the canola oil consumed contains

quizalofop ethyl residues at tolerance levels of 1.0 ppm, we calculate that the TMRC in the infants' and children's diets would be 0.000847 mg/kg/day or 9.4% of the RfD.

As indicated above, infants and children have a low potential for quizalofop ethyl exposure because of both the low levels of canola oil in the diet, and the absence of detectable residues in field-treated canola. The toxicology profile of quizalofop ethyl demonstrates low mammalian toxicity. Because there was no evidence that offspring were uniquely susceptible to the toxic effects of quizalofop ethyl, an additional 10-fold uncertainty factor should not be required to protect infants and children. Therefore, the RfD of 0.009 mg/kg/day, which utilizes a 100-fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children from aggregate exposure to quizalofop ethyl.

F. International Tolerances

Harmonization of Tolerances: Since there are no Mexican or Codex MRLs/tolerances, compatibility is not a problem at this time. Compatibility cannot be achieved with the Canadian negligible residue type limit at 0.1 ppm at the USA use pattern, which had findings of real residues above 0.1 ppm. (James Tompkins)

[FR Doc. 97–32935 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–782; FRL–5759–1]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–782, must be received on or before January 16, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch (7502C), Information Resources and Services Division, Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Joanne Miller (PM 23) ...	Rm. 237, CM #2, 703–305–6224, e-mail: miller.joanne@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
James Tompkins (PM 25).	Rm. 239, CM #2, 703–305–5697, e-mail: tompkins.james@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–782] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket control number [PF–782] and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 3, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. DowElanco

PP 6F4772

EPA has received a pesticide petition (PP 6F4772) from DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of fluroxypyr methylheptyl ester (MHE) and its only significant metabolite fluroxypyr, free and conjugated, all expressed as fluroxypyr in or on the raw agricultural commodities wheat, barley, and oats as follows: 0.5 parts per million (ppm) (grain), 10 ppm (straw and forage), 20 ppm (hay), and 0.5 ppm (aspirated grain fractions, wheat). Because residues of fluroxypyr MHE or fluroxypyr, free or conjugated, may occur in animal feeds derived from wheat, barley, and oats, the following meat and milk tolerances are also being proposed: 0.1 ppm (meat, fat, milk, and meat byproducts except for kidney) and 0.5 ppm (kidney). The proposed analytical method is based on gas chomatography (GC) with mass spectral (MS) detection. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of fluroxypyr MHE in plants (wheat) and animals (goats and poultry) is adequately understood for the purposes of this tolerance. A rotational crop study showed no carryover of significant fluroxypyr MHE related residues in representative test crops except for cereal grains for which tolerances are being proposed.

2. *Analytical method*. There is a practical method (GC with MS detection) for measuring levels of fluroxypyr MHE in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set for the proposed tolerances. Fluroxypyr has been tested through the FDAs Multiresidue Methodology, Protocols C, D. and E. The results have been published in the FDA Pesticide Analytical Manual, Volume I.

3. *Magnitude of residues*. Magnitude of residue studies were conducted for wheat, barley, and oats. Residues of fluroxypyr MHE did not concentrate in process fractions in samples treated at a 7.5 X application rate.

B. Toxicological Profile

1. *Acute toxicity*. Fluroxypyr MHE has low acute toxicity. The rat oral LD_{50} is >5000 mg/kg, the rabbit dermal LD_{50} is >2000 mg/kg, and the rat inhalation LC_{50} is >1.0 mg/l (1,000 mg/cubic meter), the maximum attainable concentration. In addition, fluroxypyr MHE is not a skin sensitizer in guinea pigs, has no dermal irritation in rabbits, and shows mild ocular irritation in rabbits. The end use formulation of fluroxypyr MHE has a similar low acute toxicity profile.

2. *Genotoxicity*. Short term assays for genotoxicity consisting of a bacterial reverse mutation assay (Ames test), an *in vitro* assay for cytogenetic damage using the Chinese hamster ovary cells, an in vitrochromosomal aberration assay using rat lymphocytes, and an *in vivo* cytogenetic assay in the mouse bone marrow (micronucleus test) have been conducted with fluroxypyr MHE. DowElanco believes that these studies show a lack of genotoxicity. In addition, short term assays for genotoxicity consisting of an Ames metabolic activation test, point mutations at the HGPRT-Locus of Chinese hamster ovary cells, *in vivo* and *in vitro* chromosomal aberrations in the Chinese hamster ovary cells, unscheduled DNA synthesis in human embryonic cells, and an assay in mouse lymphoma cells have been conducted with fluroxypyr. DowElanco believes that the weight of evidence also indicates a lack of genotoxicity.

3. *Reproductive and developmental toxicity*. Developmental studies in rats and rabbits were conducted with both fluroxypyr MHE and fluroxypyr. Studies with fluroxypyr MHE showed maternal and fetal no observed effect levels (NOELs) of 300 milligram/kilogram (mg/kg/day) (rat) and 500 mg/kg/day (rabbit). Studies with fluroxypyr showed no observed adverse effect levels (NOAELs) in the rat of 250 mg/kg/day for maternal effects and 500 mg/kg/day for fetal effects and a NOEL in the rabbit of 250 mg/kg/day for both maternal and fetal effects. DowElanco believes that these studies show that fluroxypyr and fluroxypyr MHE are not teratogenic nor will they interfere with in utero development. Two multi-generation reproduction studies were conducted with fluroxypyr in rats. The first in Wistar rats showed no effect on fertility or reproductive performance and had a NOAEL of 500 mg/kg/day (highest dose tested). The second study in Sprague-Dawley rats showed a parental NOEL for systemic effects of 100 mg/kg/day in male rats and 500 mg/kg/day in female rats. The NOEL for reproductive effects was 750 mg/kg/day for males and 1,000 mg/kg/day for females (highest dose tested). The NOEL for neonatal effects was 500 mg/kg/day.

4. *Subchronic toxicity*. Fluroxypyr MHE showed a NOEL of 1,000 mg/kg/day in a 90-day rat dietary study and a 21-day rabbit dermal study. Ninety day feeding studies with fluroxypyr showed NOELs of 80 mg/kg/day (Wistar rats), 700 mg/kg/day (Fischer 344 rats), 1342 mg/kg/day (male mice), and 1,748 mg/kg/day (female mice). In a 4-week dietary, range finding study with fluroxypyr in dogs the NOEL was >50 mg/kg/day.

5. *Chronic toxicity*. Based on chronic testing with fluroxypyr in the mouse, dog, and rat (two studies), a reference dose (RfD) of 0.8 mg/kg/day is proposed for fluroxypyr and fluroxypyr MHE. The RfD has incorporated a 100-fold safety factor to the NOEL found in the rat chronic test. NOELs found in the chronic dietary studies are as follows: 150 mg/kg/day (dog), 300 mg/kg/day (mouse), 80 mg/kg/day (Wistar rats), 100 mg/kg/day (male Fischer 344 rats), and 500 mg/kg/day (female Fischer 344 rats).

6. *Animal metabolism*. Both fluroxypyr and fluroxypyr MHE have been evaluated in rat metabolism studies. In summary, these studies show that fluroxypyr MHE is rapidly hydrolyzed and the fate of the hydrolysis products, fluroxypyr and 1-methylheptanol, are independent of whether they were given as the ester or the acid. Fluroxypyr, *per se*, was extensively absorbed and rapidly excreted principally unchanged in the urine. 1-Methylheptanol also was rapidly absorbed and rapidly eliminated. Repeated administration of fluroxypyr MHE was not associated with accumulation in tissues. Also, the metabolism and pharmacokinetics of methylheptanol are comparable to that of the methylheptyl portion of fluroxypyr MHE.

7. *Metabolite toxicology*. Administration of fluroxypyr, as the acid or methylheptyl ester, in a variety of toxicological studies has produced similar effects. The principal response to sufficiently high dosages, whether administered over the short-term or, in some cases, over a lifetime, was nephrosis. Fluroxypyr is an organic acid that is actively excreted into the urine by the kidney. Thus, the target organ and dose response relationship for fluroxypyr toxicity are entirely consistent with the data on the toxicokinetics of fluroxypyr. Metabolism studies have shown that fluroxypyr MHE is rapidly and completely hydrolyzed to fluroxypyr acid and methylheptanol.

8. *Carcinogenicity*. Using the Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), it is proposed that fluroxypyr and fluroxypyr MHE be classified as Group E for carcinogenicity (no evidence of carcinogenicity) based on the results of carcinogenicity studies in two species. DowElanco believes that there was no evidence of carcinogenicity in an 18-month mouse feeding study and a 24-month rat feeding study at all dosages tested. The NOELs shown in the mouse and rat oncogenicity studies were 1,000 and 320 mg/kg/day, respectively. A maximum tolerated dose was achieved at the top dosage level tested in both of these studies based on excessive renal toxicity. Thus, the doses tested are adequate for identifying a cancer risk. Accordingly, DowElanco believes that a cancer risk assessment is not needed.

9. *Endocrine effects*. There is no evidence to suggest that fluroxypyr and fluroxypyr HME have an effect on any endocrine system.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. An over estimation of dietary exposure from use of fluroxypyr MHE on wheat, barley, oats is determined by basing the TMRC on the conservative assumptions that all cereal grain commodities will have tolerance level residues of fluroxypyr and that 100% of the wheat, barley, and oat crops grown in the U.S. are treated with fluroxypyr MHE. The TMRC is obtained by multiplying the tolerance residue levels by the consumption data which estimates the amount of crops and related foodstuffs consumed by various population subgroups. There are no other established U.S. tolerances or exemption from tolerances for fluroxypyr MHE and no other registered uses for fluroxypyr MHE on food or feed crops in the United States. The use of a tolerance level and 100% of crop treated clearly results in an overestimate of human exposure and a safety determination for the use of fluroxypyr MHE on wheat, barley, and oats that is based on a conservative exposure assessment.

ii. *Drinking water*. Another potential source of dietary exposure are residues in drinking water. Based on the available environmental studies conducted with fluroxypyr MHE and fluroxypyr wherein the properties of these materials show little persistence in the soil environment, there is no anticipated exposure to residues of fluroxypyr MHE and fluroxypyr in drinking water. In addition, there is no established Maximum Concentration Level for residues of fluroxypyr MHE and fluroxypyr in drinking water.

2. *Non-dietary exposure*. There are no other uses currently registered for fluroxypyr MHE and fluroxypyr. The proposed use on wheat, barley, and oats involves application of fluroxypyr MHE to crops grown in an agriculture environment. Thus, the potential for non-occupational exposure to the general population is not expected to be significant.

D. Cumulative Effects

The potential for cumulative effects of fluroxypyr MHE and fluroxypyr and other substances that have a common mechanism of toxicity is also considered. There is no reliable information to indicate that toxic effects produced by fluroxypyr MHE and fluroxypyr would be cumulative with those of any other pesticide chemical. Thus, it is appropriate to consider only the potential risks of fluroxypyr MHE and fluroxypyr in an aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*. Using the conservative exposure assumptions and the proposed RfD, the dietary exposure to fluroxypyr MHE use on wheat, barley, and oats will utilize 0.2% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Since there are no anticipated residues in drinking water or from other non-occupational sources and no reliable information exists on cumulative effects due to common mechanism of toxicity, the aggregate exposure to fluroxypyr MHE is adequately represented by the dietary route. Thus, DowElanco believes that there is reasonable certainty that no harm will result from aggregate exposure to fluroxypyr MHE residues on wheat, barley, and oats.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of fluroxypyr MHE, data from developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in the rat are considered. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability and potential systemic toxicity of mating animals and on various parameters associated with the well-being of pups.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological data requirements, the database for fluroxypyr MHE relative to pre- and post-natal effects for children is complete. Further, for fluroxypyr MHE, the NOEL in the chronic feeding studies which was used to calculate the RfD (0.8 mg/kg/day) is already lower than the NOELs from the developmental studies in rats and rabbits by a factor of more than three.

Concerning the reproduction studies in rats, the pup effects shown at the highest dose tested (1,000 mg/kg/day) were attributed to maternal toxicity. Therefore, DowElanco concludes that an additional uncertainty factor is not needed and that the RfD at 0.8 mg/kg/day is appropriate for assessing risk to infants and children.

As noted above for the general U.S. population, aggregate exposure for infants and children will result from the dietary (i.e. not drinking water or non-occupational) route of exposure. In addition, there is no reliable information that shows cumulative effects based on a common mechanism of toxicity for infants and children. Using the conservative exposure assumptions previously described, the percent RfD utilized by the aggregate dietary exposure to residues of fluroxypyr MHE on wheat, barley, and oats is 0.6% for children 1 to 6 years old, the most sensitive population subgroup. Thus, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, DowElanco believes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fluroxypyr MHE residues on wheat, barley, and oats.

F. International Tolerances

There are no Codex maximum residue levels established for residues of fluroxypyr MHE and fluroxypyr on any food or feed crop. (J. Miller)

2. E.I. du Pont de Nemours and Company

PP 1F4032

EPA has received a pesticide petition (PP 1F4032) from E.I. du Pont de Nemours and Company, Barley Mill Plaza, Walker's Mill Bldg. 37, Wilmington, DE 19880-0038, proposing

pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of ethametsulfuron in or on the raw agricultural commodity canola at 0.1 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The qualitative nature of the residues of ethametsulfuron methyl is adequately understood. The unmetabolized parent compound was the major residue found in a canola metabolism study up to 30 days after application. The principal route of metabolic breakdown of ethametsulfuron methyl in canola is dealkylation from the triazine ring. The initial step in the metabolic breakdown is deethylation to form *O*-deethyl ethametsulfuron methyl. Further metabolism forms *N*-demethyl-*O*-deethyl ethametsulfuron methyl and more minor polar metabolites. For purposes of establishing the proposed tolerance, the parent compound ethametsulfuron methyl is the only residue of concern.

The available metabolism studies indicate that total radioactive residues found in mature seeds, when rapeseed was treated at a rate equivalent to the proposed application rate, ranged from 0.008 to 0.012 ppm. These terminal residues may consist of the parent compound, *O*-deethyl ethametsulfuron methyl, O-deethyl-N-demethyl ethametsulfuron methyl and other minor metabolites.

2. *Analytical method*. Analytical methods are available to measure the parent compound in oil seeds, and in oil seed processing fractions. The quantification of ethametsulfuron methyl is by normal phase high performance liquid chromatography (HPLC) using a photoconductivity detector. The Limit of Quantitation (LOQ) for the analytical method is 0.02 ppm.

3. *Magnitude of residues*—i. *Magnitude of the residue in plants.* The results of the seed analyses from canola/seed show that no detectable residues of ethametsulfuron methyl were found in canola/seed harvested 60 to 137 days after treatment at exaggerated rates of 3X of the normal application rate.

ii. *Magnitude of the residue in processed commodities*. Analyses of canola processed fractions (whole seed, pressed cake, desolventized meal, crude oil, pressed oil, solvent extracted oil, degummed oil, refined washed oil, refined bleached oil, and deodorized oil) show that levels of ethametsulfuron methyl were found to be less than 0.02 ppm, the limit of quantitation of the method in all of the fractions evaluated. All of the processed fractions were obtained from seed harvested 92 days after application at proposed use rates and exaggerated rates.

B. Toxicological Profile

1. *Acute toxicity*. Based on EPA criteria, ethametsulfuron methyl is relatively non-toxic, and be categorized as Toxicity Category IV (oral and inhalation routes) and Category III (dermal exposure). LD_{50}s are >5,000 mg/kg for acute oral toxicity in rats, >2,000 mg/kg for acute dermal toxicity in rabbits, and >5.7 mg/L for acute inhalation toxicity in rats. For technical grade active ingredient, primary eye irritation in rabbits is classified as Tox Cat II. For formulated product, primary eye irritation in rabbits is classified as Tox Cat IV. Primary dermal irritation in rabbits is classified as Tox Cat IV. Dermal sensitization in guinea pigs is classified as ''Not a skin sensitizer.''

2. *Genotoxicity*. This compound was negative in the following tests that have been conducted to determine the genotoxic and mutagenic potential of ethametsulfuron methyl: Mutagenicity assays conducted in bacteria (Ames test) and in cultured Chinese Hamster Ovary cells; a test that measures the induction of chromosomal aberrations in bone marrow cells isolated from rats treated with ethametsulfuron methyl; micronuclei induction in bone marrow cells from mice; and negative in a text that measures DNA damage in cultured rat liver cells. Based on the weight of these data, E.I du Pont concludes that ethametsulfuron methyl is neither genotoxic or mutagenic.

3. *Reproductive and developmental toxicity.* A 2-generation, four litter reproduction study with CD rats treated with dietary levels of 0, 250, 5,000, 20,000 ppm of ethametsulfuron methyl failed to reveal any evidence suggestive of an adverse effect on reproductive potential. A NOEL was indicated at the mid dose level of 5,000 ppm (equivalent to approx. 433 mg/kg b.w./day, actual intake) based on significantly ($p<0.5$) decreased body weights in the high dose treated F0 and F1 generation males.

A developmental toxicity study of ethametsulfuron methyl in rabbits indicated that dams administered 4,000 mg/kg (highest dose tested) had a higher mortality rate, lower food consumption and body weight gains, increased incidences of gross clinical signs of toxicity and of abortions, and increased absolute and relative liver weights. Absolute and relative liver weights were also slightly greater for dams administered 1,000 mg/kg. There were no compound-related effects observed for dams administered 250 mg/kg.

Dams administered 4,000 mg/kg also had a decrease in the number of live fetuses. This was related to an increase in the number of early resorptions. There were no other compound-related effects on the dams, nor were there any effects on fetal weights, malformations or variations incidences. The NOELs for this study were 250 mg/kg for the dams and 1,000 mg/kg for the fetus. Ethametsulfuron methyl was neither teratogenic in rabbits nor uniquely toxic to the conceptus.

A developmental toxicity study was also conducted in rats treated at doses of 0, 60, 250, 1,000, or 4,000 mg/kg. Among the dams of the groups given ethametsulfuron methyl, no compound-related mortality or clinical abnormalities were observed. For the treatment period, the high dose group had a lower weight gain and significantly decreased food consumption compared to the control group. No other significant differences in body weight changes or food consumption were observed. A significant trend was indicated for mean fetal weight and the mean fetal weight of the high dose group was lower than that of the control group. No significant differences were observed in the rates of malformations or developmental variations. Under the conditions of the study, the apparent no effect level for the dam and fetus was 1,000 mg/kg/day. Thus ethametsulfuron methyl was not uniquely toxic to the conceptus nor was it teratogenic in rats.

4. *Subchronic toxicity—i. Rat.* A 90-day feeding study followed by a 1-generation reproduction phase in rats at dietary levels of 0, 100, 1,000, and 5,000 ppm of ethametsulfuron methyl failed to elicit any signs of overt toxicity or any adverse effect on reproductive performance at levels as high as 5,000 ppm (equivalent to 0.5% of the diet or approximately 409 mg/kg b.w./day, actual intake). The No Observed Adverse Effect Level (NOAEL) for this study was, therefore, the high dose level of 5,000 ppm.

ii. *Mouse.* A 90-day dietary feeding study in CD-1 mice at levels of 0, 50, 500, 2,500 and 5,000 ppm indicated a No Observed Effect Level (NOEL) for females and a NOAEL for males set at

the high dose level of 5,000 ppm (equivalent to approximate 687 mg/kg b.w./day, actual intake for males).

iii. *Dog.* Dietary administration of technical ethametsulfuron methyl to dogs for 90 days at levels of 0, 100, 3,500 or 10,000 ppm failed to reveal any evidence of treatment-related toxicity at levels as high as 10,000 ppm (equivalent to 1% of the diet or approximately 386 mg/kg b.w./day, based on actual intake).

5. *Chronic toxicity*—i. *Rat.* Administration of ethametsulfuron methyl to Sprague-Dawley rats for up to 24 months at dietary levels of 0, 50, 500 and 5,000 ppm revealed a NOAEL for in-life parameters of 5,000 ppm (equivalent to 238.5 mg/kg b.w./day, actual intake), based on questionable toxicological significance of decreased ($p<0.05$) serum sodium levels in both the 5,000 ppm treated males and females during the first 12 months of treatment. The effects on serum sodium levels in the high dose groups were described as mild (representing a decrease in 2-6% of the control values) and occurring in the absence of any associated pathological changes in the kidney. Treatment with the test material at dietary levels as high as 5,000 ppm (equivalent to 0.5% of the diet) failed to elicit any evidence of treatment-related neoplastic potential.

ii. *Dogs.* Chronic dietary administration of the test material to dogs at levels of 0, 250, 3,000 and 15,000 ppm for 1-year indicated a NOEL of 3,000 ppm, equivalent to approximately 87 mg/kg b.w./day actual intake, based on compound-related effects expressed in the 15,000 ppm treated group as decreased body weight gain and food efficiency values in the males. Significantly decreased serum sodium levels in both sexes at the high dose treated level were not associated with any evidence of renal pathology. In the absence of any collaborative clinical or pathological findings differences in organ weights relative to body or brain weight were considered to be of doubtful biological significance.

iii. *Mouse.* Administration of the test material to CD-1 mice at dietary levels of 0, 25, 500, and 5,000 ppm for the period of up to 78 weeks failed to reveal any overt signs of treatment-related toxicity of dietary levels of up to 5,000 ppm (equivalent to 818 mg/kg bwt/day, actual intake). Although a direct effect of treatment on body weights or weight gains could not be established, overall body weight gain in the 5,000 ppm treated male mice was depressed (non-significant, $p>0.05$) by 10% when compared to the controls. There was no evidence of any treatment-related oncogenic potential.

6. *Animal metabolism*. When administered via oral gavage to rats, ethametsulfuron methyl was rapidly metabolized and excreted in the urine and feces. Within 3 days, greater than 90% of the administered dose was excreted by male rats and greater than 80% was excreted by females. Approximately 50% of the administered dose was excreted as unchanged ethametsulfuron methyl. The remainder was converted predominately to *N*-demethyl ethametsulfuron methyl and *O*-deethyl ethametsulfuron methyl, which are considered by by-products of cytochrome P450-mediated reactions. Less than 0.02% of the administered dose remained in the carcass or tissues. There was no significant or preferential accumulation of ethametsulfuron methyl or its metabolites in any tissue. Because of the short excretion half-life, repeated daily exposures are not expected to result in significant body burdens of ethametsulfuron methyl.

7. *Metabolite toxicology*. There is no evidence that the metabolites of ethametsulfuron methyl as identified as either the plant or animal metabolism studies are of any toxicological significance.

8. *Endocrine effects*. No special studies investigating potential estrogenic or endocrine effects of ethametsulfuron methyl have been conducted. However, the standard battery of required toxicology studies have been completed. These include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. Based on these studies there is no evidence to suggest that ethametsulfuron methyl has an effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure—i. Food*. Based on the residue data and the proposed single-crop use, potential for dietary exposure of ethametsulfuron methyl from food sources is extremely low. Residue studies have shown no residues above the LOQ (residues <0.02 ppm) in any canola seed samples evaluated, including the canola oil processed fractions. No dietary exposure is anticipated from secondary residues in meat or milk. Although canola meal is considered a minor feedstuff for cattle and poultry (representing a maximum of 15% of an animal's diet), field residue studies showed ethametsulfuron methyl residues were all below the LOQ (<0.02 ppm) in all of the canola RACs and processed fractions, including meal, even when the crop was treated at 2-3X the proposed maximum use rate.

Direct human consumption of canola as a food commodity in the United States is extremely low. Canola is a minor crop in the U.S., and the only canola fraction used as a food product is the refined canola oil. A dietary risk evaluation (DRES) was conducted to determine the theoretical maximum residue contribution of ethametsulfuron methyl in the diet as a result of agricultural use on canola. Unfortunately, consumption data for canola oil does not exist in the 1977-1979 food consumption database used in EPA's DRES system, since at that time, canola oil was not a significant part of the U.S. diet. Since 1977 more canola oil is used in U.S. homes, although total production and usage are still minor when compared to other edible oils such as soybean oil.

Conservative assumptions were used to estimate canola consumption in the United States. The USDA's Oilseed Analysis Division has indicated that an average of 1.1 billion pounds of canola oil was used in the United States annually over the past 5 years. The dietary exposures that might occur by way of canola oil consumption can be estimated by taking the average annual use of canola oil in the United States (includes both domestically produced and imported canola oils) and dividing it by the approximate US population of 266.3 million people. This provides a per-capita consumption estimate for the general population. Using this approach, total canola oil consumption on a grams per kg body weight per day was calculated by dividing by the average days in a year and average body weight of a person (60 kg). The 60 kg value is used by the US EPA as part of their ''Food Factor'' system, and is also supported by taking the average weight of children between the ages of 6 months to 19 years (36 kg) and the average weight of adults of 70 kg and assuming a 69 year life span (as proposed in the review draft of the US EPA's Exposure Factors Handbook). Using these assumptions, canola oil consumption was calculated to be 0.088 g/kg bw/day.

While this method provides a useful approximation of canola consumption, this is clearly a conservative estimate for risk assessment purposes, since this estimate assumes that all of the canola oil used in the US is indeed ingested. In reality, not all the oil that is used in cooking or deep-fat frying is consumed but instead, is discarded or recycled. Another indication that the consumption value of 0.088 g/kg bw/day is an over-estimate is from the USDA's 1989-1992 food survey (not yet included in the EPA's DRES system),

which indicates canola oil consumption is 0.00023 g/kg/day for the general U.S. population.

Using the consumption estimate of 0.088 g canola oil/ kg bw/day for the general US population, and assuming that 100% of the canola crop is treated with ethametsulfuron methyl and all canola consumed contains residues at the proposed tolerance level of 0.1 ppm, the theoretical maximum residue contribution of ethametsulfuron methyl in the diet is calculated to be 0.00001 mg/kg/day or <0.01% of the RfD of 0.87 mg/kg/day.

ii. *Drinking water.* Another potential source of dietary exposure to pesticides are residues in drinking water. There is no established Maximum Concentration Level (MCL) for ethametsulfuron methyl in water. Based on the low use rate of ethametsulfuron methyl, and a use pattern that is not widespread (since the only proposed use is on a minor crop), DuPont does not anticipate residues of ethametsulfuron in drinking water and exposure from this route is unlikely.

2. *Non-dietary exposure.* Ethametsulfuron methyl is not registered for any use which could result in non-occupational, non-dietary exposure to the general population. Ethametsulfuron methyl is a herbicide with proposed use only on canola. There are no other food uses, nor are there any residential or non-crop uses of this active ingredient. Therefore, the only potential for non-occupational aggregate exposure would come from dietary intake.

D. Cumulative Effects

Ethametsulfuron methyl belongs to the sulfonylurea class of compounds. Other compounds in this class are registered herbicides. However, the herbicidal activity of the sulfonylureas is due to the inhibition of acetolactase synthase (ALS), an enzyme only found in plants. ALS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack ALS and this biosynthetic pathway. This lack of ALS contributes to the low toxicity of the sulfonylurea compounds in animals. There is no evidence to indicate or suggest that ethametsulfuron methyl has any toxic effects on mammals that would be cumulative with those of any other chemicals.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions described above and based on the most sensitive species chronic NOEL of 87 mg/kg and a Reference Dose (RfD) of 0.87 mg/kg/day, the proposed use of ethametsulfuron methyl on canola is expected to utilize 0.001% of the RfD for the general U.S. population. Generally, exposures below 100 percent of the RfD are of no concern because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose risk to human health. Thus, DuPont concludes that there is a reasonable certainty that no harm will result from aggregate exposure to ethametsulfuron methyl resulting from proposed agricultural use on canola.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of ethametsulfuron methyl, data were considered from developmental toxicity studies in the rat and rabbit, and a multi-generation reproduction study in rats. The developmental toxicity studies demonstrated that even at the high oral doses used in these studies (up to 4,000 mg/kg in rabbits and rats), no teratogenic effects were found in either species nor was the compound found to be uniquely toxic to the conceptus.

The 2-generation reproduction study in rats treated at dietary levels as high as 20,000 ppm on a daily basis throughout 2 generations (equivalent to 1,582 mg/kg/day for males and 1817 mg/kg/day for females), showed no evidence of effects on reproductive performance in the adults, or evidence of gross or histopathological effects in the adult or weanling rats in any test group. This study indicates that ethametsulfuron methyl is not a reproductive toxicant.

As mentioned previously, canola oil is a very minor component of the diet, and thus had not been included as part of the 1977-79 food survey used in EPA's DRES system. DuPont is not aware of specific food survey data concerning consumption of canola oil by infants and children. However, the 1977-79 food survey database does provide consumption data for other edible oils for each of the population subgroups, including infants and children. This data indicate that non-nursing infants consume more soybean and coconut oil than any of the other 22 population subgroups, specifically consuming 4.2 times more soybean oil and 49.1 times more coconut oil than the consumption by the general US population. The data also show that children 1-6 consume more corn, cottonseed, peanut and sunflower oil than any other subgroup listed, to a maximum of 2 times more than the general U.S. population. Using these data and making the most conservative assumption to extrapolate to canola oil, we can estimate that infants and children consume 49 times more canola oil than does the U.S. population, and calculate an approximate daily consumption of 4.3 g canola oil/kg body weight. If we use the additional conservative assumptions that all the canola oil consumed contains ethametsulfuron methyl residues at tolerance levels of 0.1 ppm, we calculate that the maximum theoretical residue concentration of ethametsulfuron methyl in the infants' and children's diets would be 0.00049 mg/kg/day or <0.05% of the RfD.

As indicated above, DuPont concludes that infants and children have a low potential for ethametsulfuron methyl exposure because of both the low level of canola oil in the diet, and the absence of detectable residues in field-treated canola. The toxicology profile of ethametsulfuron methyl demonstrates low mammalian toxicity, and results from the developmental and reproduction studies indicate that there is no additional sensitivity for infants and children. Therefore, DuPont concludes that an additional safety (uncertainty) factor is not warranted and the RfD of 0.87 mg/kg body weight/day, which utilizes a 100-fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children from aggregate exposure to ethametsulfuron methyl.

F. International Tolerances

Ethametsulfuron methyl and its end-use product Muster are registered only in Canada on canola/rape and mustard with a MRL value of 0.1 ppm. A CODEX tolerance for ethametsulfuron methyl has not been established. (Jim Tompkins)

3. Monsanto

PP 7F4840

EPA has received a pesticide petition (PP 7F4840) from Monsanto, Suite 1100, 700 14th St., NW., Washington, DC 2005, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of sulfosulfuron 1-(4,6-dimethoxypyrimidin-2-yl)-3-[(2-ethanesulfonyl-imdazo[1,2-a]pyridine-3-yl)sulfony]urea in or on the raw agricultural commodities. The proposed analytical method involves hydrolyzing sulfosulfuron and its imadazopyridine-containing metabolites under acidic conditions to the common chemophore, ethyl sulfone. Ethyl sulfone is then separated and quantitated by High Performance Liquid Chromatography (HPLC) with fluorescence detection. EPA has determined that the petition

contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. Metabolism of sulfosulfuron in plants is negligible. The nature of the major sulfosulfuron residues in wheat matrices depends primarily on the mode of application with reliance upon metabolism in the soil.

Postemergence applications result in residues that are mostly made up of parent compound, with small amounts of five to six metabolites that together make up less than 15% of the total radioactive residue.

Preemergence application result in soil degradation of the parent compound followed by uptake primarily of the imidazopyridine ring-containing metabolites and small amounts of the parent compound. The pyrimidine ring-containing metabolites under these conditions are tightly bound to the soil, resulting in negligible uptake of these residues. Little further metabolism of the imidazopyridine metabolites takes place in the plant. The predominant residues resulting from preemergence applications were sulfonamide (22% TRR) and guanidine (18.3% TRR).

In both cases, translocation of residue to the grain is negligible. The highest residues are observed following postemergence applications and the residues are primarily parent compound.

In rotational crops, residues were low, with the TRR's not exceeding 0.01 ppm in most crops. The most abundant metabolite was sulfonamide, with low levels of a sulfonamide-sugar conjugate and parent compound also observed.

2. *Analytical method*. The primary crop (wheat) residue and the secondary (animal products) residues are analyzed as total residue by hydrolyzing sulfosulfuron and its imadazopyridine-containing metabolites under acidic conditions to the common chemophore, ethyl sulfone. Ethyl sulfone is then separated and quantitated by High Performance Liquid Chromatography (HPLC) with fluorescence detection.

3. *Magnitude of residues*. EPA has received a pesticide petition from Monsanto Company proposing to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide sulfosulfuron in or on the following:

Commodity	Part per million (ppm)
Wheat	
grain	0.01 ppm (limit of quantitation 0.008 ppm)
straw	0.1 ppm
hay	0.3 ppm
forage	3.0 ppm
Animal Products	
milk	0.004 ppm
fat	0.004 ppm
meat	0.004 ppm
muscle	0.004 ppm
meat by-products	0.1 ppm
kidney	0.1 ppm
liver	0.1 ppm

B. Toxicological Profile

1. *Acute toxicity*. A rat acute oral study with an LD_{50} of >5,000 mg/kg, EPA Category IV. A rabbit acute dermal study with an LD_{50} of >5,000 mg/kg, EPA Category IV. A rat inhalation study with and LC_{50} of >3.0 mg/l, the highest concentration generated, EPA Category IV. A primary eye irritation study in the rabbit showing moderate eye irritation, EPA Category III. A primary dermal irritation study in the rabbit showing essentially no irritation, EPA Category IV. A dermal sensitization study in the guinea pig showing no potential for sensitization. Acute and subchronic neurotoxicity studies in rats demonstrating no neurotoxicity potential. Sulfosulfuron has a low order of acute toxicity.

2. *Genotoxicity*. An *in vitro* Ames/*Salmonella* mutagenicity assay in five commonly used strains was negative for mutagenic potential.

An *in vitro* CHO/HGPRT Gene Mutation assay was negative for mutagenicity up to the limit of solubility.

An *in vitro* chromosomal aberration test in cultured mammalian cells demonstrated the induction of chromosomal aberrations only under conditions of prolonged incubation at high dose levels that exceeded the solubility of the test material. The mechanism responsible for this induction and the biological relevance of the effect is not clear. Other, more relevant, chromosomal aberration tests (see below) were negative.

An *in vitro* chromosome aberration study in human lymphocytes was negative for chromosomal aberrations.

An *in vivo* bone marrow micronucleus assay in the mouse was negative for chromosomal effects.

The weight of evidence demonstrates that sulfosulfuron does not produce significant genotoxic or mutagenic effects.

3. *Reproductive and developmental toxicity*. A developmental study in the rat demonstrated no signs of maternal or developmental toxicity up to the maximum dose level of 1,000 mg/kg/day. The NOEL was considered to be 1,000 mg/kg/day.

A developmental study in the rabbit demonstrated no signs of maternal or developmental toxicity up to the maximum dose level of 1,000 mg/kg/day. The NOEL was considered to be 1,000 mg/kg/day.

A 2-generation reproduction study in the rat demonstrated a subchronic toxicity NOEL of 5,000 ppm based on body weight and food consumption decreases, urinary bladder calculi formation and minor bladder and kidney pathology. There were no effects on reproduction or fertility up to 20,000 ppm, the highest dose tested. Sulfosulfuron demonstrates no reproductive effects in rats and no teratogenic or developmental effects in rats and rabbits.

4. *Subchronic toxicity*. A 28-day dermal study in the rat with a NOEL of at least 1,000 mg/kg/day, the highest dose tested. A 90-day feeding study in the rat resulted in only mild body weight/weight gain effects at 20,000 ppm, the highest dose tested. The NOEL for both males and females was considered to be 6,000 ppm. A 90-day feeding study in the dog demonstrated subchronic toxicity, primarily in the urinary bladder, secondary to urinary crystal formation and urolithiasis at dose levels of 300 and 1,000 mg/kg/day in females and at 1,000 mg/kg/day in males. The NOEL was considered to be 100 mg/kg/day in females and 300 mg/kg/day in males. Sulfosulfuron has a low order of subchronic toxicity, related only to the precipitation of test material in the urinary bladder of dogs at high doses.

5. *Chronic toxicity*. A 1-year study in the dog demonstrated toxicity in the urinary bladder secondary to urinary crystal and calculus formation at 500 mg/kg/day in a single male animal. Urinary crystal formation was observed in females at 500 mg/kg/day with no subsequent pathology. The NOEL was considered to be 100 mg/kg/day for male and female dogs.

A combined chronic toxicity/oncogenicity study in the rat demonstrated chronic toxicity, primarily in the urinary bladder, in males and females at 5,000 and females at 20,000 mg/kg/day. The NOEL for chronic toxicity was considered to be 500 ppm or 24.4 mg/kg/day. This is the

lowest NOEL and is used in the calculation of the Reference Dose (RfD).

An 18-month oncogenicity study in the mouse demonstrated chronic toxicity, primarily in the urinary bladder, of male mice at 3,000 and 7,000 ppm. No chronic toxicity was observed in females. The NOEL for chronic toxicity was considered to be 700 ppm for male mice and 7,000 ppm for female mice. Sulfosulfuron demonstrates chronic toxicity related only to the formation of crystals and calculi of the compound in the urinary bladders of mice, rats and dogs.

6. *Carcinogenicity*. An 18-month oncogenicity study in the mouse demonstrated a small increase in the incidence of benign mesenchymal tumors of the urinary bladder submucosa in male mice with urinary bladder calculi at 7,000 ppm. However, these tumors are reportedly unique to Swiss-derived mice and were considered to be of biological relevance only to the mouse by a Independent Working Group on Mouse Mesenchymal Tumors convened by the International Life Sciences Institute (ILSI).

A combined chronic toxicity/ oncogenicity study in the rat (same as above) demonstrated a urinary bladder transitional cell carcinoma and a urinary bladder transitional cell papilloma in two females at 5,000 mg/ kg/day, probably secondary to urinary system calculi formation and (chronic) irritation.

The low incidences of oncogenicity observed in the oncogenicity studies conducted with sulfosulfuron are either considered to be relevant to the mouse only or a secondary threshold effect related to chronic irritation resulting from bladder stone formation at high doses. Sulfosulfuron is not considered to be a primary oncogen.

Using the Guidelines for Carcinogenic Risk Assessment published September 24, 1986, Monsanto believes that the EPA would classify sulfosulfuron as a Group ''C'' carcinogen, without quantitative risk assessment, i.e., using the margin of exposure (MOE) approach for risk assessment. Under the proposed guidelines published April 10, 1996, however, Monsanto believes that sufosulfuron should be included in the ''Not Likely Human Carcinogen'' category based upon mechanistic considerations. To quote the 1996 EPA guideline document discussing a similar effect in a rat study:

''A major uncertainty is whether the profound effects of (substance 5) may be unique to the rat. Even if (substance 5) produced stones in humans, there is only limited evidence that humans with bladder stones develop cancer. Most often human bladder stones are either passed in the urine or lead to symptoms resulting in their removal.''

In either case, a Margin of Exposure assessment or reference dose (RfD) approach would be utilized. Since the chronic NOEL for male rats is lower than the oncogenic NOEL for female rats (24 mg/kg/day vs 30 mg/kg/day), the male rat chronic NOEL was used with a 100 fold safety factor for a reference dose of 0.24 mg/kg/day, for the quantitation of human risk.

7. *Animal metabolism*. An animal metabolism study was conducted in the rat using sulfosulfuron radiolabeled in both the pyrimidine and iminodazopyridine rings to detect possible cleavage of the sulfonylurea bond. Following oral dosing of sulfosulfuron, absorption was found to be greater at low doses (>90%) than at the higher doses (40%). Sulfosulfuron was readily excreted, mostly unchanged, with urinary excretion the major route of elimination at low doses and fecal excretion the major route at high doses. Greater than 90% of the dose was excreted 3 days after administration. Expiration as carbon dioxide or volatiles was not a significant route of elimination. Metabolism of sulfosulfuron in the rat occurred to only a limited extent with demethylation and pyrimidine ring hydroxylation as the major metabolic routes, yielding desmethyl-sulfosulfuron and 5-hydroxy-sulfosulfuron as the major metabolites. There was no evidence of bio-retention of sulfosulfuron or its metabolites; tissue and blood levels were negligible, with no individual tissue showing levels exceeding 0.2% of the dose.

8. *Metabolite toxicology*. Dietary residues are comprised almost entirely of parent sulfosulfuron and the imidazopyridine-containing metabolites sulfonamide and guanidine. Specific toxicology data is not available on these metabolites, but the structures do not suggest any specific toxicologic concern and the level of dietary exposure is low. These metabolites are not considered to present a significant toxicological risk.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. Estimates of dietary exposure to residues of sulfosulfuron utilized the proposed tolerance-level residues for wheat grain (0.01 ppm) and for the following animal products: milk (0.004 ppm), fat (0.004 ppm), meat (0.004 ppm) and meat by-products (0.1 ppm, including kidney and liver). One-hundred percent market share was assumed as well as the assumption that no loss of residue would occur due to processing and cooking. A Reference Dose (RfD) of 0.24 mg/kg/day was assumed based on the low NOEL from the chronic/oncogenicity study in rats (≈ 24 mg/kg/day) with a safety factor of 100. Since the present label lists only wheat or fallow as approved rotations, no residues were entered for rotational crops. Using these conservative assumptions, dietary residues of sulfosulfuron contribute only 0.000149 mg/kg/day (0.006% of the RfD) for children 1-6 years, the most sensitive sub-population. For the U.S. Population as a whole, the exposure was only 0.000048 mg/kg/day (0.02% of the RfD).

ii. *Drinking water*. Given the low use rates, rapid soil degradation, strong soil binding characteristics and low soil mobility of sulfosulfuron, the risk of significant ground and surface water contamination and exposure via drinking water is considered to be negligible. Assuming that 10% of the RfD is allocated to drinking water exposure (0.024 mg/kg/day), and the average, 70 kg human consumes 2 liters of water per day, a Maximum Allowable Concentration value for drinking water of 0.84 mg/l is proposed for sulfosulfuron.

2. *Non-dietary exposure*. Sulfosulfuron is proposed for a variety of non-crop uses including roadsides, fencerows, industrial sites, parks, apartment complexes, schools and other public areas. Exposure assessments have been made for mixer/loaders and applicators in these situations (occupational exposure) and the cumulative (amortized) daily exposure from both these activities has been estimated to be less than 0.5 µg/kg/day, or approximately 0.2% of the RfD. The non-occupational exposure in these locations to the casual passer-by would be expected to be orders of magnitude less. The exposure in either instance does not present a significant exposure risk.

D. Cumulative Effects

Sulfosulfuron falls into the common category of sulfonylurea (SU) herbicides; however there is no information to suggest that any of the SU's have a common mechanism of mammalian toxicity or even produce similar effects. It is not appropriate to combine exposures in this case, and Monsanto is considering only the potential risk of sulfosulfuron in its aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*. As presented above, the exposure of the U.S. General population to sulfosulfuron is low, and the risks, based on comparisons to the reference dose, are negligible. Margins

of safety are expected to be considerable. Monsanto concludes that there is a reasonable certainty that no harm will result to the U.S. Population from aggregate exposure to sulfosulfuron residues.

2. *Infants and children*. In assessing the potential for additional sensitivity of infants and children to residues of sulfosulfuron, Monsanto considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in rats. No developmental or reproductive effects were observed up to the highest dose tested in each of the three studies. The Observed NOEL's were 1,000 mg/kg/day, 1,000 mg/kg/day and 20,000 ppm, respectively. Using the same conservative assumptions that were made previously for the dietary exposure analysis for the U.S. General population, the percent of the RfD utilized by pre-adult sub-populations are: all infants-0.03%; nursing infants-0.005%; non-nursing infants-0.04%; children, 1-6 years-0.06%; children, 7-12 years-0.04%. Monsanto concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to sulfosulfuron residues.

F. International Tolerances

There are currently no international (Codex) tolerances established for sulfosulfuron. Sulfosulfuron is currently registered on wheat in Switzerland, Poland, the Czech Republic, Slovakia and South Africa. Petitions for tolerances for sulfosulfuron in/on wheat have been submitted in Canada, Australia and the European Union. (Jim Tompkins)

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ENVIRONMENTAL PROTECTION AGENCY

[PF–785; FRL–5760–5]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number [PF–785], must be received on or before January 16, 1998.

ADDRESSES: By mail submit written comments 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 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 ''SUPPLEMENTARY INFORMATION.'' No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as ''Confidential Business Information'' (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Amelia M. Acierto, Registrtion Division (7505W), Office of Pesticide Programs, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460. Office location, telephone number and e-mail address: Rm. 4W60 4th floor, CS1, 2800 Crystal Drive, Arlington VA, (703)308-8377, e-mail: acierto.amelia@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–785] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number [PF–785] and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 4, 1997

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Ecolab Inc.

PP 7E4922

EPA has received a pesticide petition (PP 7E4922) from Ecolab Inc., 370 N. Wabasha Street, St. Paul, Minnesota 55102, proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR 180.1001(c) to establish an exemption from the requirement of a tolerance for the residues of

hydroxyethylidine diphosphonic acid (HEDP) when used as an inert ingredient at levels of 0.9% in pesticide formulations applied to agricultural commodities after harvest.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting the petition. Additional data may be needed before EPA rules on the petition.

A. Proposed Use Practices

HEDP is proposed for use as an inert ingredient in an antimicrobial treatment formulation contacting raw agricultural commodities.

1. *Acute toxicity*. The acute and chronic toxicity of HEDP have been tested extensively. Adverse effects are not expected when used in the proposed manner.

Pure HEDP exhibits low acute oral and dermal toxicity. The oral LD_{50} ranged from 1,340 to 3,130 milligrams/kilogram (mg/kg) (Toxicity Category III) and the dermal LD_{50} ranged from 7,940 to greater than 10,000 mg/kg (Toxicity Category IV). HEDP is moderately irritating to the skin (Toxicity Category III) and is corrosive to the eyes (Toxicity Category I).

2. *Genotoxicity*. No mutagenic activity was observed in microbial assays using five *Salmonella* strains or in a L5178Y TK mouse lymphoma cell point mutation assay, with and without mammalian microsomal activation. There are no significant genotoxicity concerns for HEDP.

3. *Reproductive and developmental toxicity*. No reports were found in the open literature indicating that HEDP caused developmental or reproductive effects.

4. *Subchronic toxicity*. Subchronic studies were conducted in both rats and dogs. In these studies, rats were exposed to HEDP in the diet at concentrations up to 30,000 parts per million (ppm) and in dogs up to 10,000 ppm. Histopathological evaluations of tissues from the reproductive systems in male and female animals of both species did not demonstrate any lesions, morphological changes or weight variations. Although the functionality of the reproductive systems were not evaluated, there was no indication that the HEDP treatment affected these tissues.

In a 90–day feeding study, rats were fed diets containing 3,000, 10,000 or 30,000 ppm HEDP (disodium monohydrate salt). At 30,000 ppm average body weight gains of both males and females were reduced and absolute and relative liver weights of males were decreased. Increased erythrocyte counts (males), decreased hemoglobin concentration (both sexes), decreased hematocrit values (both sexes), and decreased leukocyte counts (females at 84–days only) were observed at 30,000 ppm. No other hematologic, urinalysis, or clinical chemistry parameter was affected. The no-observed-effect level (NOEL) was greater than 10,000 ppm.

The disodium monohydrate salt of HEDP was administered to beagle dogs at dietary concentrations of 1,000, 3,000, or 10,000 ppm for 90–days. No adverse hematologic, biochemical, or histopathologic effects were observed. The NOEL was 10,000 ppm.

The NOEL from both the rat and the dog studies was 10,000 ppm. Based on the data from these studies the daily intake of HEDP can be estimated. The estimated intake of HEDP by male and female rats at 10,000 ppm was 635 and 724 milligrams/kilogram/day (mg/kg/day), respectively. The estimated intake of HEDP by male and female dogs at 10,000 ppm was 278 and 385 mg/kg/day, respectively.

5. *Carcinogenicity*. Nothing in the available literature suggests that HEDP is known to be a carcinogen; thus, a discussion of aggregate excess lifetime cancer risk resulting from exposure to the chemical from residues in food and drinking water (ground and surface water) and from residential and other non-occupational source(s) is not applicable.

6. *Endocrine effects*. HEDP does not acts as an endocrine disrupter or possess intrinsic hormonal activity.

B. Aggregate Exposure

1. *Dietary exposure*—i. *Food*. There are no established U.S. food tolerances for HEDP. Because the compound has an affinity for water, residues are expected to drain away with wash water instead of ''sticking'' to the food items. Tests on broccoli and tomatoes indicate only trace amounts of HEDP remain on these food items that have contacted treated equipment. For broccoli (cut), an average of 0.78 ppb HEDP residues were found. An average of 0.09 ppb HEDP residues were found on tomatoes. While these data are not meant to be representative of all fruits and vegetables, it shows that any potential HEDP residues are not significant. Dietary exposure from the proposed use is possible; however, any residues that may remain are expected to be very minimal and, because of the low toxicity of the undiluted raw material, these residues would not be of toxicological concern.

ii. *Drinking water*. There should be no concern about the potential for transfer of HEDP residues to human drinking water because it does not interfere with routine removal of organics in laboratory semi-continuous activated sludge sewage treatment units. Because of the physical chemistry of this compound, it is unlikely that any States are conducting water monitoring programs for HEDP.

HEDP is proposed for use as an inert ingredient in a pesticide formulation used on fruits, vegetables, tree nuts, cereal grain, herbs, and spices. HEDP is classified as slow to intermediate in biodegradation to CO_2. Additionally, the biodegradation is accelerated by light. Data in the aforementioned reference indicates that 0.2 ppm HEDP solutions in a mineral medium biodegrade by 79% in 3–days when exposed to sunlight.

The maximum expected concentration of HEDP in waste water treatment streams from the use of the proposed pesticide product is 0.07 ppm. Furthermore, HEDP will biodegrade in waste water treatment plants and in the environment. Therefore, HEDP released from the use of the proposed pesticide product poses no threat to drinking water.

iii. *Non-dietary, non-occupational exposure*. The estimated non-occupational exposure to HEDP has been evaluated based on its proposed use pattern.

The compound, as an inert ingredient in a pesticide formulation in the form of a soluble concentrate/liquid, is used in industrial and commercial settings.

HEDP use in homes does not occur.

The potential for significant non-occupational non-dietary exposure under the use proposed in this petition to the general population (including infants and children) is unlikely. HEDP is proposed in this petition to be used only at commercial establishments (including farms) and is not to be used in or around the home.

iv. *Environmental fate and ecological effects*. HEDP is classified as slow to intermediate in biodegradation to CO_2. Additionally, the biodegradation is accelerated by light. Data in the aforementioned reference indicates that 0.2 ppm HEDP solutions in a mineral medium biodegrade by 79% in 3–days when exposed to sunlight. Degradation of HEDP has been shown in several test soils at rates similar to biodegradable linear alkybenzenesulfonate. Complexes of HEDP with copper (II) and iron (III) rapidly photodegrade in aqueous solution under irradiation from a mercury arc lamp in the laboratory.

Environmental effects data on HEDP (including Daphnia magna, Midge Larvae, Grass Shrimp, Oyster Shell Deposition, Bluegill Sunfish, Rainbow Trout, Channel Catfish, and Sheepshead Minnow) show HEDP is classified as practically non-toxic, with the exception of oysters, in which it is classified as being slightly toxic. The maximum expected concentration of HEDP in waste water treatment streams from the use of the proposed pesticide product is 0.07 ppm. This value is three orders of magnitude below the lowest toxic concentration listed above (oysters). Furthermore, HEDP will biodegrade in waste water treatment plants and in the environment. Therefore, HEDP released from the use of the proposed pesticide product poses no threat to aqueous organisms present in the environment.

C. Cumulative Effects

Review of EPA's list of inert ingredients found no similar approved inert ingredients or compounds with similar structures.

The list of currently registered active ingredients from the National Pesticide Information Retrieval System (NPIRS) was reviewed for compounds similar to HEDP. The ethylene-releasing growth regulator ethephon (chemical name 2-chloroethylphosphonate) is somewhat similar in that a two-carbon fragment is the organic component of a phosphonic acid. However, HEDP contains two phosphonic acid groups attached to the same carbon and contains no chlorine. Ethephon, on the other hand, contains a single phosphonic moiety but has a chlorine attached at the 2-position of the ethyl group. Further, the mode of action of ethephon is to release ethylene by rapidly decomposing with loss of the chlorine and the phosphonate; this pathway is not available for HEDP. Thus, combining exposures to HEDP with this compound is not appropriate.

D. Safety Determination

1. *U.S. population*. Tests conducted by Ecolab Inc. indicate very low residues of HEDP are expected to remain on treated commodities (whether raw agricultural commodities or processed); thus, exposure to the U.S. general population including infants and children would be very minimal as a result of the proposed use.

In testing for Ecolab using tomatoes and broccoli the HEDP residue on these vegetables was generally below 1 ppb. Assuming that a normal adult weighing 70 kg ingests approximately 2,000 g of food a day, and that all the food ingested is fruits and vegetables that contain a 1 ppb residue of HEDP, the daily intake of HEDP would be estimated at 0.000027 mg/kg/day.

Comparing the daily intake of HEDP under these worst case situations with the lowest NOEL for HEDP in the subchronic animal studies (278 mg/kg/day) provides a margin of exposure of approximately 10,000,000. Clearly this larger margin of exposure demonstrates the lack of concern about the presence of the minute residues of HEDP on food.

Dietary exposure to HEDP is possible; however, any residues that may remain are expected to be very minimal and, because of the low toxicity of the undiluted raw material, these residues would not be of toxicological concern.

Therefore, exposure of this inert ingredient (from the use proposed in this petition) to the U.S. general population would not pose a health risk.

2. *Infants and children*. HEDP should not pose a health risk to the U.S. population subgroup of infants and children.

Tests conducted by Ecolab Inc. indicate very low residues of HEDP are expected to remain on treated commodities (whether raw agricultural commodities or processed); thus, exposure to the U.S. general population including infants and children would be very minimal as a result of the proposed use. Dietary exposure to HEDP is possible; however, any residues that may remain are expected to be very minimal and, because of the low toxicity of the undiluted raw material, these residues would not be of toxicological concern.

Therefore, exposure of this inert ingredient (from the use proposed in this petition) should not pose a health risk to the U.S. population subgroup of infants and children.

E. Analytical Method

Because this petition is for an exemption from the requirement of a tolerance, an enforcement method for HEDP is not needed. However, a spectrophotometric method to determine residues of HEDP has been submitted to the Agency .

F. International Tolerances

The petitioner understands that there are no current established Maximum Residue Levels for HEDP.

2. Wacker Silicones Corporation

PP 7E4794

EPA has received a pesticide petition (PP 7E4794) from Walker Silicones Corporation, on behalf of Wacker-Chemie, 3301 Sutton Road, Adrain, Michigan 49221-9397 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend the exemption from the requirement of a tolerance established under 40 CFR 180.1001(c) for the residues of pentaerythritol stearates (CAS. No. 85116-93-4) from 25 ppm to 500 ppm.

EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting the petition. Additional data may be needed before EPA rules on the petition.

A. Proposed Use Practices

As in the tolerance exemption established and published in the **Federal Register** on July 3, 1996 (61 FR 34741–34743) (FRL–5381–2), the proposed use of a pentaerythritol stearates which include pentaerythritol monostearate (CAS No. 78–23–9), pentaerythritol distearate (CAS No. 13081–97–5), pentaerythritol tristearate (CAS No. 28188–24–1), pentaerythritol tetrastearate (CAS No. 115–83–3) is limited to agricultural food use. This includes use on crops and seeds used to grow crops.

B. Toxicological Profile

A summary of the toxicology data is included in the proposed rule that was published in the **Federal Register** on April 17, 1996 (61 FR 16747–16749) (FRL–5355–7).

Pentaerythritol stearates are large, branched hydrocarbons. All carbon-carbon bonds are single bonds. Degradation is anticipated in the presence of enzymes. Hypothesized degradation products include free pentaerythritol and stearic acid (a natural product). The degradation products are likely to be polar and readily eliminated in urine.

1. *Acute toxicity*. The acute oral LD_{50} in rats was determined to be >2,000 mg/kg. This study demonstrates that the mixture of pentaerythritol stearates is practically non-toxic to mammals. Wacker Silicones Corporation and Wacker-Chemie are not aware of any data that suggest that pentaerythritol stearates pose any potentially greater acute risk to infants or children.

2. *Reproductive and developmental toxicity*. Wacker Silicones Corporation and Wacker-Chemie are not aware of any developmental or reproductive effects resulting from exposure to pentaerythritol stearates.

3. *Chronic toxicity*. Wacker Silicones Corporation and Wacker-Chemie are not aware of any effects resulting from chronic exposure to pentaerythritol

stearates. In addition, Wacker Silicones Corporation and Wacker-Chemie are not aware of any data that suggests that chronic exposure to pentaerythritol stearates, including during infancy and childhood, poses any potentially greater lifetime risk.

4. *Carcinogenicity*. Wacker Silicones Corporation and Wacker-Chemie are not aware of any oncogenic effects resulting from exposure to pentaerythritol stearates. In addition, Wacker Silicones Corporation and Wacker-Chemie are not aware of any data that suggests that chronic exposure to pentaerythritol stearates, including during infancy and childhood, poses any potentially greater lifetime cancer risk.

5. *Endocrine effects*. Pentaerythritol stearates are not structurally similar to any compounds with known endocrine effects. Wacker Silicones Corporation and Wacker-Chemie are not aware of any endocrine effects resulting from exposure to pentaerythritol stearates either individually or in combination with other substances.

C. Aggregate Exposure

Exposure to pentaerythritol stearates via both the diet and drinking water is anticipated to be negligible. Pentaerythritol stearates are ingredients in a product that Wacker-Chemie proposes to market in the United States exclusively as an inert ingredient in pesticide formulations that are used exclusively on crops and seeds used to grow crops.

1. *Dietary exposure— Food*. In its review on the previous exemption, EPA's Chemistry Branch determined that the maximum residue of pentaerythritol stearates in food/feed resulting from a single application of pentaerythritol stearates at 0.53 grams/acre (0.0012 lb/acre) would be 0.6 ppm assuming that (a) all the pentaerythritol stearates contained in the pesticide formulation applied to the crop are in the harvested commodity, (b) there is no loss of residue through weathering or volatilization, and (c) pentaerythritol stearates are used on low yield crops (2,000 lb/acre). Further assuming that (i) a maximum of 10 applications per season, (ii) all crops are treated at the proposed maximum seasonal rate, the maximum theoretical seasonal residues of pentaerythritol stearates would be 6 ppm.

Actual seasonal residues are anticipated to be several orders of magnitude lower than the 6 ppm calculated maximum residue for the following reasons:

(i) Only a portion of the pesticide spray is intercepted by edible plant parts.

(ii) Degradation of residues following application is anticipated.

(iii) Treated crops may be medium or high yield crops.

(iv) Crops generally received less than 10 applications per season.

(v) Only a small percentage of pesticide formulations will include pentaerythritol stearates as an inert ingredient.

Actual seasonal residues of pentaerythritol stearates are therefore anticipated to be negligible.

2. *Drinking water*. Exposure to pentaerythritol stearate via drinking water will be negligible. Pentaerythritol stearates have very low solubility in water (>0.1 mg/100 g water at 30° C). Solubility in organic solvents is also anticipated to be low due to the high molecular weight (403– 1201 amu) of the pentaerythritol stearates. The potential for pentaerythritol stearate contamination of ground water or surface water is therefore negligible. If residues did contaminate ground water or surface water, it is highly probable that the low solubility of pentaerythritol stearates in water and organic solvents would result in removal of the residues via standard drinking water purification techniques.

3. *Non-dietary, non-occupational exposure*. Pentaerythritol stearates are ingredients in a product that Wacker-Chemie proposes to market in the United States exclusively as an inert ingredient in pesticide formulations that are used exclusively on crops and seeds used to grow crops. No non-occupational exposure of the United States population to pentaerythritol stearates will result from the proposed use of pentaerythritol stearates.

D. Cumulative Effects

Pentaerythritol stearates do not have any known significant toxicological mechanism or mode of action. Therefore, there is no known significant cumulative risk associated with the proposed use of pentaerythritol stearates.

E. Safety Determination

1. *U.S. population*. Exposure to pentaerythritol stearates via both the diet and drinking water is anticipated to be negligible. Pentaerythritol stearates are ingredients in a product that Wacker-Chemie proposes to market in the United States exclusively as an inert ingredient in pesticide formulations that are used exclusively on crops and seeds used to grow crops. No non-occupational exposure of the United States population to pentaerythritol stearates will result from the proposed use of pentaerythritol stearates. Aggregate exposure to pentaerythritol stearates is therefore anticipated to be negligible.

2. *Infants and children*. Wacker Silicones Corporation and Wacker-Chemie are not aware of any data that suggest that pentaerythritol stearates pose any potential greater acute or chronic risk to infants or children.

F. International Tolerances

There are no Codex maximum residue levels (MRLs) or exemptions from MRLs for pentaerythritol stearates established for residues of pentaerythritol stearates.

[FR Doc. 97–32932 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50838; FRL–5761–5]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit to the following applicant. The permit is in accordance with, and subject to, the provisions of 40 CFR part l72, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, 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: 1921 Jefferson Davis Highway, Rm. 239, CM #2, Arlington, VA, 703–305–5697, e-mail: tompkins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following experimental use permit:

62719–EUP–1. Issuance. DowElanco, 9330 Zionsville Road, Indianapolis, IN 46268–1054. This experimental use permit allows the use of 7,000 pounds of the herbicide triclopyr on 1,950 aquatic acres to evaluate the control of various weeds. The program is authorized only in the States of Alabama, Arkansas, California, Florida, Georgia, Idaho, Illinois, Indiana, Kentucky, Louisiana, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Vermont, Virginia, Washington, and Wisconsin. The

experimental use permit is effective from November 25, 1997 to December 31, 1998. Time-limited tolerances have been established for residues of the active ingredient in or on fish and shellfish (40 CFR 180.417).

Persons wishing to review this experimental use permit are referred to the designated product manager. Inquires concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: December 9, 1997.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 97–32934 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5935–8]

Proposed Administrative Settlement Under The Comprehensive Environmental Response, Compensation, And Liability Act; In Re: Parcel A—Industri-Plex Superfund Site; Woburn, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* A document is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA Dayton Hudson Corporation and National Development Associates of New England, Inc. for injunctive relief or for costs incurred or to be incurred by EPA in conducting response actions at the Industri-Plex Superfund Site in Woburn, Massachusetts.

DATES: Comments must be provided on or before January 16, 1998.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts 02203, and should refer to: Agreement and Covenant Not to Sue Re: Parcel A, Industri-Plex Superfund Site, Woburn, Massachusetts, U.S. EPA Docket No. CERCLA–I–98–1009.

FOR FURTHER INFORMATION CONTACT: Daniel H. Winograd, U.S. Environmental Protection Agency, J.F.K. Federal Building, Mailcode RCT, Boston, Massachusetts 02203, (617) 565–3686.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, notification is hereby given of a proposed prospective purchaser agreement concerning the Industri-Plex Superfund Site in Woburn, MA. The settlement was approved by EPA Region I, subject to review by the public pursuant to this document. Dayton Hudson Corporation and National Development Associates of New England, Inc. have executed signature pages committing them to participate in the settlement. Under the proposed settlement, Dayton Hudson Corporation and National Development Associates of New England, Inc. will construct and operate a retail shopping complex and pay $30,000 to the Hazardous Substance Superfund. In addition, all of the settling parties agree to abide by institutional controls and to provide access to the property. EPA believes the settlement is fair and in the public interest.

EPA is entering into this agreement under the authority of CERCLA section 101 *et seq.* which provides EPA with authority to consider, compromise, and settle a claim under sections 106 and 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. The U.S. Department of Justice has also signed this agreement. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this document.

A copy of the proposed administrative settlement may be obtained in person or by mail from Daniel H. Winograd, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode RCT, Boston, Massachusetts 02203, (617) 565–3686.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA–I–98–1009).

Dated: December 4, 1997.

Patricia Meaney,

Acting Regional Administrator.

[FR Doc. 97–32923 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–5936–1]

Proposed Administrative Settlement Under The Comprehensive Environmental Response, Compensation, and Liability Act; In Re: Norwood PCB Disposal Site; Norwood, MA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is proposing to enter into a prospective purchaser agreement to address claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* This document is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve the liability under CERCLA of Joseph Laham, individually, and 921 Inc. for injunctive relief or for costs incurred or to be incurred by EPA in conducting response actions at properties on the Norwood PCB Disposal Superfund Site in Norwood, Massachusetts.

DATES: Comments must be provided on or before January 16, 1998.

ADDRESSES: Comments should be addressed to the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts 02203, and should refer to: In re: Joseph Laham and 921 Inc., U.S. EPA Docket No. CERCLA–I–97–1044.

FOR FURTHER INFORMATION CONTACT: Robert Cianciarulo, U.S. Environmental Protection Agency, J.F.K. Federal Building, Mailcode RCT, Boston, Massachusetts 02203, (617) 573–5718.

SUPPLEMENTARY INFORMATION: In accordance with the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended

(CERCLA), 42 U.S.C. 9601 *et seq.*, notification is hereby given of a proposed prospective purchaser agreement concerning the Norwood PCB Disposal Site in Norwood, MA. The settlement was approved by EPA Region I on September 29, 1997, subject to review by the public pursuant to this document. Joseph Laham, individually, and 921, Inc., collectively the Settling Respondents, have executed a signature page committing them to participate in the settlement. Under the proposed settlement, the Settling Respondents are required to establish a trust fund to finance redevelopment activities at the site, to pay $10,000 to the Hazardous Substance Response Trust Fund, to fund specified redevelopment activities and to demolish a Groundwater Treatment System building at the end of its useful life. Further, Respondents are required to provide access to the site and to impose on the property subject to the agreement institutional controls that will protect the remedial action at the site.

EPA is entering into this agreement under the authority of CERCLA section 101 *et seq.* which provides EPA with authority to consider, compromise, and settle a claim under sections 106 and 107 of CERCLA for costs incurred by the United States. The U.S. Department of Justice will have approved this settlement in writing prior to the agreement becoming effective. EPA will receive written comments relating to this settlement for thirty (30) days from the date of publication of this document.

A copy of the proposed administrative settlement may be obtained in person or by mail from Robert Cianciarulo, U.S. Environmental Protection Agency, JFK Federal Building, Mailcode HIO, Boston, Massachusetts 02203, (617) 573–5778.

The Agency's response to any comments received will be available for public inspection with the Docket Clerk, U.S. Environmental Protection Agency, Region I, JFK Federal Building, Mailcode RCG, Boston, Massachusetts (U.S. EPA Docket No. CERCLA–I–97–1044).

Dated: September 29, 1997.

Patricia Meaney,

Assistant Regional Administrator.

[FR Doc. 97–32922 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby given 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.: 202–010689–069
Title: Transpacific Westbound Rate Agreement.
Parties:
American President Lines, Ltd. (''APL'')
Hapag-Lloyd Container Line GmbH
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Neptune Orient Container Line, Inc. (''NOL'')
Nippon Yusen Kaisha, Ltd.
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Synopsis: The proposed amendment provides that, as affiliated companies, APL and NOL shall have a single vote on Agreement matters.

Agreement No.: 202–011528–005
Title: Japan/U.S. Eastbound Freight Conference
Parties:
American President Lines, Ltd. (''APL'')
Hapag-Lloyd Container Line GmBH
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
A.P. Moller-Maersk Line
Neptune Orient Lines, Ltd. (''NOL'')
Orient Overseas Container Line (U.S.A.)
P&O Nedlloyd B.V.
P&O Nedlloyd Limited
Sea-Land Service, Inc.
Wilhelmsen Lines AS
Synopsis: The proposed amendment provides that APL and NOL shall be considered a single member for voting and quorum purposes in conducting the Agreement's business.

Dated: December 11, 1997.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–32818 Filed 12–16–97; 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.

Expa Corporation, 4719 N.W., 72nd Avenue, Miami, FL 33166, Officers: Jose F. Estrada, President, Cecilia Estrada, Secretary

Olympic International Freight Forwarders, 2058 NE Lind Court, Poulsbo, WA 98370, Kelly M. Cloward, Sole Proprietor

R S Exports, Inc., 701 W. Manchester Blvd., Suite 203, Inglewood, CA 90301, Officer: Charles Rosales, President

Dated: December 11, 1997.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 97–32817 Filed 12–16–97; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 2, 1998.

A. Federal Reserve Bank of San Francisco (Pat Marshall, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. The Langer Family Limited Partnership, Helen Langer Smith, General Partner, Port Orchard, Washington; to retain voting shares of Olympic Bancorp, Port Orchard, Washington, and thereby indirectly retain shares of Kitsap Bank, Port Orchard, Washington.

Board of Governors of the Federal Reserve System, December 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32917 Filed 12-16-97; 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 January 2, 1998.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Deutsche Bank, Frankfurt am Main, Federal Republic of Germany; to acquire through its wholly owned subsidiary, Deutsche Morgan Grenfell, Inc., New York, New York, certain assets of National Westminster Bank PLC, London, England, and of its wholly owned subsidiary NatWest Securities Corporation, New York, New York, and thereby engage in financial and investment advisory activities, pursuant to § 225.28(b)(6) of the Board's Regulation Y; securities brokerage activities; riskless principal activities; private placement services; futures commission merchant activities and other transactional services, pursuant to § 225.28(b)(7) of the Board's Regulation Y; investing and trading activities, pursuant to § 225.28(b)(8)(ii) of the Board's Regulation Y. Notificant also proposes to engage as principal in (1) buying and selling bank-ineligible securities; and (2) forward contracts, options, futures, swaps, and similar contracts, whether traded on exchanges or not, on bank-ineligible securities. *See Deutsche Bank AG*, 79 Fed. Res. Bull 161 (1995).

Board of Governors of the Federal Reserve System, December 12, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–32916 Filed 12-16-97; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Privacy Act of 1974; System of Records

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Amend payroll records system.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is amending systems notice, FRTIB–5, Payroll Records, to include new routine uses allowing disclosure to the Department of Health and Human Services Federal Parent Locator System for the purpose of locating Board employees involved in child support cases and enforcing employees' child support obligations.

DATES: Comments must be received no later than January 16, 1998. The proposed notice will be effective January 16, 1998 unless the Board receives comments which would result in a different determination. If comments received result in a different determination, the document will be republished with the change.

ADDRESSES: Comments may be sent to Thomas L. Gray, Assistant General Counsel for Administration, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, D.C. 20005.

FOR FURTHER INFORMATION CONTACT: Thomas L. Gray, Assistant General Counsel for Administration, (202) 942–1662. FAX (202) 942–1676.

SUPPLEMENTARY INFORMATION:

I. Discussion of Proposed Additions to Routine Use

Pursuant to Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the Board will disclose data from its payroll system of records to the Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services (DHH) for use in its Federal Parent Locator System (FPLS) and Federal Tax Offset System.

The FPLS is a computerized network through which States may request location information from Federal and State agencies to find non-custodial parents and their employers for the purposes of establishing paternity and securing support. Effective October 1, 1997, the FPLS will be enlarged to include the National Directory of New Hires, a database containing information on employees commencing employment, quarterly wage data on private and public sector employees, and information on unemployment compensation benefits. Effective October 1, 1998, the FPLS will be further expanded to include a Federal Case Registry. The Federal Case Registry will contain abstracts on all participants involved in child support and enforcement cases. When the Federal Case Registry is instituted, its files will be matched on an ongoing basis against the files in the National Directory of New Hires to determine if an employee is a participant in a child support case anywhere in the country. If the FPLS identifies a person as being a participant in a State child support case, that State will be notified of the participant's current employer. State requests to the FPLS for location information will also continue to be processed after October 1, 1998.

Data to be disclosed by the Board to the FPLS include: employee name, address, Social Security number, and quarterly wages. In addition, names and Social Security numbers (SSN) submitted by the Board to the FPLS will be disclosed by the DHH to the Social Security Administration for verification to ensure that the SSN provided is correct. The data disclosed to the FPLS will also be disclosed by the DHH to the Department of the Treasury for use in verifying claims for the advance payment of the earned income tax credit or to verify a claim of employment on a tax return.

II. Compatibility of Proposed Routine Uses

We are proposing these routine uses in accordance with the Privacy Act of 1974, as amended (5 U.S.C. 552a(b)(3)). The Privacy Act permits the disclosure of information about individuals without their consent for a routine use where the information will be used for a purpose which is compatible with the purpose for which the information was originally collected. The Office of Management and Budget has indicated that a compatible use is a use which is necessary and proper. See OMB Guidelines, 51 FR 18982, 18985 (1986). Since the proposed uses of the data are required by Pub. L. 104–193, they are clearly necessary and proper uses, and therefore compatible uses which meet Privacy Act requirements.

III. Effect of the Proposed Changes on Individuals

We will disclose information under the proposed routine uses only as required by Pub. L. 104–193 and as permitted by the Privacy Act.

Accordingly, FRTIB–5, Payroll Records, system notice originally published in the **Federal Register** at 52 FR 12065 (April 14, 1987) and finalized at 55 FR 18949 (May 7, 1990) is further amended by adding new text after the existing text for ''Routine Uses of Records'' to read as follows:

FRTIB–5

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

* * * * *

The information in this system will also be disclosed as follows:

a. To the Department of Health and Human Services Federal Parent Locator System and Federal Tax Offset System for use in locating current and former employees involved in child support and paternity cases and identifying their income sources to be used in child support orders and enforcement actions.

b. To the Department of Health and Human Services Federal Parent Locator System for release to the Social Security Administration for verifying Social Security numbers in connection with the operation of the FPLS.

c. To the Department of Health and Human Services Federal Parent Locator System for release to the Department of the Treasury for purposes of administering the Earned Income Tax Credit Program and verifying a claim with respect to employment in a tax return.

* * * * *

Roger W. Mehle,

Executive Director.

[FR Doc. 97–32830 Filed 12–16–97; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/27/97 AND 11/07/97

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Thermo Electron Corportion, Allied Healthcare Products, Inc., Bear Medical Systems, Inc	98–0078	10/27/97
Heritage Fund I, L.P., Donald R. Swortwood and Letitia H. Swortwood, Westek Associates, Inc	98–0107	10/27/97
Silicon Valley Group, Inc., Tinsley Laboratories, Inc., Tinsley Laboratories, Inc	98–0135	10/27/97
Kenneth A. Hendricks, Perfection Roofing Materials, Inc., Perfection Roofing Materials, Inc	98–0140	10/27/97
Kenneth A. Hendricks, United Building Supply, Inc., United Building Supply, Inc	98–0141	10/27/97
Renal Treatment Centers, Inc., Satellite Dialysis Centers, Inc., California Kidney Centers, A California partnership, Ca	98–0150	10/27/97
Renal Treatment Centers, Inc., Kidney Healthcare Centers, Inc., California Kidney Centers, a California general partner	98–0151	10/27/97
Unit Corporation, H.C. Hickman and Bonnie B. Hickman (Husband and Wife), Hickman Drilling Company	98–0152	10/27/97
Kenneth A. Hendricks, Marshall Roofing Supply, Inc., Marshall Roofing Supply, Inc	98–-0160	10/27/97
CGW Southeast Partners III, L.P., Youth Services International, Inc., YSI Holdings-Georgia, Inc	98–0178	10/27/97
BTG, Inc., Micros-To-Mainframes, Inc., Micros-To-Mainframes, Inc	98–0184	10/27/97
Blackstone Capital Partners III Merchants Banking Fnd LP, Whitehall Associated, L.P., Borden Decorative Products Holdings, Inc	98–0187	10/27/97
Nippon Telegraph and Telephone Corporation, The Associated Group, Inc., Teligent, LLC	98–0200	10/27/97
MicroAge, Inc., Gaines Computer Service, Inc., Gaines Computer Service, Inc	98–0201	10/27/97
Retail Networks, Inc., Silas Creek Retail, Inc. (Debtor-in-Possession), Silas Creek Retail, Inc	98–0207	10/27/97
HBO & Company, National Health Enhancement Systems, Inc., National Health Enhancement Systems, Inc	98–0208	10/27/97
Mr. Reinhard Mohn (a German person), K–III Communications Corporation, Newbridge Book Clubs	98–0212	10/27/97
Fleet Financial Group, Inc., Columbia Management Company, Columbia Management Company	98–0214	10/27/97
Fleet Financial Group, Inc., Columbia Funds Management Company/Columbia Trust Co., Columbia Funds Management Company/Columbia Trust Co	98–0215	10/27/97
HealthSouth Corporation, Horizon/CMS Healthcare Corporation, Horizon/CMS Healthcare Corporation	97–1816	10/28/97
Petco Animal Supplies, Inc., PetCare Plus, Inc., PetCare Plus, Inc	97–3698	10/28/97
The Nebraska Synod-Evangelical Luthern Church, Quorum Health Group, Inc., Midlands Medical Associates, L.P	98–0015	10/28/9
American Home Products Corporation, Genset SA (A French Company), Genset Asset	98–0049	10/28/97
NOVA Corporation, Firstar Corporation, Elan Merchant Services, LLC	98–0115	10/28/97
The Restaurant Company, Perkins Family Restaurants, LP, PFR Assets	98–0133	10/28/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/27/97 AND 11/07/97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Adidas AG, (a German company), Sport Development S.C.A. (a French company), Salomon S.A	98–0139	10/28/97
Cable Plus Holding Company, MultiTechnology Services, L.P., MultiTechnology Services, L.P	98–0172	10/28/97
Ameritech Corporation, Sprint Corporation, Central Telephone Company of Illinois; The Cendon	97–1889	10/29/97
Chiquita Brands International, Inc., Stokely USA, Inc., Stokely USA, Inc	98–0063	10/29/97
Asplundh Tree Expert Co., Central Locating Service, Ltd., Central Locating Service, Ltd	98–0072	10/29/97
American Disposal Services, Inc., John Sexton Contractors Co., John Sexton Contractors Co	98–0142	10/29/97
Marshall Industries, Sterling Electronics Corporation, Sterling Electronics Corporation	98–0145	10/29/97
Daisytek International Corporation, Richard D. Schoenberg, Steadi Systems, Ltd	98–0173	10/29/97
Thomas H. Lee Equity Fund III, Fisher Scientific International, Inc., Fisher Scientific International, Inc	98–0177	10/29/97
Degussa Aktiengesellchaft, Ney Dental International, Inc. a Debtor in Possession, Ney Dental International, Inc	98–0182	10/29/97
SOS Staffing Services, Inc., Michael A. Jones, Jones Assets	98–0191	10/29/97
Arctic Slope Regional Corporations, Dale R. and Carol A. Lindsey, Harbor Enterprises, Inc. (d/b/a Petro Marine Services)	98–0192	10/29/97
Rauma Corporation, James L. Read, Read Corporation; Read Management Inc. & F.T. Read &	98–0193	10/29/97
Citadel Communications Corporation, Charles H. Wilson and Jo Anne J. Wilson, Pacific Northwest Broadcasting Corporation	98–0209	10/29/97
Action Performance Companies, Inc., Voting Trust dated December 4, 1968 of Hallmark Cards, Revell-Monogram, Inc	98–0220	10/29/97
Electro Scientific Industries, Inc., Applied Intelligent Systems, Inc., Applied Intelligent Systems, Inc	97–3696	10/30/97
John A. Catsimatidis, Sloan's Supermarkets, Inc., Sloan's Supermarkets, Inc	98–0060	10/30/97
Midcoast Energy Resources, Inc., Ted Collins, Jr., Republic Gas Partners, LLC & v/s of Mid Louisiana et al	98–0104	10/30/97
Wallace Computer Services, Inc., Mark C. Pope, III, Graphics Industries, Inc	98–0128	10/30/97
Whitehall Associates, L.P., Melamine Chemicals, Inc., Melamine Chemicals, Inc	98–0197	10/30/97
LDI, Ltd., Thompson PBE, Inc., Thompson PBE, Inc	98–0248	10/30/97
Rohr, Inc., James J. Lockshaw, Tolo Incorporated	98–0122	10/31/97
Fred's Inc., CVS Corporation, Big B, Inc. & Big B Drugs, Inc	98–0171	10/31/97
Steven E. Karol, Harrisons and Crosfield plc, Harcros Lumber and Building Supplies, Inc. d/b/a Moore'	98–0238	10/31/97
L. Francis Rooney, III, Harrisons & Crosfield plc, Harcros Lumber and Building Supplies, Inc. d/b/a Moore'	98–0242	10/31/97
Jordan Industries, Telephone Services, Inc. of Florida, Telephone Services, Inc. of Florida	98–0245	10/31/97
William J. Barkett, Metropolitan Life Insurance Company, MLI assets plus Met West Agribusiness, Inc	98–0287	10/31/97
Precision Castparts Corp., Harnischfeger Industries, Inc., J&L Fiber Services, Inc	98–0341	10/31/97
American General Corporation, Western National Corporation, Western National Corporation	98–0035	11/02/97
Philip Services Corp. (a Canadian company), Industrial Services Technologies, Inc., Industrial Services Technologies, Inc	98–0036	11/02/97
AMERCO, Encore Financial, Inc., Encore Financial, Inc	98–0038	11/02/97
United States Filter Corporation, John W. & Linda L. VandenBos (Husband and Wife), JWI, Inc	98–0124	11/03/97
James B. Page, Angelica Corporation, Angelica Assets	98–0143	11/03/97
Darwin Deason, Computer Data Systems Inc., Computer Data Systems, Inc	98–0164	11/03/97
Alternative Resources Corporation, International Business Machines Corporation, CGI Systems, Inc	98–0183	11/03/97
E. Bronson Ingram Q–TIP Marital Trust, Empresas Quintec, S.A., Comptacion Tenica S.A.; Cameron Financial Business S.A	98–0194	11/03/97
Frontier Insurance Group Inc., William F. Galtney, Jr., Western Indemnity Insurance Company and Professional	98–0202	11/03/97
J.W. Childs Equity Partners, L.P., Lawrence M. Posen, Beltone Electronics Corporation	98–0211	11/03/97
J.W. Childs Equity Partners, LP, Faye Posen, Beltone Electronics Corporation	98–0221	11/03/97
Madison Dearborn Capital Partners II, L.P., Tuesday Morning Corporation, Tuesday Morning Corporation	98–0227	11/03/97
The Home Depot, Inc., David Katzman, DeeKay Enterprises, Inc.	98–0232	11/03/97
Winterthur Swiss Insurance Company, Federated American Insurance Company, Federated American Insurance Company	98–0236	11/03/97
Titan Exploration, Inc., Offshore Energy Development Corporation, Offshore Energy Development Corporation	98–0244	11/03/97
Atlas Copco A.B. (a swedish company), Keesling Familty Trust, Arizona Mite-E-Lift Corp. Assets	98–0246	11/03/97
Citizens Utilities, Company, Ogden Telephone Company, Ogden Telephone Company	98–0253	11/03/97
Saratoga Partners III, L.P., Equality Acquisition Corp., Equality Acquisition Corp	98–0254	11/03/97
Conseco, Inc., Washington National Corporation, Washington National Corporation	98–0255	11/03/97
University of Pittsburgh Medical Center System, Memorial Hospital of Bedford County, Memorial Hospital of Bedford County	98–0259	11/03/97
Nicholas J. Ferrante, PMT Services, Inc., PMT Services, Inc	98–0260	11/03/97
The Morris Belkin Family Trust, A. Ahlstrom Corporation, Sanford Warranty Company, SJF Aviation Holdings, Inc	98–0261	11/03/97
The Hartford Financial Services Group, Inc., Royal & Sun Alliance Insurance Group, plc, Royal Life Insurance Company of America	98–0262	11/03/97
Apache Corporation, Mobil Corporation, Ampolex (Western Australia) Inc	98–0265	11/03/97
Ingersoll-Rand Company, Robert L. Ogur, Johnstone Pump Company	98–0267	11/03/97
Peter Brant, Bear Island Paper Company, L.P., Bear Island Paper Company, L.P	98–0280	11/03/97
Joseph Allen, Bear Island Paper Company, L.P., Bear Island Paper Company, L.P	98–0281	11/03/97
KKR 1996 Fund, L.P., Norman Lear, Act III Cinemas, Inc	98–0282	11/03/97
Gannett Co., Inc., Maine Radio and Television Company, Maine Radio and Television Company	98–0285	11/03/97
Trivest Fund I, Ltd., Katzenberg Holding Corporation, Katzenberg Holding Corporation	98–0296	11/03/97
Golder, Thoma, Cressey, Rauner Fund V, L.P., Grady F. Burrow, National Computer Print, Inc. an Alabama Corp	98–0308	11/03/97
General Electric Company, InSight Health Services Corp., InSight Health Services Corp	98–0315	11/03/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 10/27/97 AND 11/07/97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Steve L. Volla, Roxborough Memorial Health Foundation, Jamestown Associates, Memorial Properties, Roxborough	98–0352	11/03/97
J.M. Huber Corporation, John Hancock Mutual Life Insurance Co., Nahelo Forest LLC	98–0137	11/04/97
Green Equity Investors, L.P., Larry J. Hochberg and Barbara P. Hochberg, Sportmart, Inc	98–0167	11/04/97
Thermo Electron Corporation, Peek plc, Peek plc	98–0243	11/04/97
AMR Corporation, U.S. Airways Group, Inc., U.S. Airways Group, Inc	98–0249	11/04/97
The Estee Lauder Companies, Inc., Donna Karan International Inc., Donna Karan Studio	98–0251	11/04/97
McLeod Regional Medical Center of the Pee Dee, Inc., SSM Health Care Corporation, Saint Eugene Community Hospital	98–0294	11/04/97
Unifi, Inc., Lamar Beach, SI Holding Company	97–3258	11/05/97
Kimberly-Clark Corporation, Tecnol Medical Products, Inc., Tecnol Medical Products, Inc	97–3526	11/05/97
Glenn R. Jones, Cable TV Fund 12–D, Ltd., Cable Assets	98–0058	11/05/97
New England Investment Companies, L.P., Caisse Nationale de Credit Agricole (a French company), Daniel Breen & Company, L.P	98–0199	11/05/97
Genicom Corporation, Novadyne Acquisition Company, Inc. or Heller Financial, Novadyne Computer Systems, Inc	98–0218	11/05/97
Washington Mutual, Inc., Textron Inc., Avco Financial Services of Hollywood, Fla., Inc	98–0224	11/05/97
Arrow Electronics, Inc., SN Holding, Inc., SN Holding, Inc	98–0230	11/05/97
Robert J. Tomsich, Noel Group, Inc., Curtis Industries, Inc	98–0263	11/05/97
Land O'Lakes, Inc., Alpine Lace Brands, Inc., Alpine Lace Brands, Inc	98–0276	11/05/97
UICI, Information Partners Capital Fund, L.P., EduServ Technologies, Inc	98–0299	11/05/97
Regal Cinemas, Inc., Irwin R. Cohen, Capitol Industries, Inc	98–0317	11/05/97
Brunswick Corporation, Peter D. Brown, Hammer Strength Corporation	98–0226	11/06/97
Grupo UNO S.A. (an Argentine company), Tescorp, Inc., Tescorp, Inc	98–0250	11/06/97
Eastern Environmental Services, Inc., Delmarva Power & Light Company, Pine Grove, Inc	98–0309	11/06/97
Rental Service Corporation, David P. Lanoha, Rent-It-Center,Inc., d/b/a Center Rental and Sales, In	98–0311	11/06/97
Suiza Foods Corporation, Country Fresh, Inc., Country Fresh, Inc	98–0031	11/07/97
International Business Machines Corporation, Unison Software, Inc., Unison Software, Inc	98–0064	11/07/97
Pluma, Inc., Harold Robinson, Frank L. Robinson Company	98–0300	11/07/97
PPC Holdings, Inc., Judd's, Incorporated, Judd's Incorporated	98–0312	11/07/97
American Buildings Company, United Dominion Industries Limited, Windsor Door Division of United Dominion Industries Ltd	98–0313	11/07/97
Union Bank of Switzerland, William Blair Capital Partners V, L.P., GNWC Wire Cable & Network Products, Inc	98–0332	11/07/97
MBNA Corporation, National Commerce Bancorporation, National Bk. of Commerce, Nashville Bk of Commerce et al	98–0335	11/07/97
United States Filter Corporation, Puro Water Group, Inc., Puro Water Group, Inc	98–0340	11/07/97
Warburg, Pincus Ventures, LP, Time Warner Inc., Cinamerica Theatres, LP	98–0342	11/07/97
Warburg, Pincus Ventures, LP, Mr. Sumner M. Redstone, Cinamerica Theatres, LP	98–0343	11/07/97
N.V. Koninklijke (Royal Dutch Shell) (a Dutch company), Bechtel Group, Inc., International Generating Co., & DGC Holdings, Ltd	98–0347	11/07/97
Hicks, Muse, Tate & Furst Equity Fund III, L.P., C. G. Reuther, III, Reuther's Sea Food Company, Inc., Reuther, Inc	98–0353	11/07/97
Hicks, Muse, Tate & Furst Equity Fund III, L.P., David A. Pippin, Reuther's Sea Food Company, Inc., Reuther, Inc	98–0354	11/07/97
Dynacare Inc., General Health Systems, Louisiana Reference Laboratories, Inc	98–0356	11/07/97
Jerry E. Kimmel, Shelter Components Corporation, Shelter Components Corporation	98–0360	11/07/97
Guidant Corporation, EndoVascular Technologies, Inc., EndoVascular Technologies, Inc	98–0365	11/07/97
Fuji Photo Film Co., Ltd., International Paper Company, Anchor/Lith-Kem-Ko, Inc	98–0378	11/07/97
Berkshire Fund IV, Limited Partnership, Robert Stephen Holdings Limited (a U.K. company), Holmes Products Corp	98–0380	11/07/97
ALRENCO, Inc., RTO, Inc., RTO, Inc	98–0390	11/07/97
John W. Kluge, Image Entertainment, Inc., Image Entertainment, Inc	98–0392	11/07/97
United Auto Group, Inc., Homer D. Skelton, Covington Pike Toyota, Inc., Homer Skelton, Inc. Homer	98–0395	11/07/97
Untied Auto Group, Inc., Paulette and Gene Doe (husband and wife), Covington Pike Dodge, Inc	98–0396	11/07/97
Incentive AB, Memorial Health System, Memorial Medical Center, Inc	98–0404	11/07/97
Ohio Edison Company, Roth Bros., Inc., Roth Bros., Inc	98–0416	11/07/97
Boston Chicken, Inc., Boston Chicken, Inc., Great Lakes Bagels, L.P.; Sunbelt Bagels, L.L.C	98–0418	11/07/97
National Data Corporation, Physician Support Systems, Inc., Physician Support Systems, Inc	98–0423	11/07/97
George D. Johnson, Jr., ALRENCO, Inc., Alrenco, Inc	98–0426	11/07/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–32955 Filed 12–16–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/10/97 AND 11/21/97

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Kenneth R. Thomson, Dow Jones & Company, Inc., IDD Enterprises, L.P	97–3644	11/12/97
Western Atlas Inc., Arthur Kelsey, Weldmation, Inc	98–0292	11/12/97
Kenneth R. Thomson, Dow Jones & Company, Inc., Ottaway Newspapers, Inc	98–0304	11/12/97
Dow Jones & Company, Inc., Kenneth R. Thomson, Thomson Newspapers, Inc	98–0305	11/12/97
Thermo Electron Corporation, Novartis AG (a Swiss company), Novartis Assets	98–0318	11/12/97
AccuStaff Incorporated, Richard A. Koplow, Office Specialists, Inc	98–0326	11/12/97
The Vincam Group, Inc., Theodore L. Gatsas, Staffing Network, Inc	98–0330	11/12/97
The Vincam Group, Inc., Michael J. Gatsas, Staffing Network, Inc	98–0337	11/12/97
Renal Care Group, Inc., Laidlaw Inc. (a Canadian corporation), STAT Dialysis, Inc.; STAT Management Corporation	98–0359	11/12/97
Insignia Financial Group, Inc., P. Wesley Foster, Jr., Barnes Morris Pardoe & Foster Management Services, LLC	98–0364	11/12/97
J.W. Childs Equity Partners, L.P., Hicks, Muse, Tate & Furst Equity Fund II, L.P., Desa Holdings Corporation	98–0376	11/12/97
Mediacom LLC, Jones Cable Income Fund 1–C, Ltd., Jones Cable Income Fund 1–B/C Venture	98–0377	11/12/97
Chase Manhattan Corporation, (The), Bank of New York Company, Inc., (The), The Bank of New York (Delaware)	98–0385	11/12/97
The Bank of Nova Scotia, Standard Chartered PLC (a U.K. company), Standard Chartered Bank (Mocatta Bullion and Base Metal)	98–0408	11/12/97
CM Holdings, Inc., WH Smith Group, plc (a British company), The Wall Music, Inc	98–0437	11/12/97
General Electric Company, Lockheed Martin Corporation, LMT Sub Inc	98–0441	11/12/97
The Presbyterian Foundation for Philadelphia, Foundation for the Elderly, Inc., FFE/Maplewood-Cliveden, Inc	98–0196	11/13/97
Group Financial Partners, Inc., M. Stuart Millar, Datatape Inc. and Delta Tango, Inc	98–0258	11/13/97
Theodore L. Gatsas, The Vincam Group, The Vincam Group	98–0338	11/13/97
Michael J. Gatsas, The Vincam Group, Inc., The Vincam Group, Inc	98–0339	11/13/97
Paul G. Allen, Metricom, Inc., Metricom, Inc	98–0344	11/13/97
Paul G. Allen, Metricom, Inc., Metricom, Inc	98–0345	11/13/97
Jacor Communications, Inc., American Radio Systems Corporation, American Radio Systems License Corp	98–0398	11/13/97
Pioneer Natural Resources Company, Electrafina S.A., Plum Creek Pipeline, Co	98–0406	11/13/97
Atlas Copco AB, Joseph A. Paradis, III, Rental Equipment Service Company	98–0457	11/17/97
Jerrold M. Jung, Wolverine Tractor & Equipment Company, Wolverine Tractor & Equipment Company	98–0257	11/18/97
Crown NorthCorp, Inc., ULLICO, Inc., AMI Capital, Inc	98–0288	11/18/97
Mr. and Mrs. Marc Ladreit de Lacharriere, Robert D. and Judith M. Van Kampen, Fitch Investors Service, L.P., Fitch Information Service	98–0351	11/18/97
Frontier Vision Partners, L.P., Cox Enterprises, Inc., CoxCom, Inc	98–0375	11/18/97
Frontier Insurance Group, Inc., ACCEL International Corporation, Acceleration Life Insurance Co., Acceleration National	98–0382	11/18/97
International Business Machines Corporation, International Business Machines Corporation, Technology Service Solutions	98–0386	11/18/97
Sumner Redstone, Mari Hulman George, IMS Broadcasting, LLC	98–0403	11/18/97
Creative Technology Ltd., Cambridge SoundWorks Inc., Cambridge SoundWorks Inc	98–0420	11/18/97
CKE Restaurants, Inc., Alvin E. (Spike) Ehrhardt and Theresa Ehrhardt, Great River Restaurants; Hannibal Sandy's, Inc	98–0443	11/18/97
Inland Resources, Inc., Crysen Corporation, Crysen Refining, Inc. & Sound Refining, Inc	98–0465	11/18/97
Patriot American Hospitality Operating Company, Wyndham Hotel Corporation, Wyndham Hotel Corporation	98–0472	11/18/97
Spartan Motors, Inc., Smeal Fire Apparatus Co., Smeal Fire Apparatus Co	98–0478	11/18/97
Media General, Inc., T. Eugene Worrell, Bristol Newspapers, Inc and Abingdon Newspapers, Inc	98–0483	11/18/97
Guy J. Turcotte (a resident of Canada), Pioneer Natural Resources Company, Pioneer Natural Resources Company	98–0484	11/18/97
Pioneer Natural Resources Company, Chauvco Resources Ltd. (a Canadian company), Chauvco Resources Ltd	98–0485	11/18/97
MedPartners, Inc., Blue Cross and Blue Shield of Massachusetts, Inc., Blue Cross and Blue Shield of Massachusetts, Inc	98–0486	11/18/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/10/97 AND 11/21/97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Emerson Electric Co., Computational Systems, Incorporated,Computational Systems, Incorporated	98–0487	11/18/97
Lason, Inc., Lou Lee, VIP Litho, Inc	98–0488	11/18/97
Lason, Inc., Melvin A. and Perl Valdez, VIP Litho, Inc.	98–0489	11/18/97
ShopKo Stores, Inc.Penn-Daniels, Incorporated, Penn-Daniels, Incorporated	98–0492	11/18/97
Video Update, Inc., Moovies, Inc., Moovies, Inc	98–0499	11/18/97
Discount Auto Parts, Inc., Hi-Lo Automotive, Inc., Hi-Lo Automotive, Inc	98–0518	11/18/97
Kinetic Concepts, Inc., Charles E. Hasty, CH Industries, Inc	98–0531	11/18/97
Textron, Inc., Ransomes plc, Ransomes plc	98–0532	11/18/97
Omaha World-Herald Company,BRC Holdings, Inc., Business Records Corporation	97–0605	11/19/97
Caritas Christi, Neponset Valley Health System, Inc., Neponset Valley Health System, Inc	98–0436	11/19/97
Metals USA, Inc., Thomas J. Shapiro, Wayne Steel, Inc	98–0448	11/19/97
Anthony Kies, The Edgar B. Rumble Marital Trust, Michigan Hangar Co., Inc	98–0455	11/19/97
Monsanto Company, Milennium Pharmaceuticals, Inc, Milennium Pharmaceuticals, Inc	98–0476	11/19/97
Hutchison Whampoa Limited, Western Wireless Corporation, Western Wireless Corporation	98–0503	11/19/97
The FINOVA Group, Inc., The Nomura Securities, Co., Ltd., AT&T Commerical Finance Corporation	98–0514	11/19/97
MBNA Corporation Broadway National Bank, Broadway Bancshares, Inc	98–0521	11/19/97
N.V. Koninklije Nederlandsche Petroleum Maatschappij, Tejas Gas Corporation, Tejas Gas Corporation	98–0266	11/20/97
Republic Industries, Inc., The Charlie Roberts Hillard Marital Deduction Termin-Hillard Auto Group, Inc	98–0275	11/20/97
Worldtex Inc., NFA Corp., NFA Corp's Elastic Corporation of America division	98–0302	11/20/97
C.H. Boehringer Sohn, Ben Venue Laboratories, Inc., Ben Venue Laboratories, Inc	98–0409	11/20/97
USA Waste Services, Inc., Longview Group, Inc., Longview Group, Inc	98–0414	11/20/97
Richard M. Scaife, Gannett Co., Inc., Gannett Satelite Information Network, Inc., Media West	98–0435	11/20/97
Integrated Electrical Services, Inc., Bob Weik, Baxter Electric Company, Ltd	98–0516	11/20/97
Bob Weik, Integrated Electrical Services, Inc., Integrated Electrical Services, Inc	98–0517	11/20/97
Dover Corporation, Sanger Works Factory Holdings, Inc., Sanger Works Factory Holdings, Inc	98–0233	11/21/97
Lucent Technologies, Inc., Livingston Enterprises, Inc., Livingston Enterprises, Inc	98–0328	11/21/97
Terry L. Hunter, The Registry, Inc., The Registry, Inc	98–0348	11/21/97
The Registry, Inc., Terry L. Hunter, The Hunter Group, Inc	98–0349	11/21/97
Steven M. Willens, Lucent Technologies, Inc., Lucent Technologies, Inc	98–0387	11/21/97
Ronald H. Willens, Lucent Technologies, Inc., Lucent Technologies, Inc	98–0388	11/21/97
ICG Communications, Inc., NETCOM On-Line Communication Services, Inc., NETCOM On-Line Communication Services, Inc	98–0401	11/21/97
The Hartford Financial Services Group, Inc., Omni Insurance Group, Inc., Omni Insurance Group, Inc	98–0405	11/21/97
Allen E. Paulson, Riviera Holdings Corporation, Riviera Holdings Corporation	98–0407	11/21/97
J&J Snack Foods Corp., National ICEE Corporation, National ICEE Corporation	98–0427	11/21/97
CMI Corporation, Rexworks, Inc., Rexworks, Inc	98–0431	11/21/97
American Buildings Company, Neal C. and Brenda L. DuCharme (husband and wife), Modular Structures International, Inc	98–0442	11/21/97
ICN Pharmaceuticals, Inc., Dr. h.c. Paul Sacher, Hoffmann-La Roche, Inc.; Roche Products, Inc	98–0444	11/21/97
Thomas J. Shapiro, Metals USA, Inc., Metals USA, Inc	98–0447	11/21/97
Orion Capital Corporation, Michigan Mutual Insurance Company, Unisun Insurance Company	98–0449	11/21/97
Cooper Industries, Mr. Jack Pearlman, AtLite Lighting Equipment, Inc	98–0450	11/21/97
Bridgestone Corporation, Gerald W. Fletcher, Fletcher's Cobre Tire, Inc	98–0451	11/21/97
Metal Management, Inc., Michael Suisman, Aerospace Metals, Inc	98–0456	11/21/97
Metropolitan Life Insurance Company, Bankers Trust New York Corporation, Bankers Trust New York Corporation	98–0463	11/21/97
Mrs. L. Bettencourt, Angeion Corporation, Angeion Corporation	98–0477	11/21/97
SmarTalk Teleservices, Inc., Frontier Corporation, Frontier Corporation	98–0481	11/21/97
TDS Voting Trust, Yves Jacques Rey-Millet, Indiantown Company, Inc	98–0491	11/21/97
TDS Voting Trust, Christian Rey-Millet, Indiantown Company, Inc	98–0497	11/21/97
Everett R. Dobson Irrevocable Family Trust, Tina K. Chang, Texas 16 Cellular Telephone Company	98–0504	11/21/97
Siemens Aktiengesellschaft, Allen K. and Johnnie C. Breed, husband & wife, BREED Technologies, Inc	98–0506	11/21/97
Continental Grain Company, Empire Funding Holding Corporation, Empire Funding Holding Corporation	98–0507	11/21/97
Occidental Petroleum Corporation, Elf Aquitaine, Elf Atochem North America, Inc	98–0510	11/21/97
Carolyn Louise Adams, Enron Corp., Taurus Energy Corp	98–0511	11/21/97
James N. Isaacs, Empire Funding Holding Corporation, Empire Funding Holding Corporation	98–0512	11/21/97
W.W. Clyde Investment Co., Geneva Rock Products, Inc., Geneva Rock Products, Inc	98–0524	11/21/97
Berkshire Hathaway Inc., International Dairy Queen, Inc., International Dairy Queen, Inc	98–0526	11/21/97
The Chase Manhattan Corporation, Triton PCS, Inc. (Joint Venture), Triton PCS, Inc. (Joint Venture)	98–0527	11/21/97
J.P. Morgan & Co. Incorporated, Triton PCS, Inc. (Joint Venture), Triton PCS, Inc. (Joint Venture)	98–0528	11/21/97
Private Equity Investors III, L.P., Triton PCS, Inc. (Joint Venture), Triton PCS, Inc. (Joint Venture)	98–0529	11/21/97
Equity-Linked Investors II, L.P., Triton PCS, Inc. (Joint Venture), Triton PCS, Inc. (Joint Venture)	98–0530	11/21/97
American Mutual Holding Company, AmVestors Financial Corporation, AmVestors Financial Corporation	98–0533	11/21/97
Saputo Group, Inc., Specialty Foods Acquisition Corporation, Stella Holdings, Inc	98–0535	11/21/97
Delco Remy International, Inc., Ballantrae Corporation, Ballantrae Corporation	98–0537	11/21/97
Access Beyond, Inc., Hayes Microcomputer Products, Inc., Hayes Microcomputer Products, Inc	98–0538	11/21/97
Ellicott Associates, L.P., Solid State Geophysical Inc., Solid State Geophysical Inc	98–0540	11/21/97
Linsalata Capital Partners Fund II, L.P., The Tranzonic Companies, The Tranzonic Companies	98–0541	11/21/97
Mail-Well, Inc., Golden Books Family Entertainment, Inc., Golden Books Publishing Company, Inc	98–0544	11/21/97
Nextel Communications, Inc., Industrial Wireless Technologies, Inc	98–0550	11/21/97
University of Pittsburgh Medical Center System, The Rehabilitation Institute of Pittsburgh, The Rehabilitation Institute of Pittsburgh	98–0551	11/21/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/10/97 AND 11/21/97—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
George S. Hofmeister, Daniel P. Crawford, Danvid Company, Inc	98–0556	11/21/97
AAA Auto Club South, Inc., The American Automobile Association, Inc., The American Automobile Association, Inc.—Florida Div	98–0557	11/21/97
Texas Health Resources, L.P. McCuistion Community Hospital, McCuistion Regional Medical Center	98–0562	11/21/97
Fiskars Oy Ab, Triumph Capital Investors, L.P., EnviroWorks Holding Company	98–0564	11/21/97
Man Chi Tam (a Hong Kong resident), Access Beyond, Inc., Access Beyond, Inc	98–0569	11/21/97
Outdoor Systems, Inc., Jon Gunderson, Outdoor Media Group, Inc	98–0577	11/21/97
N.V. Koninklije Nederlandsche Petroleum Maatschappij, N.V. Koninklije Nederlandsche Petroleum Maatschappij, Corpus Christi Natural Gas Company, L.P	98–0582	11/21/97
Tele-Communications, Inc., Tele-Communications, Inc., Robin Cable Systems, L.P	98–0588	11/21/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–32956 Filed 12–16–97; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/24/97 AND 12/05/97

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Spectra-Physics AB, FLIR Systems, Inc., FLIR Systems, Inc	98–0086	11/26/97
Allied Capital Lending Corporation, Allied Capital Corporation, Allied Capital Corporation	98–0494	11/26/97
Allied Capital Lending Corporation, Allied Capital Corporation II, Allied Capital Corporation II	98–0495	11/26/97
Allied Capital Lending Corporation, Allied Capital Commercial Corporation, Allied Capital Commercial Corporation	98–0496	11/26/97
The Toa Fire and Marine Reinsurance Co., Ltd., Swiss Reinsurance Company (a Swiss corporation), The Mercantile and General Reinsurance Company of America	98–0548	11/26/97
George S. Hofmeister, Mario J. Gabelli, Binnings Building Products, Inc	98–0555	11/26/97
Recycling Industries, Inc., Jack Levin, United Metal Recyclers	98–0560	11/26/97
Recycling Industries, Inc., Brenner Companies, Inc., Brenner Companies, Inc. and United Metal Recyclers	98–0561	11/26/97
Recycling Industries, Inc., Seymour Levin, United Metal Recyclers	98–0570	11/26/97
Pacific Mutual Holding Company, Oppenheimer Capital, L.P., Oppenheimer Capital, L.P	98–0575	11/26/97
Ambac Financial Group, Inc., Construction Loan Insurance Corporation, Construction Loan Insurance Corporation	98–0583	11/26/97
The Dow Chemical Company, Sentrachem Limited, Sentrachem Limited	97–3189	11/28/97
Fiserv, Inc., Hanifen, Imhoff Holdings, Inc., Hanifen, Imhoff Holdings, Inc	98–0314	11/28/97
Morgan Stanley, Dean Witter, Discover & Co., CSG Systems International, Inc., CSG Systems International, Inc	98–0411	11/30/97
Northland Cable Properties Six Limited Partnership, Tele-Communications, Inc., Robin Cable Systems, L.P. InterMedia Partners, L.P	98–0393	12/01/97
Northland Communciations Corporation, Tele-Communications, Inc., Robin Cable Systems, L.P. InterMedia Partners, L.P.	98–0394	12/01/97
United States Filter Corporation, Stranco, Inc., Stranco, Inc	98–0433	12/01/97
Preussag AG, Hapag-Lloyd AG, Hapag-Lloyd AG	98–0445	12/01/97
Cedar Fair, L.P., Knott's Berry Farm (a partnership), Knott's Berry Farm (a partnership)	98–0565	12/01/97
Patriot American Hospitality Operating Company, WHG Resorts & Casinos, Inc., WHG Resorts & Casinos, Inc	98–0567	12/01/97
Pharma Vision 2000 AG, Tularik Inc., Tularik Inc	98–0568	12/01/97
Robotic Vision Systems, Inc., Vanguard Automation, Inc., Vanguard Automation, Inc	98–0578	12/01/97
Global Private Equity III Limited Partnership, Kay Juel, III, Contact East, Inc	98–0586	12/01/97
The Guarantee Life Companies, Inc., PFG, Inc., PFG, Inc	98–0589	12/01/97
Legal and General Group Plc, Georgia Duck & Cordage Mill, Georgia Duck & Cordage Mill	98–0652	12/01/97
John W. Pope, Rose's Holdings, Inc., Rose's Stores, Inc	98–0432	12/02/97
Clear Channel Communications, Inc., Hicks, Muse, Tate & Furst Equity Fund II, L.P., Benchmark Jackson, L.L.C	98–0466	12/02/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/24/97 AND 12/05/97—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Arbed S.A., Minorco (a Luxembourg company), Hochschild Partners	98–0471	12/02/97
Wisconsin Energy Corporation, ESELCO, Inc., ESELCO, Inc	98–0509	12/02/97
Hillenbrand Industries, Inc., Vickers PLC, Air-Shields Vickers, Inc. & TECA Corporation	98–0522	12/02/97
American Industrial Partners Capital Fund II, L.P., John W. Kluge, Stanadyne Automotive Holding Corp	98–0546	12/02/97
U.S. Office Products Company, Mr. Thomas S. Bagley, AASI Holding Corporation	98–0549	12/02/97
Woodgrain Millwork, Inc., Fenway Partners Capital Fund, L.P., Brown Moulding Company, Inc	98–0563	12/02/97
Advanced Communications Group, Inc., Liberty Cellular, Inc., KIN Network, Inc	98–0576	12/02/97
Ryder Systems, Inc., Russ Jones, International Truck Rental and Leasing, Inc	98–0579	12/02/97
Cablevision System Corporation, Mitsubishi Estate Co., Ltd. (a Japanese corporation), Radio City Productions LLC	98–0580	12/02/97
Ricoh Company, Ltd. (a Japanese company), Jeffry M. Picower, Monroe Systems For Business, Inc	98–0594	12/02/97
Home Products International, Inc., The Chase Manhattan Corporation, Seymour Sales Corporation	98–0598	12/02/97
BASF Akiengesellschaft, Hoechst Aktiengesellschaft, BHC Company	98–0599	12/02/97
Citicorp, Amerisource Health Corporation, Amerisource Health Corporation	98–0609	12/02/97
Marshall T. Reynolds, Portec, Inc., Portec Assets	98–0613	12/02/97
Clarian Health Partners, Inc., Lakeland Health Corporation, Lakeland Health Corporation	98–0614	12/02/97
Legal & General Group Plc, BTR Plc, Schlegal Corporation; Schlegel Oklahoma Inc	98–0615	12/02/97
Questor Partners Fund, LP, Lord Moyne-Jonathan Guinness, AP Parts International, Inc	98–0617	12/02/97
Phoenix Packaging Corporation, Sequa Corporation, Northern Can Systems, Inc., Sequa Corporation	98–0623	12/02/97
DLJ Merchant Banking Partners, II, L.P., Victor J. Barnett, Arcade Holding Corporation	98–0625	12/02/97
Whole Foods Market, Inc., Edward and Juliette Jonna, Merchant Management Affiliates, Inc.; Merchant of Vino	98–0626	12/02/97
Central Parking Corporation, Lewis Katz, Kinney System Holding Corporation	98–0628	12/02/97
Lewis Katz, Central Parking Corporation, Central Parking Corporation	98–0629	12/02/97
Starwood Lodging Corporation, ITT Corporation, ITT Corporation	98–0631	12/02/97
The Clayton & Dubilier Private Equity Fund IV LP, Rubin Brown, Brown Wholesale Electric Company, Inc	98–0634	12/02/97
Mannesmann AG, R. William Milton, Crane America Services, Inc.; Crane America Leasing, In	98–0636	12/02/97
J. Frank Harrison, Jr., Walter Matthews, Jr., Coca-Cola Bottling Company, Southeast, Incorporated	98–0643	12/02/97
Jordan Industries, Inc., Motion Control Engineering, Inc., Motion Control Engineering, Inc	98–0646	12/02/97
Tribune Company, James M. Landoll, Landoll, Inc	98–0648	12/02/97
Tribune Company, The McConnell Family Trust, Landoll, Inc	98–0649	12/02/97
Tyler Corporation, William D. Oates, Business Resources Corporation	98–0650	12/02/97
General Electric Company, James Bastian, SimuFlite Training International, Inc	98–0704	12/02/97
VS&A Communications Partners II, L.P., The Dun & Bradstreet Corporation, The Reuben H. Donnelly Corporation (Proprietary East Di	98–0534	12/03/97
First Data Corporation, NationsBank Corporation, Boatmen's Merchant Processing Company, LLC	98–0584	12/03/97
Olympus Growth Fund II, LP, Steven C. Francis and Gayle A. Francis, AMN Healthcare, Inc	98–0607	12/03/97
Health Care Service Corporation a Mutual Legal Reserve, Medical Mutual of Ohio, Medical Life Insurance Company	98–0616	12/03/97
Telephone and Data Systems, Inc. Voting Trust, Bennet R. and Maxine H. Miller (Husband and Wife), Tri-County Telephone Company, Inc	98–0679	12/03/97
General Dynamics Corporation, Ceridian Corporation, Computing Devices International and Subs	98–0452	12/04/97
Newcor, Inc., Machine Tool & Gear, Inc., Machine Tool & Gear Inc	98–0591	12/04/97
Allied Waste Industries, Inc., Laidlaw Inc., ECDC Environmental, L.C	98–0624	12/04/97
Robbins & Myers, Inc., J.M. Huber Corporation, Flow Control Equipment, Inc	98–0665	12/04/97
Martin Marietta Materials, Inc., Hanson, P.L.C., Milestone Materials, Inc	98–0718	12/04/97
American Radio Systems Corporation, Latin Communications Group, Inc., Radio Exito, Inc.; Portland Radio, Inc	97–2054	12/05/97
Apple Computer, Inc., Power Computing Corporation, Power Computing Corporation	97–3427	12/05/97
Jeffrey J. Prosser, B. John Klindworth, St. Croix Cable T.V., Inc., Virgin Islands Cable T.V	97–3457	12/05/97
Interstate Bakeries Corporation, Estate of Elizabeth B. Noyce, JSC Corporation	98–0264	12/05/97
Wang Laboratories, Inc., David A. Banning & Mary Lynn Banning, Bannex Corporation	98–0439	12/05/97
Wasserstein Perella Group, Inc., Boston Ventures Limited Partnership IV, National Law Publishing Company, Inc	98–0453	12/05/97
Rally's Hamburgers, Inc., Checkers Drive-in Restaurants, Inc., Checkers Drive-in Restaurants, Inc	98–0475	12/05/97
G. James Roush, FDX Corporation, FDX Corporation	98–0536	12/05/97
Newcor, Inc., Stephen Grand, Grand Machining Company d/b/a Deco-Grand; Deco Technolo	98–0590	12/05/97
MasTec, Inc., Employee Stock Ownership Plan of Weeks Construction Co., Weeks Construction Company	98–0592	12/05/97
Material Sciences Corporation, Marshal I. Wais, Colorstrip's, Inc	98–0597	12/05/97
RJR-Nabisco Holding, Inc., Cornnuts, Inc., Cornnuts, Inc	98–0606	12/05/97
The SKM Equity Fund II, LP, Dan Neuhar, Wee Good Corporation	98–0621	12/05/97
The SKM Equity Fund II, LP, Michel Bernstein, Wee Good Corporation	98–0622	12/05/97
Lear Corporation, Stronach Trust, Magna Interior Systems (USA), Inc	98–0627	12/05/97
Mid-America Dairymen, Inc., Whitehall Associates, L.P., Starflake Foods Company, Inc. & Borden Fun Cheese Busi	98–0630	12/05/97
The Clayton & Dubilier Private Equity Fund IV LP, Kenneth Moskowitz, Avon Electrical Supplies, Inc.; Avon Electrical	98–0632	12/05/97
The Clayton & Dubilier Private Equity Fund IV, Leonard Moskowitz, Avon Electrical Supplies, Inc.; Avon Electrical Product	98–0633	12/05/97
MedPartners, Inc., American Medical Management, Ltd., American Medical Management, Ltd	98–0642	12/05/97
JELD–WEN, Inc., Grossman's, Inc. (debtor in possession), Grossman's, Inc. (debtor in possession)	98–0645	12/05/97
TPG Partners, L.P., Nestle S.A. (A Swiss company), Nestle Assets	98–0647	12/05/97

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 11/24/97 AND 12/05/97—Continued

Name of acquiring person, Name of acquired person, Name of acquired entity	PMN No.	Date terminated
Omnicom Group Inc., John H. Kragie & Elizabeth J. Newell, Kragie/Newell Advertising, Inc	98–0653	12/05/97
Newcourt Credit Group Inc., Dover Corporation, Chief Automotive Systems, Inc	98–0657	12/05/97
George R. and Ruth J. Wackenhut, Celeste D. Dockery, Professional Employee Management, Inc., et al	98–0659	12/05/97
Ronald O. Perelman, Millard E. Morris, Eniram Funding, LLC; & Eniram Securitization, LLC	98–0661	12/05/97
Deere & Company, Cameco Industries, Inc., Cameco Industries, Inc	98–0667	12/05/97
Mitsui & Co. Ltd., Unilever N.V., Conopco, Inc. doing business as Lipton	98–0671	12/05/97
Galey & Lord, Inc., Polymer Group, Inc., Dominion Textile, Inc. plus five foreign subs	98–0683	12/05/97
Bain Capital Fund V–B, L.P., Sandman Merger Corporation, Sandman Merger Corporation	98–0688	12/05/97
The President and Fellows of Harvard College, Sandman Merger Corporation, Sandman Merger Corporation	98–0689	12/05/97
The Dow Chemical Company, The Dow Chemical Company, Radian International, LLC	98–0691	12/05/97
Joseph Bick, Keystone Automotive Industries, Inc., Keystone Automotive Industries, Inc	98–0695	12/05/97
Ametek, Inc., EG&G Inc., Rotron Incorporated	98–0706	12/05/97
Suiza Foods Corporation, M. Jay Skirboll, Liquitane Corp., Liquitane Associates, S&Z Development	98–0713	12/05/97
Genesis Health Ventures, Inc. Genesis ElderCare Corp., Institutional Health Care Services, Inc., Care 4, L.P	98–0717	12/05/97
Eastern Maine Healthcare, Osteeopathic Healthcare Services, Inland Hospital	98–0732	12/05/97
O'Neal Steel, Inc., Prudential Corporation plc, Carolina Steel Corporation	98–0745	12/05/97
Mitsui & Co. Ltd, MidAmerican Energy Holdings Company, UNITRAIN, Inc.	98–0747	12/05/97
Lynch Corporation, Sappi Limited (a South African company), S.D. Warren Company	98–0748	12/05/97
Pluma, Inc., John R. Beale and Linda Beale, Stardust Corporation	98–0749	12/05/97
Nippon Paper Industries Co., Ltd., Weyerhaeuser Company, North Pacific Paper Company	98–0750	12/05/97
General Electric Company, Preferred Machine and Tool Products Corporation, Preferred Machine and Tool Products Corporation	98–0755	12/05/97
Sinclair Broadcast Group, Inc., Lakeland Group Television, Inc., Lakeland Group Television, Inc	98–0756	12/05/97
Welsh, Carson, Anderson & Stowe VII, L.P., Tenet Healthcare Corporation, Tenet Healthcare Corporation	98–0767	12/05/97
The 1818 Fund II, LP, National HealthCare, L.P., National HealthCare Corporation	98–0770	12/05/97
ACX Technologies, Inc., Britton Group, plc, Britton Group, plc	98–0777	12/05/97
ConAgra, Inc., Lawrence Zoll, Zoll Foods Corporation	98–0784	12/05/97
Lawrence Zoll, ConAgra, Inc., ConAgra, Inc	98–0785	12/05/97

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, D.C. 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 97–32957 Filed 12-16-97; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of Transportation and Property Management, Property Management Division, Federal Supply Service; Revision and Stocking Change of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/Office of Transportation and Property Management, Property Management Division, is changing the stocking of the following Standard form because of low user demand:

SF 114E, Sale of Government Property—Negotiated Sales Cotnract

Since this form is now authorized for local reproduction, you can obtain the updated camera copy in three ways:

From the ''U.S. Government Management Policy CD–ROM;

On the internet. Address: http://www.gsa.gov/forms, or;

From CARM, Attn.: Barbara Williams, (202) 501–0581.

Also, the form was revised for database compatibility.

FOR FURTHER INFORMATION CONTACT: Deidre Huber, Director, Property Management Division, (703) 305–7240. This contact is for information on completing the form and interpreting the Federal Property Management Regulation only.

DATES: Effective upon publication in the **Federal Register**.

Dated: December 4, 1997.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 97–32810 Filed 12–16–97; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–98–07]

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. Formative Research on Weapons Carrying and Use Among Youth—New—The Division of Violence plans to conduct formative research on weapon carrying behavior among young persons and victims of interpersonal violent injury. CDC has initiated an effort to collect qualitative information from: 1. Systems representatives (adults 18 and older who work and interact with youth) and 2. adolescents, (ages 11–18), who are at high, medium and low risk for weapon carrying and interpersonal injury. The purpose of the proposed data collection is to explore what factors influence youths to possess or carry weapons. The results of this study will be useful to officials planning or operating violence prevention interventions in the study community and other communities.

The study is to be conducted in two phases: Phase 1 will involve the collection of research data from one-on-one, semi-structured interviews with 70 systems representatives. Systems representatives are persons who have contact with youth (which includes but is not limited to): (1) Formal providers or people who serve in an official capacity, or interact with youth (e.g. youth outreach workers, youth hostel workers, community-based agency staff members, law enforcement officers who patrol gang areas); and (2) informal providers: people who informally serve, the target population of youth (e.g. mall shop owners, school bus drivers, drug dealers).

In Phase 2, qualitative survey research will be conducted with key participant informants (youth ages 11–18), to verify data collected during Phase I, and to collect ethnographic data regarding risk and protective behaviors among youth. Specifically, Phase 2 will involve the collection of research data from one-on-one, semi-structured interviews with 132 key participant informants. The specific target area includes the East, North, West Downtown and Wrigley areas of the City of Long Beach and one segment of Dominuez. Interviews will be conducted in a setting or location which is most comfortable and convenient for the study subjects. There is no cost to Respondents.

Respondents	No. of respondents	No. of responses	Average burden/response (in hrs.)	Total burden (in hrs.)
Systems Representatives	70	1	1	70
Key Participant Informants	132	1	1.5	198
Total	.....	.....	.....	268

Dated: December 11, 1997.

Wilma G. Johnson,

Acting Associate Director for Policy Planning And Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–32868 Filed 12–16–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 802]

Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for the Public Health Conference Support Cooperative Agreement Program for Human Immunodeficiency Virus (HIV) Prevention. CDC is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of HIV Infection. (For ordering a copy of Healthy People 2000 and CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992), see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION**.)

Authority

This program is authorized under Section 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended.

Smoke-Free Workplace

CDC strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products, and Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities that receive Federal funds in which education, library, day care, health care, or early childhood development services are provided to children.

Eligible Applicants

Eligible applicants are non-profit organizations including universities, colleges, research institutions, hospitals, other public and private (e.g., national, regional) non-profit organizations and federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations. State and local health departments may only apply for funding under Category 2 (See Application Section).

Note: Organizations authorized under section 501(c)(4) of the Internal Revenue Code of 1986 are not eligible to receive Federal grant/cooperative agreement funds.

Availability of Funds

Approximately $400,000 is available in FY 1998 to fund approximately 15 to 25 awards. It is expected that the average award will be $20,000 and will be funded for a 12-month budget and project period. Funding estimates may vary and are subject to change.

Use of Funds

- CDC funds may be used for direct cost expenditures: salaries, speaker fees, rental of conference related equipment, registration fees, and transportation cost (not to exceed economy class fares) for non-Federal employees.
- CDC funds may be used for only those parts of the conference specifically supported by CDC as documented in the Notice of Cooperative Agreement (award document).
- CDC funds may not be used for the purchase of equipment, payments of honoraria, organizational dues, entertainment or personal expenses, cost of travel and payment of a Federal

employee, or per diem or expenses, other than mileage, for local participants.

- CDC funds may not be used for reimbursement of indirect costs.
- CDC funds may not be used to purchase novelty items (e.g., bags, T-shirts, hats, pens) distributed at meetings.
- CDC will not fund 100 percent of the proposed conference. Part of the cost of the proposed conference must be supported with other than Federal funds.
- CDC will not fund a conference after it has taken place.
- CDC funds may be used for only those parts of the conference specifically supported by CDC as documented on the notice of award.

Restrictions on Lobbying

Fiscal year 1997 appropriation lobbying language remains in full effect as follows: Applicants should be aware of restrictions on the use of HHS funds for lobbying under the requirements of Section 1352 of Public Law 101–121, effective December 23, 1989. This law provides, in pertinent part, that recipients (and their subtier contractors and/or subgrantees) are prohibited from using appropriated Federal funds (other than profits from a Federal contract) for lobbying Congress or any Federal agency in connection with the award of a particular contract, grant, cooperative agreement or loan. This would include grants/cooperative agreements that, in whole or in part, involve conferences for which Federal funds cannot be used directly or indirectly encouraging participants to lobby or instructing participants on how to lobby.

Section 503 of the Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act (Public Law 104–208), effective October 1, 1996, establishes additional restrictions on the use of Federal funds for lobbying. Whereas previous anti-lobbying prohibitions involved only activities for or against passage of legislation pending before the Congress, the FY 1997 appropriations language establishes an additional prohibition against lobbying for or against legislation pending before State legislatures:

Section 503(a): No part of any appropriation contained in the FY 1997 Appropriations Act shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the Congress, * * * except in presentation to the Congress itself or any State legislature.

Section 503(b): No part of any appropriation contained in the Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

Under Section 503, any activity designed to influence action in regard to a particular piece of pending legislation would be considered ''lobbying.'' That is, Section 503 prohibits lobbying for or against pending legislation, as well as indirect or ''grass roots'' lobbying efforts by award recipients that are directed at inducing members of the public to contact their elected representatives at the Federal or State levels to urge support of, or opposition to, pending legislative proposals. As a matter of policy, CDC extends the prohibitions to lobbying with respect to local legislation and local legislative bodies.

The new provisions are not intended to prohibit all interaction with the legislative branch, or to prohibit educational efforts pertaining to public health. Clearly there are circumstances when it is advisable and permissible to provide information to the legislative branch in order to foster implementation of prevention strategies to promote public health. However, it would not be permissible to influence, directly or indirectly, a specific piece of pending legislation.

It remains permissible to use CDC funds to engage in activity to enhance prevention; collect and analyze data; publish and disseminate results of research and surveillance data; implement prevention strategies; conduct community outreach services; provide leadership and training, and foster safe and healthful environments.

Recipients of CDC grants and cooperative agreements need to be careful to prevent CDC funds from being used to influence or promote pending legislation. With respect to conferences, public events, publications, and ''grassroots'' activities that relate to specific legislation, recipients of CDC funds should give close attention to isolating and separating the appropriate use of CDC funds from non-CDC funds. CDC also cautions recipients of CDC funds to be careful not to give the appearance that CDC funds are being used to carry out activities in a manner that is prohibited under Federal law.

Background

The HIV epidemic constitutes a significant threat to the public health of the United States. The most recent estimate of HIV prevalence indicates that between 650,000 and 900,000 Americans are living with HIV. Recently, there has been a marked decrease in deaths among people with AIDS. The decline in deaths is likely due to both the slowing of the epidemic and to improved treatments over the past several years. However, women and people of color are still disproportionately affected by HIV. Declines in deaths were greater among whites (28 percent) than among blacks (10 percent) and Hispanics (16 percent). Among women, AIDS deaths declined only 7 percent in the first three quarters of 1996. HIV/AIDS remains a leading cause of death.

Although the number of AIDS cases in men who have sex with men has declined, they continue to account for the largest proportion of reported cases. In 1996, women represented 20 percent of adults and adolescents reported with AIDS, greater than the proportion in any previous year. Among women, heterosexual contact and injecting drug use accounted for 40 percent and 34 percent, respectively, of cases reported in 1996. For the first time, blacks represented 41 percent of adults and adolescents reported with AIDS, exceeding the proportion in the white population.

A great number of public and private health care providers have made significant strides in developing effective strategies for HIV information dissemination and prevention. However, mechanisms are needed to disseminate information about the newest developments in disease prevention, health promotion techniques, and their practical applications nationwide.

CDC supports local, State, regional, national, and international health efforts to prevent unnecessary disease, disability, and premature death and to improve the quality of life. This support often takes the form of education, including the transfer of research findings and public health strategies and practices, through symposia, seminars, and workshops. Through its support of conferences and meetings related to the areas of public health research, education, and prevention applications, CDC is a key participant in the dissemination of essential prevention information and in the implementation of HIV prevention programs.

National HIV Prevention Goal

Applications must be consistent with the CDC national goal of assisting in building and maintaining the necessary

State, local, and community infrastructure and technical capacity to carry out necessary HIV and STD prevention programs.

Purpose

The purpose of the HIV Prevention Conference Support funding is to provide PARTIAL support for specific non-Federal conferences in the areas of health promotion, disease prevention information and education programs, and applied research. Because conference support by CDC creates the appearance of CDC co-sponsorship, there will be active participation by CDC in the development and approval of those portions of the agenda supported by CDC funds. CDC funds will not be expended for non-approved portions of conference. In addition, CDC will reserve the right to approve or reject the content of the full agenda, press events, promotional materials (including press releases), speaker selection, and site selection. Contingency awards will be made allowing usage of only 25 percent of the total amount to be awarded until a final full agenda is approved by CDC. This will provide funds to support costs associated with preparation of the agenda. The remainder of funds will be released only upon approval of the final full agenda. CDC reserves the right to terminate co-sponsorship at any time.

This program is not meant for conferences to educate the general public or to deliver prevention interventions to persons at risk for HIV infection.

- Any conference sponsored by CDC shall be held in facilities that are fully accessible to the public as required by the Americans with Disabilities Act Accessibility Guidelines (ADAAG). Accessibility under ADAAG addresses accommodations for persons with sensory impairments as well as persons with physical disabilities or mobility limitations. The Director, or his/her designee, of the CIO(s) providing funds or approving CDC sponsorship of a conference must assure that the proposed meeting facilities comply with ADAAG.
- The conference organizer(s) may use CDC's name only in factual publicity for the conference and should understand that CDC involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, or products.

Topics concerned with issues and areas other than HIV prevention should be directed to other public health agencies or in accordance with the current **Federal Register** Notice (see **Federal Register** Notice 803, [61 FR 19296] published on April 29, 1997).

Program Requirements

Development of HIV prevention conferences may require substantial CDC collaboration and involvement. In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under A. (Recipient Activities) and CDC will be responsible for the activities listed under B. (CDC Activities).

A. Recipient Activities

1. Manage all activities related to conference content (e.g., objectives, topics, participants, session design, workshops, special exhibits, speakers, fees, agenda composition, printing). Many of these items may be developed in concert with assigned CDC project personnel.
2. Provide draft copies of the agenda and proposed ancillary activities to the CDC Grants Management Office for review and comment. Submit a copy of the final agenda and proposed ancillary activities to the CDC Grants Management Office for acceptance.
3. Determine and manage all promotional activities (e.g., title, logo, announcements, mailers, press). CDC must review and approve the use of any materials with reference to CDC involvement or support.
4. Manage all registration processes with participants, invitees, and registrants (e.g., travel, reservations, correspondence, conference materials and hand-outs, badges, registration procedures).
5. Plan, negotiate, and manage conference site arrangements, including all audio-visual needs.
6. Develop and conduct education and training programs on HIV prevention.
7. If the proposed conference is or includes a satellite broadcast:

a. Provide individual, on-camera rehearsals for all presenters,

b. Provide at least one full dress rehearsal involving the moderator, all presenters, equipment, visuals, and practice telephone calls at least one day before the actual broadcast and as close to the actual broadcast time as possible,

c. Provide full scripting and Teleprompter use for the moderator and all presenters,

d. Select a professional moderator.

8. Collaborate with CDC staff in reporting and disseminating results and relevant HIV prevention and education and training information to appropriate Federal, State, and local agencies, health-care providers, HIV/AIDS prevention and service organizations, and the general public.

B. CDC Activities

1. Provide technical assistance through telephone calls, correspondence, and site visits in the areas of program agenda development, implementation, and priority setting related to the cooperative agreement.
2. Provide scientific collaboration for appropriate aspects of the program, including selection of speakers, pertinent scientific information on risk factors for HIV infection, preventive measures, and program strategies for the prevention of HIV infection.
3. Review draft agendas and the Grants Management Officer will issue approval or disapproval of the final agenda and proposed ancillary activities prior to release of restricted funds.
4. Assist in the reporting and dissemination of research results and relevant HIV prevention education and training information to appropriate Federal, State, and local agencies, health-care providers, the scientific community, and HIV/AIDS prevention and service organizations, and the general public.

Technical Reporting Requirements

An original and two copies of final performance and financial status reports (reporting actual expenses) are required no later than 90 days after the end of the budget/project period. The performance report should include: (1) The cooperative agreement number; (2) title of the conference; (3) name of the principal investigator, program director or coordinator; (4) name of the organization that conducted the conference; (5) a copy of the agenda; (6) a list of individuals who participated in the formally planned sessions of the meeting; (7) a summarization of the results of the meeting, including a discussion of the accomplishments related to stated conference objectives; and (8) the Program Review Panel's report that all written materials have been reviewed as required (see the section Program Review Panel).

With the prior approval of CDC, copies of proceedings or publications resulting from the conference may be substituted for the final performance report, provided they contain the information requested in items (1) through (8) above.

Application Content

Organizations should submit separate applications in any of the three following categories:

Category 1: Regional, national, or international conferences for

individuals or organizations implementing HIV prevention programs or providing relevant services. The focus will be on information exchange including lessons learned and successful programs;

Category 2: Local, statewide, or regional conferences providing information about technology transfer regarding interventions for effective HIV prevention for a defined population within a specific locality, State, or multi-state area (State and local health departments may apply only under Category 2); and

Category 3: Regional, national, or international conferences for researchers to impart theoretically based or empirically demonstrated health research with the intention to train health and other professionals in innovative, enhanced interventions, e.g., newly emerging science-based interventions for health professionals.

A. Letter Of Intent (LOI)

Applicants must submit an original and two copies of a two-page typewritten LOI that briefly describes the application category (1, 2, or 3), title, location, proposed conference dates, purpose, target population(s) (e.g., youth, women, Men Who Have Sex with Men (MSM), Injecting Drug Users (IDU), and the intended audience (number and description)). The LOI must also include the estimated total cost of the conference, the percentage of the total cost (which must be less than 100 percent) being requested from CDC, and the relationship of the conference to CDC Topics of Special Interest (listed below).

Topics of Special Interest

1. Prevention of HIV infection among:

A. Under-served populations (e.g., women of reproductive age, racial and ethnic minorities)

B. High-risk populations (e.g., men who have sex with men, drug users, in-school and out-of-school youth, and migrant workers)

C. Populations in special settings (e.g., correctional institutions)

D. Under-served geographic areas

Preferences may be given to supporting organizations that serve multiple high-risk populations.

2. Development of HIV prevention strategies with a broad range of community, regional, or national partners.

Preferences are established to include national priorities, to ensure a balance of CDC HIV prevention funding, and to address at-risk populations and geographic areas that are under-served. No preference will be given to organizations that have received funding in past years.

LOIs will be reviewed by CDC and an invitation to submit an application will be made based on:

1. Documented need for the proposed conference,

2. Contribution to the prevention of HIV/AIDS,

3. National HIV prevention priorities based on emerging trends in the epidemic,

4. The proposed conference's relationship to the CDC determined topics of special interest,

5. Timing of the conference that will allow for CDC input, and

6. Availability of funds.

Also include the name, mailing address, telephone number, and if available, fax number and e-mail address of the organization's primary contact person. Current recipients of CDC HIV funding must provide the award number and title of the funded programs. No attachments, booklets, or other documents accompanying the LOI will be considered. The two page limitation (inclusive of letterhead and signatures), must be observed or the letter of intent will be returned without review.

B. Final Application

Applicants invited to apply must develop applications in accordance with PHS Form 5161–1 (OMB Number 0937–0189). Pages must be clearly numbered, and a complete index to the application and its appendices must be included. The original and two required copies of the application must be submitted unstapled and unbound. All material must be typewritten in unreduced type on 8½ by 11″ paper, with at least 1″ margins, and printed on one side only. Materials which should be part of the basic plan should not be in the appendices. Use the evaluation criteria described below to develop your application. The body of the application must be limited to 12 pages.

The following information must be included:

1. A project summary cover sheet that includes:

a. Application category (1, 2, or 3),
b. Name of organization,
c. Name of conference,
d. Location of conference,
e. Date (s) of conference,
f. Target population(s) (e.g., youth, women, MSM, IDU),
g. Intended audience and number,
h. Dollar amount requested,
i. Total conference budget.

2. Biographical sketches and job descriptions of the individuals responsible for planning and coordinating the conference.

3. A Budget Narrative separately identifying and justifying line items to which the requested Federal funds would be applied.

4. A draft agenda for the proposed conference.

5. Award number and title(s) of funded program(s) for current recipients of CDC HIV funding. Must not have submitted the same proposal for review for funding to other parts of CDC.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria (TOTAL 100 POINTS).

1. Category-specific criterion (20 points):

A. Category 1: Extent to which the applicant provides evidence of an opportunity for participants and presenters to interact during the conference.

B. Category 2: Extent to which the applicant relates the specific connection of the conference content to HIV prevention community planning priorities and provides a description of need for the proposed conference.

C. Category 3: Extent to which the applicant demonstrates the scientific soundness of the technology to be transferred as evidenced by inclusion in HIV prevention research publications, peer reviewed journals, or scientific consensus panel review.

The following criteria apply to all applications:

2. Proposed Program and Technical Approach (30 points):

A. The extent to which the applicant's description of the proposed conference relates to HIV prevention and education, including the public health need of the proposed conference and the degree to which the conference can be expected to influence public health practices, and the extent of the applicant's collaboration with other agencies serving the intended audience, including local health and education agencies concerned with HIV prevention.

B. The applicant's description of conference objectives in terms of quality, specificity, and the feasibility of the conference based on the operational plan, and the extent to which evaluation mechanisms for the conference adequately assess increased knowledge, attitudes, and behaviors of the target participants.

C. The relevance and effectiveness of the proposed agenda in addressing the chosen HIV prevention and education topic.

D. The degree to which conference activities proposed for CDC funding

strictly adhere to the prevention of HIV transmission.

3. Applicant Capability (25 points):

A. The adequacy and commitment of institutional resources to administer the program for the proposed conference.

B. The adequacy of existing and proposed facilities and resources for conducting conference activities.

C. The degree to which the applicant has established and used critical linkages with health and education departments and community planning groups with the mandate for HIV prevention. Letters of support (limit of 5) from such agencies addressing related capability and experience should be included. They must explain how the agency will work with the applicant to plan the proposed conference. Letters that do not pertain directly to the proposed conference will not be considered.

4. Qualifications of Program Personnel (25 points):

A. The qualifications, experience, and commitment of the principal staff person, and his or her ability to devote adequate time and effort to provide effective leadership.

B. The competence of associate staff persons, discussion leaders, and speakers to accomplish conference objectives.

C. The degree to which the application demonstrates that all key personnel have education and expertise relative to the conference objectives, are informed about the transmission of HIV, and understand nationwide information and education efforts currently underway that may affect, and be affected by, the proposed conference.

5. Budget Justification and Adequacy of Facilities: (not scored) The proposed budget will be evaluated on the basis of its reasonableness, concise and clear justification, consistency with the intended use of cooperative agreement funds, and the extent to which the applicant documents financial support from other sources.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance number is 93.941.

Submission Requirements and Deadlines

A. Letter of Intent (LOI)

1. One original and two copies of the LOI must be postmarked by the following deadline dates in order to be considered. (Facsimiles are not acceptable.) An invitation to submit an application does not constitute a commitment to fund.

2. Letter of Intent Due Dates: January 31, 1998.

B. Application

One original and two copies of the invited application must be submitted on PHS Form 5161–1 (OMB Number 0937–0189) and must be postmarked by the date specified in the acceptance letter in order to be considered in the application cycles.

Applications may be accepted by CDC only after the LOI has been reviewed by CDC and written invitation from CDC has been received by prospective applicant. Availability of funds may limit the number of Letters of Intent, regardless of merit, that receive an invitation to submit an application.

C. Addresses for Submission of Letter of Intent and Invited Applications

One original and two copies of the Letters of Intent and invited application must be postmarked on or before the deadline date and mailed to: Juanita Dangerfield, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–15, Atlanta, GA 30305.

D. Deadlines

Letters of Intent and Application shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing.)

E. Late Applications

Applications that do not meet the criteria in D.1. or D.2. above are considered late applications and will be returned to the applicant without review.

Other Requirements

Program Review Panel

Recipients must comply with the document entitled Content of HIV/AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control Assistance Programs (June 1992) (a copy is in the application kit). To meet the requirements for a Program Review Panel, recipients are encouraged to use an existing Program Review Panel such as the one created by the State health department's HIV/AIDS prevention program. If the recipient forms its own Program Review Panel, at least one member must also be an employee (or a designated representative) of an appropriate health or educational agency, consistent with the Content Guidelines. The names of review panel members must be listed on the Assurance of Compliance form (CDC Form 0.1113) which is also included in the application kit.

Use of CDC Name

The conference organizer(s) may use CDC's name only in factual publicity for the conference, and should understand that CDC involvement in the conference does not necessarily indicate support for the organizer's general policies, activities, or products.

Where To Obtain Additional Information

To receive additional written information, call (404) 332–4561. You will be asked to leave your name, address, and phone number, and refer to Announcement Number 802. You will receive a complete program announcement, a list of the relevant ''Healthy People 2000'' HIV objectives, and the addresses and phone numbers for CDC contact personnel. CDC will not send application kits by facsimile or express mail unless the cost for the latter is paid by the addressee.

This and other CDC announcements are also available through the CDC homepage on the Internet. The address for the CDC homepage is http://www.cdc.gov.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from Ms. Juanita Dangerfield, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–15, Room 300, Atlanta, GA 30305, telephone (404) 842–6577. Programmatic technical assistance may

be obtained from Ms. Linda LaChanse, Program Analyst, Training and Technical Support Systems Branch, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop E–40, Atlanta, GA 30333, telephone (404) 639–0964.

Please refer to Announcement Number 802 when requesting information, submitting your Letter of Intent and submitting the invited application in response to the announcement.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 512–1800. Single copies of CDC's Strategic Plan for Preventing Human Immunodeficiency Virus (HIV) Infection (July 8, 1992) can be obtained by calling the CDC National AIDS Clearinghouse at (800) 458–5231.

Dated: December 11, 1997.

Joseph R. Carter,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 97–32867 Filed 12–16–97; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Head Start Program; Notice of Award

AGENCY: Administration on Children, Youth and Families, Administration for Children and Families, HHS.

ACTION: Notice of Sole Source Award to Administer the Head Start Child Development Credentialing Program.

SUMMARY: The Head Start Bureau announces its intention to enter into a noncompetitively awarded cooperative agreement with The Council for Early Childhood Professional Recognition to administer the Child Development Associate (CDA) Credentialing Program. The CDA Program is a national project to credential qualified caregivers who work with children birth to age five in a variety of public and private agency settings, and in a variety of roles, including as center-based caregivers of infants and toddlers or preschool age children, as home visitors, or as family child care providers.

If there are organizations interested in competing for this grant to administer the Head Start Child Development Credentialing Program, they are requested to express their interest by contacting either E. Dollie Wolverton or Lynda Perez by January 16, 1998.

DATES: Effective on January 16, 1998.

FOR FURTHER INFORMATION CONTACT: E. Dollie Wolverton, Head Start Bureau, ACYF, P.O. Box 1182, Washington, D.C. 20013, (202) 205–8418 (Not a toll free call); or Lynda Perez, Grants Officer, Head Start Bureau, ACYF, P.O. Box 1182, Washington, D.C. 20013, (202) 205–7359 (Not a toll free call).

SUPPLEMENTARY INFORMATION:

I. Background

The project period for this cooperative agreement will be four years. The award is approximately $1,000,000 annually. The authority for this credentialing program is section 648(e) of the Head Start Act (42 U.S.C. 9843).

The Head Start Program is committed to staff development for all individuals employed in local programs to increase the understanding and skills necessary to carry out their jobs, as well as professional development leading to credentials and degrees. In addition to ongoing staff development, section 648A of the Head Start Act directs the Secretary to ensure that each of the 55,000 Head Start classrooms for preschool-age children has a qualified teacher, with a minimum of a CDA credential.

Those who are credentialed include prekindergarten staff from the various military sectors, child care, church-affiliated preschools, Title I school-based programs, and Head Start. Also, the revised Head Start Program Performance Standards, which become effective January 1, 1998, include new standards for infant and toddler programs and the requirement that infant and toddler teachers also be qualified by January 1, 1999, and thereafter within one year of hire, holding a CDA credential at a minimum.

Beginning in 1972, ACYF has supported various organizations to administer the CDA National Credentialing Program. These organizations included a Consortium of several child development and early childhood education associations and the Bank Street College of Education. The first decade of this credential award program was unstable and problematic due, in large measure, to the fact that the grant was recompeted frequently, leading to several changes in administering organizations and resulting breaks in services. The general instability and under-use of the CDA credential system caused concern to the Department and the Congress. The Department requested that the National Association for the Education of Young Children create a non-profit subsidiary to become a free standing organization that would permanently administer the CDA credentialing program. Accordingly, the Council for Early Childhood Professional Recognition was established to administer the national CDA Credentialing Program through a cooperative agreement. The intent of maintaining a permanent home for the national Child Development Associate credentialing program was reinforced in 1992, when Section 7 of the 1992 Juvenile Justice Act, entitled, ''Head Start Training Improvement,'' amended the Head Start Act, requiring the funding of an organization to administer a centralized child development credential and national assessment program.

II. Reason for Sole Source Award

The Council for Early Childhood Professional Recognition has effectively restored public confidence in the CDA Credential and increased the number of credentials awarded. The number of candidates credentialed each year has steadily grown from about 2,000 credentialed candidates annually to nearly 8,000 per year. As of June 1997, nearly 83,000 teachers, home visitors and family child care providers have been credentialed. The Council has also increased the recognition and credibility of the CDA Credential among the States, and now 47 States, the District of Columbia and Puerto Rico recognize the Child Development Associate credential as the requirement for the licensing of a child care center. This provides those certified with the CDA credential with the mobility to move from State-to-State with State recognition of their credential and qualifications.

The Council is efficiently and cost-effectively administering the National CDA Credentialing Program at a time when the demand for the credential has greatly increased. This allows the Council to maintain the assessment and credentialing fee to the candidate (the majority are low-income) at $325.

Because of the mandate for qualified teachers of infants and toddlers and preschool age children, welfare reform, and the President's intended expansion of the Head Start Program to serve one million eligible children by the year 2002, the need for qualified, credentialed staff is an urgent matter, particularly given the annual turnover rate of 17 percent among Head Start staff. To address the expansion of the

Head Start Program and the expansion of services by other agencies providing child care and early childhood education, it is estimated that approximately 8,000 CDA candidates will require assessment and a credential award during each of the next four years.

In the face of these challenges, the Department seeks to ensure the continuity of the administration of this unique national credentialing program, which provides affordable credentialing award services which are nationally recognized, cost effective, represent quality standards for staff working with children ages birth to five years, and enjoy the confidence of the States, institutions of higher learning, and the field of early childhood.

(Catalog of Federal Domestic Assistance Program Number 93.600, Project Head Start)

Dated: December 11, 1997.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 97–32954 Filed 12–16–97; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0430]

Medical Devices; Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance entitled ''Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA.'' The guidance document provides suggestions for the nonclinical laboratory studies and the design, conduct, and analysis of appropriate clinical studies that the Center for Devices and Radiological Health (CDRH), FDA, believes will provide reasonable assurance of the safety and effectiveness of these devices. The guidance document also sets forth the review criteria and describes the data to support a 510(k) submission. The guidance accompanies a final rule, which appears elsewhere in this issue of the **Federal Register**, announcing the reclassification of tumor associated antigen immunological test systems from class III (premarket approval) to class II (special controls).

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written comments concerning this guidance document to the contact person listed below. Submit written requests for single copies of ''Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA'' to the Division of Small Manufacturers Assistance (DSMA), Center for Devices and Radiological Health (HFZ–220), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist the office in processing your request, or fax your request to 301–443–8818. See the SUPPLEMENTARY INFORMATION section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Peter E. Maxim, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1293.

SUPPLEMENTARY INFORMATION:

I. Background

FDA issued an order (September 19, 1996) in the form of a letter reclassifying tumor associated antigen immunological test systems from class III to class II. The order identified the premarket notification guidance document for tumor associated antigens as one of the designated special controls. The guidance document contains general information on the definition of qualifying devices and the administrative requirements for submitting a 510(k) to FDA. The document also lists the types of nonclinical (analytical) studies to be included in the submission. These studies include reagent characterization, assay specificity, and device performance characteristics to include precision, linearity, interfering substances, analytical sensitivity and methods of comparison to another device. Finally, the document provides guidance on the design of clinical studies to support a submission for a new tumor marker intended to monitor previously treated patients.

This guidance document represents the agency's current thinking on the design of clinical studies expected to support a 510(k) submission for new tumor markers intended to monitor previously treated patients. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulation, or both.

II. Requests for Comments

Interested persons may, at any time, submit to the contact person listed above written comments regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

III. Electronic Access

In order to receive the ''Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA'' via your fax machine, call the CDRH Facts-On-Demand system at 1–800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (957) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). The CDRH maintains an entry on the WWW for easy access to the Web. Updated on a regular basis, the CDRH home page includes ''Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA,'' device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at http://www.fda.gov/cdrh. ''Guidance Document for the Submission of Tumor Associated Antigen Premarket Notifications, [510(k)], to FDA'' will be available at http://www.fda.gov/cdrh/ode/ed—cl.html.

A text-only version of the CDRH Web site is also available from a computer or VT–100 compatible terminal by dialing 1–800–222–0185 (terminal settings are 8/1/N). Once the modem answers, press Enter several times and select menu choice 1: FDA BULLETIN BOARD SERVICE. From there follow instructions for logging in, and at the BBS TOPICS PAGE, arrow down to the FDA home page (do not select the first CDRH entry). Then select Medical Devices and Radiological Health. From there select CENTER FOR DEVICES

AND RADIOLOGICAL HEALTH for general information, or arrow down for specific topics.

Dated: October 7, 1997.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 97–32875 Filed 12–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Cardiovascular and Renal Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Cardiovascular and Renal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on January 27, 1998, 8:30 a.m. to 5:30 p.m.; and January 28, 1998, 9 a.m. to 4 p.m.

Location: National Institutes of Health, Natcher Conference Center, 45 Center Dr., Bethesda, MD 20892.

Contact Person: Joan C. Standaert, Center for Drug Evaluation and Research (HFD–110), 419–259–6211, or Danyiel A. D'Antonio (HFD–21), 301–443–5455, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12533. Please call the Information Line for up-to-date information on this meeting.

Agenda: On January 27, 1998, the committee will review and discuss: (1) New drug application (NDA) 20–736, Verdia™ (tasosartan, Wyeth-Ayerst Research), as a therapy for hypertension; and (2) the unapproved outpatient use of intermittent intravenous positive inotropic agents. On January 28, 1998, the committee will review and discuss NDA 20–718, Integrilin™ (eptifibatide, Cor Therapeutics, Inc.), for use in the settings of percutaneous transluminal angioplasty and acute coronary syndrome.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by January 20, 1998. Oral presentations from the public will be scheduled between approximately 8:30 a.m. and 9:30 a.m. on January 27, 1998. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before January 20, 1998, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: December 11, 1997.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 97–32874 Filed 12–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0188]

International Conference on Harmonisation; Guidance on General Considerations for Clinical Trials

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a guidance entitled ''E8 General Considerations for Clinical Trials.'' The guidance was prepared under the auspices of the International Conference on Harmonisation of Technical Requirements for Registration of Pharmaceuticals for Human Use (ICH). The guidance sets forth general scientific principles for the conduct, performance, and control of clinical trials.

DATES: Effective December 17, 1997. Submit written comments at any time.

ADDRESSES: Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857. Copies of the guidance are available from the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4573. Single copies of the guidance may be obtained by mail from the Office of Communication, Training and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, or by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800. Copies may be obtained from CBER's FAX Information System at 1–888–CBER–FAX or 301–827–3844.

FOR FURTHER INFORMATION CONTACT:

Regarding the guidance: G. Alexander Fleming, Center for Drug Evaluation and Research (HFD–510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6391.

Regarding ICH: Janet J. Showalter, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0864.

SUPPLEMENTARY INFORMATION: In recent years, many important initiatives have been undertaken by regulatory authorities and industry associations to promote international harmonization of regulatory requirements. FDA has participated in many meetings designed to enhance harmonization and is committed to seeking scientifically based harmonized technical procedures for pharmaceutical development. One of the goals of harmonization is to identify and then reduce differences in technical requirements for drug development among regulatory agencies.

ICH was organized to provide an opportunity for tripartite harmonization initiatives to be developed with input from both regulatory and industry representatives. FDA also seeks input from consumer representatives and others. ICH is concerned with harmonization of technical requirements for the registration of pharmaceutical products among three regions: The European Union, Japan, and the United States. The six ICH sponsors are the European Commission, the European Federation of Pharmaceutical Industries Associations, the Japanese Ministry of Health and Welfare, the Japanese Pharmaceutical Manufacturers Association, the Centers for Drug Evaluation and Research (CDER) and CBER, FDA, and the Pharmaceutical Research and Manufacturers of America. The ICH Secretariat, which coordinates the preparation of documentation, is provided by the International Federation of Pharmaceutical Manufacturers Associations (IFPMA).

The ICH Steering Committee includes representatives from each of the ICH sponsors and the IFPMA, as well as observers from the World Health Organization, the Canadian Health Protection Branch, and the European Free Trade Area.

In the **Federal Register** of May 30, 1997 (62 FR 29540), FDA published a draft tripartite guideline entitled ''General Considerations for Clinical Trials.'' The notice gave interested persons an opportunity to submit comments by July 1, 1997.

After consideration of the comments received and revisions to the guidance, a final draft of the guidance was submitted to the ICH Steering Committee and endorsed by the three participating regulatory agencies on July 17, 1997.

In accordance with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997), this document has been designated a guidance, rather than a guideline.

The guidance describes internationally accepted principles and practices in the conduct of clinical trials and development strategy for new drug products. It is intended to facilitate the evaluation and acceptance of foreign clinical trial data by promoting a common understanding of general principles and approaches. The guidance also presents an overview of ICH clinical safety and efficacy documents.

This guidance represents the agency's current thinking on general considerations for the conduct, performance, and control of clinical trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

The public is encouraged to submit written comments with new data or other new information pertinent to this guidance. The comments in the docket will be periodically reviewed, and, where appropriate, the guidance will be amended. The public will be notified of any such amendments through a notice in the **Federal Register**.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. An electronic version of this guidance is available on the Internet (http://www.fda.gov/cder/guidance/index.htm) or at CBER's World Wide Web site at ''http://www.fda.gov/cber/publications.htm''.

The text of the guidance follows:

E8 General Considerations for Clinical Trials[1]

1. Objectives of This Document

In the three ICH regions, the evolution of drug development strategies and evaluation processes has led to the establishment of regional guidances on general considerations for clinical trials and the process of clinical development of pharmaceuticals for human use. This harmonized guidance is derived from those regional documents as well as from ICH guidances.

The ICH document ''General Considerations for Clinical Trials'' is intended to:

(a) Describe internationally accepted principles and practices in the conduct of both individual clinical trials and overall development strategy for new medicinal products.

(b) Facilitate the evaluation and acceptance of foreign clinical trial data by promoting a common understanding of general principles, general approaches, and the definition of relevant terms.

(c) Present an overview of the ICH clinical safety and efficacy documents and facilitate the user's access to guidance pertinent to clinical trials within these documents. The relevant ICH documents are listed in Annex 1.

(d) Provide a separate glossary of terms used in the ICH clinical safety and efficacy related documents that pertain to clinical trials and indicate which documents contain these.

For the sake of brevity, the term ''drug'' has been used in this document. It should be considered synonymous with ''investigational (medicinal) product,'' ''medicinal product,'' and ''pharmaceutical,'' including vaccines and other biological products. The principles established in this guidance may also be applied to other clinical investigations (e.g., radiotherapy, psychotherapy, surgery, medical devices and alternative therapies).

2. General Principles

2.1 Protection of Clinical Trial Subjects

The principles and practices concerning protection of trial subjects are stated in the ICH guidance on Good Clinical Practice (ICH E6). These principles have their origins in The Declaration of Helsinki and should be observed in the conduct of all human drug investigations.

Before any clinical trial is carried out, results of nonclinical investigations or previous human studies should be sufficient to indicate that the drug is acceptably safe for the proposed investigation in humans. The purpose and timing of animal pharmacology and toxicology studies intended to support studies of a given duration are discussed in ICH M3. The role of such studies for biotechnology products is cited in ICH S6.

Throughout drug development, emerging animal toxicological and clinical data should be reviewed and evaluated by qualified experts to assess their implications for the safety of the trial subjects. In response to such findings, future studies and, when necessary, those in progress should be appropriately modified in a timely fashion to maintain the safety of trial participants. The investigator and sponsor share responsibility for the protection of clinical trial subjects together with the Institutional Review Board/Independent Ethics Committee. The responsibilities of these parties are described in ICH E6.

2.2 Scientific Approach in Design and Analysis

Clinical trials should be designed, conducted, and analyzed according to sound scientific principles to achieve their objectives, and should be reported appropriately. The essence of rational drug development is to ask important questions and answer them with appropriate studies. The primary objectives of any study should be clear and explicitly stated.

Clinical studies can be classified according to when the study occurs during clinical development or, as shown in Table 1, by their objectives. (The illustrative examples are not intended to be exhaustive.) The cardinal logic behind serially conducted studies of a medicinal product is that the results of prior studies should influence the plan of later studies. Emerging data will frequently prompt a modification of the development strategy. For example, results of a therapeutic confirmatory study may suggest a need for additional human pharmacology studies.

The availability of foreign clinical data should obviate the need to generate similar data in an ICH region if the ICH E5 and ICH E6 guidances are followed (see ICH E5).

[1] This guidance represents the agency's current thinking on general considerations for the conduct, performance, and control of clinical trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

TABLE 1.—AN APPROACH TO CLASSIFYING CLINICAL STUDIES ACCORDING TO OBJECTIVE

Type of Study	Objective of Study	Study Examples
Human Pharmacology	• Assess tolerance • Define/describe PK[1] and PD[2] • Explore drug metabolism and drug interactions • Estimate activity	• Dose-tolerance studies • Single and multiple dose PK and/or PD studies • Drug interaction studies
Therapeutic Exploratory	• Explore use for the targeted indication • Estimate dosage for subsequent studies • Provide basis for confirmatory study design, endpoints, methodologies	• Earliest trials of relatively short duration in well-defined narrow patient populations, using surrogate or pharmacological endpoints or clinical measures • Dose-response exploration studies
Therapeutic Confirmatory	• Demonstrate/confirm efficacy • Establish safety profile • Provide an adequate basis for assessing the benefit/risk relationship to support licensing • Establish dose-response relationship	• Adequate, and well controlled studies to establish efficacy • Randomized parallel dose-response studies • Clinical safety studies • Studies of mortality/morbidity outcomes • Large simple trials • Comparative studies
Therapeutic Use	• Refine understanding of benefit/risk relationship in general or special populations and/or environments • Identify less common adverse reactions • Refine dosing recommendation	• Comparative effectiveness studies • Studies of mortality/morbidity outcomes • Studies of additional endpoints • Large simple trials • Pharmacoeconomic studies

[1] Pharmacokinetics
[2] Pharmacodynamics

3. Development Methodology

This section covers issues and considerations relating to the development plan and to its individual component studies.

3.1 Considerations for the Development Plan

3.1.1 Nonclinical Studies

Important considerations for determining the nature of nonclinical studies and their timing with respect to clinical trials include:

(a) Duration and total exposure proposed in individual patients.

(b) Characteristics of the drug (e.g., long half life, biotechnology products).

(c) Disease or condition targeted for treatment.

(d) Use in special populations (e.g., women of childbearing potential).

(e) Route of administration.

The need for nonclinical information including toxicology, pharmacology, and pharmacokinetics to support clinical trials is addressed in the ICH M3 and S6 documents.

3.1.1.1 *Safety studies.* For the first studies in humans, the dose that is administered should be determined by careful examination of the prerequisite nonclinical pharmacokinetic, pharmacological, and toxicological evaluations (see ICH M3). Early nonclinical studies should provide sufficient information to support selection of the initial human dose and safe duration of exposure, and to provide information about physiological and toxicological effects of a new drug.

3.1.1.2 *Pharmacological and pharmacokinetic studies.* The basis and direction of the clinical exploration and development rests on the nonclinical pharmacokinetic and pharmacology profile, which includes information such as:

(a) Pharmacological basis of principal effects (mechanism of action).

(b) Dose-response or concentration-response relationships and duration of action.

(c) Study of the potential clinical routes of administration.

(d) Systemic general pharmacology, including pharmacological effects on major organ systems and physiological responses.

(e) Studies of absorption, distribution, metabolism, and excretion.

3.1.2 Quality of Investigational Medicinal Products

Formulations used in clinical trials should be well characterized, including information on bioavailability wherever feasible. The formulation should be appropriate for the stage of drug development. Ideally, the supply of a formulation will be adequate to allow testing in a series of studies that examine a range of doses. During drug development, different formulations of a drug may be tested. Links between formulations, established by bioequivalence studies or other means, are important in interpreting clinical study results across the development program.

3.1.3 Phases of Clinical Development

Clinical drug development is often described as consisting of four temporal phases (Phases I–IV). It is important to recognize that the phase of development provides an inadequate basis for classification of clinical trials because one type of trial may occur in several phases (see Figure 1). A classification system using study objectives as discussed in section 2.2 is preferable. It is important to appreciate that the phase concept is a description, not a set of requirements. It is also important to realize that the temporal phases do not imply a fixed order of studies since for some drugs in a development plan the typical sequence will not be appropriate or necessary. For example, although human pharmacology studies are typically conducted during Phase I, many such studies are conducted at each of the other three stages, but nonetheless are sometimes labeled as Phase I studies. Figure 1 demonstrates this close but variable correlation between the two classification systems. The distribution of the points of the graph shows that the types of study are not synonymous with the phases of development.

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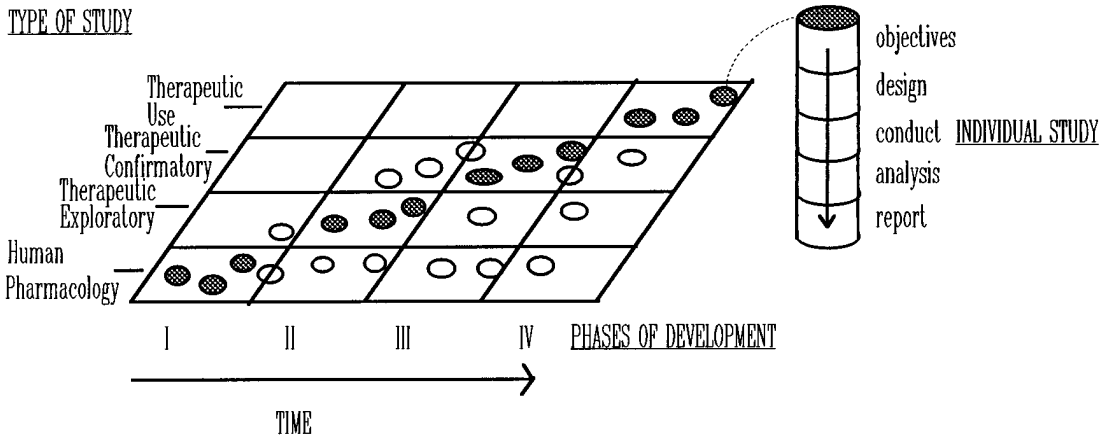
[1] This matrix graph illustrates the relationship between the phases of development and types of study by objective that may be conducted during each clinical development of a new medicinal product. The shaded circles show the types of study most usually conducted in a certain phase of development, the open circles show certain types of study that may be conducted in that phase of development but are less usual. Each circle represents an individual study. To illustrate the development of a single study, one circle is joined by a dotted line to an inset column that depicts the elements and sequence of an individual study.

Figure 1.—Correlation Between Development Phases and Types of Study[1]



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Drug development is ideally a logical, step-wise procedure in which information from small early studies is used to support and plan later larger, more definitive studies. To develop new drugs efficiently, it is essential to identify characteristics of the investigational medicine in the early stages of development and to plan an appropriate development based on this profile.

Initial trials provide an early evaluation of short-term safety and tolerability and can provide pharmacodynamic and pharmacokinetic information needed to choose a suitable dosage range and administration schedule for initial exploratory therapeutic trials. Later confirmatory studies are generally larger and longer and include a more diverse patient population. Dose-response information should be obtained at all stages of development, from early tolerance studies, to studies of short-term pharmacodynamic effect, to large efficacy studies (see ICH E4). Throughout development, new data may suggest the need for additional studies that are typically part of an earlier phase. For example, blood level data in a late trial may suggest a need for a drug-drug interaction study, or adverse effects may suggest the need for further dose finding and/or additional nonclinical studies. In addition, to support a new marketing application approval for the same drug, e.g., for a new indication, pharmacokinetic or therapeutic exploratory studies are considered to be in Phase I or Phase II of development.

3.1.3.1 *Phase I (Most typical kind of study: Human pharmacology).* Phase I starts with the initial administration of an investigational new drug into humans.

Although human pharmacology studies are typically identified with Phase I, they may also be indicated at other points in the development sequence. Studies in this phase of development usually have nontherapeutic objectives and may be conducted in healthy volunteer subjects or certain types of patients, e.g., patients with mild hypertension. Drugs with significant potential toxicity, e.g., cytotoxic drugs, are usually studied in patients. Studies in this phase can be open, baseline controlled, or may use randomization and blinding, to improve the validity of observations.

Studies conducted in Phase I typically involve one or a combination of the following aspects:

(a) Estimation of initial safety and tolerability

The initial and subsequent administration of an investigational new drug into humans is usually intended to determine the tolerability of the dose range expected to be needed for later clinical studies and to determine the nature of adverse reactions that can be expected. These studies typically include both single and multiple dose administration.

(b) Pharmacokinetics

Characterization of a drug's absorption, distribution, metabolism, and excretion continues throughout the development plan. Their preliminary characterization is an important goal of Phase I. Pharmacokinetics may be assessed via separate studies or as a part of efficacy, safety and tolerance studies. Pharmacokinetic studies are particularly important to assess the clearance of the drug and to anticipate possible accumulation of parent drug or metabolites and potential drug-drug interactions. Some pharmacokinetic studies are commonly conducted in later phases to answer more specialized questions. For many orally administered drugs, especially modified release products, the study of food effects on bioavailability is important. Obtaining pharmacokinetic information in subpopulations such as patients with impaired elimination (renal or hepatic failure), the elderly, children, women, and ethnic subgroups should be considered. Drug-drug interaction studies are important for many drugs; these are generally performed in phases beyond Phase I, but studies in animals and in vitro studies of metabolism and potential interactions may lead to doing such studies earlier.

(c) Assessment of pharmacodynamics

Depending on the drug and the endpoint studied, pharmacodynamic studies and studies relating drug blood levels to response (PK/PD studies) may be conducted in healthy volunteer subjects or in patients with the target disease. In patients, if there is an appropriate measure, pharmacodynamic data can provide early estimates of activity and potential efficacy and may guide the dosage and dose regimen in later studies.

(d) Early measurement of drug activity

Preliminary studies of activity or potential therapeutic benefit may be conducted in Phase I as a secondary objective. Such studies are generally performed in later phases but may be appropriate when drug activity is readily measurable with a short duration of drug exposure in patients at this early stage.

3.1.3.2 *Phase II (Most typical kind of study: Therapeutic exploratory).* Phase II is usually considered to start with the initiation of studies in which the primary objective is to explore therapeutic efficacy in patients.

Initial therapeutic exploratory studies may use a variety of study designs, including concurrent controls and comparisons with baseline status. Subsequent trials are usually randomized and concurrently controlled to evaluate the efficacy of the drug and its safety for a particular therapeutic indication. Studies in Phase II are typically conducted in a group of patients who are selected by relatively narrow criteria, leading to a relatively homogeneous population, and who are closely monitored.

An important goal for this phase is to determine the dose(s) and regimen for Phase III trials. Early studies in this phase often utilize dose escalation designs (see ICH E4) to give an early estimate of dose response and later studies may confirm the dose response relationship for the indication in question by using recognized parallel dose-response designs (could also be deferred to phase III). Confirmatory dose response studies may be conducted in Phase II or left for Phase III. Doses used in Phase II are usually but not always less than the highest doses used in Phase I.

Additional objectives of clinical trials conducted in Phase II may include evaluation of potential study endpoints, therapeutic regimens (including concomitant medications), and target populations (e.g., mild versus severe disease) for further study in Phase II or III. These objectives may be served by exploratory analyses, examining subsets of data, and by including multiple endpoints in trials.

3.1.3.3 *Phase III (Most typical kind of study: Therapeutic confirmatory).* Phase III usually is considered to begin with the initiation of studies in which the primary objective is to demonstrate, or confirm therapeutic benefit.

Studies in Phase III are designed to confirm the preliminary evidence accumulated in Phase II that a drug is safe and effective for use in the intended indication and recipient population. These studies are intended to provide an adequate basis for marketing approval. Studies in Phase III may also further explore the dose-response relationship, or explore the drug's use in wider populations, in different stages of disease, or in combination with another drug. For drugs intended to be administered for long periods, trials involving extended exposure to the drug are ordinarily conducted in Phase III, although they may be started in Phase II (see ICH E1). ICH E1 and ICH E7 describe the overall clinical safety database considerations for chronically administered drugs and drugs used in the elderly. These studies carried out in Phase III complete the information needed to support adequate instructions for use of the drug (official product information).

3.1.3.4 *Phase IV (Variety of studies: Therapeutic use).* Phase IV begins after drug approval. Therapeutic use studies go beyond the prior demonstration of the drug's safety, efficacy and dose definition.

Studies in Phase IV are all studies (other than routine surveillance) performed after drug approval and related to the approved indication. They are studies that were not considered necessary for approval but are often important for optimizing the drug's use. They may be of any type but should have valid scientific objectives. Commonly conducted studies include additional drug-drug interaction, dose-response, or safety studies and studies designed to support use under the approved indication, e.g., mortality/morbidity studies, epidemiological studies.

3.1.3.5 *Development of an application unrelated to original approved use.* After initial approval, drug development may continue with studies of new or modified indications, new dosage regimens, new routes of administration, or additional patient populations. If a new dose, formulation, or combination is studied, additional human pharmacology studies may be indicated, necessitating a new development plan.

The need for some studies may be obviated by the availability of data from the original development plan or from therapeutic use.

3.1.4 Special Considerations

A number of special circumstances and populations require consideration on their own when they are part of the development plan.

3.1.4.1 *Studies of drug metabolites.* Major active metabolite(s) should be identified and deserve detailed pharmacokinetic study. Timing of the metabolic assessment studies within the development plan depends on the characteristics of the individual drug.

3.1.4.2 *Drug-drug interactions.* If a potential for drug-drug interaction is suggested by metabolic profile, by the results of nonclinical studies or by information on similar drugs, studies on drug interaction during clinical development are highly recommended. For drugs that are frequently coadministered, it is usually important that drug-drug interaction studies be performed in nonclinical and, if appropriate, in human studies. This is particularly true for drugs that are known to alter the absorption or metabolism of other drugs (see ICH E7), or whose metabolism or excretion can be altered by effects of other drugs.

3.1.4.3 *Special populations.* Some groups in the general population may require special study because they have unique risk/benefit considerations that need to be taken into account during drug development, or because they can be anticipated to need modification of use of the dose or schedule of a drug compared to general adult use.

Pharmacokinetic studies in patients with renal and hepatic dysfunction are important to assess the impact of potentially altered drug metabolism or excretion. Other ICH documents address such issues for geriatric patients (ICH E7) and patients from different ethnic groups (ICH E5). The need for nonclinical safety studies to support human clinical trials in special populations is addressed in the ICH M3 document.

Particular attention should be paid to the ethical considerations related to informed consent from vulnerable populations and the procedures scrupulously followed (see ICH E6).

(a) Investigations in pregnant women

In general, pregnant women should be excluded from clinical trials where the drug is not intended for use in pregnancy. If a patient becomes pregnant during administration of the drug, treatment should generally be discontinued if this can be done safely. Followup evaluation of the pregnancy, fetus, and child is very important. Similarly, for clinical trials that include pregnant women because the medicinal product is intended for use during pregnancy, followup of the pregnancy, fetus, and child is very important.

(b) Investigations in nursing women

Excretion of the drug or its metabolites into human milk should be examined where applicable. When nursing mothers are enrolled in clinical studies, their babies should be monitored for the effects of the drug.

(c) Investigations in children

The extent of the studies needed depends on the current knowledge of the drug and the possibility of extrapolation from adults and children of other age groups. Some drugs may be used in children from the early stages of drug development (see ICH M3).

For a drug expected to be used in children, evaluation should be made in the appropriate age group. When clinical development is to include studies in children, it is usually appropriate to begin with older children before extending the trial to younger children and then infants.

3.2 Considerations for Individual Clinical Trials

The following important principles should be followed in planning the objectives, design, conduct, analysis, and reporting of a clinical trial (see ICH guidances in Annex 1). Each part should be defined in a written protocol before the study starts (see ICH E6).

3.2.1 Objectives

The objective(s) of the study should be clearly stated and may include exploratory or confirmatory characterization of safety and/or efficacy and/or assessment of pharmacokinetic parameters and pharmacological, physiological, or biochemical effects.

3.2.2 Design

The appropriate study design should be chosen to provide the desired information. Examples of study design include parallel group, crossover, factorial, dose escalation, and fixed dose-dose response (see ICH E4, E6, E9 and E10). Appropriate comparators should be utilized and adequate numbers of subjects included to achieve the study objectives. Primary and secondary endpoints and plans for their analyses should be clearly stated (see ICH E9). The methods of monitoring adverse events by changes in clinical signs and symptoms and laboratory studies should be described (see ICH E3). The protocol should specify procedures for the followup of patients who stop treatment prematurely.

3.2.2.1 *Selection of subjects.* The stage of development and the indication to be studied should be taken into account in selecting the subject population (e.g., normal healthy subjects, cancer patients or other special populations in early phase development) as should prior nonclinical and clinical knowledge. The variability of groups of patients or healthy volunteers studied in early trials may be limited to a narrow range by strict selection criteria, but as drug development proceeds, the populations tested should be broadened to reflect the target population.

Depending on the stage of development and level of concern for safety, it may be necessary to conduct studies in a closely monitored (i.e., inpatient) environment.

As a general principle, trial subjects should not participate concurrently in more than one clinical trial but there can be justified exceptions. Subjects should not be enrolled repetitively in clinical trials without time off treatment adequate to protect safety and exclude carryover effects.

In general, women of childbearing potential should be using highly effective contraception to participate in clinical trials (see ICH M3).

For male subjects, potential hazards of drug exposure in the trial to their sexual partners or resulting progeny should be considered. When indicated (e.g., trials involving drugs that are potentially mutagenic, or toxic to the reproductive system), an appropriate contraception provision should be included in the trial.

3.2.2.2 *Selection of control group.* Trials should have an adequate control group. Comparisons may be made with placebo, no treatment, active controls, or of different doses of the drug under investigation. The choice of the comparator depends on, among other things, the objective of the trial (see ICH E9 and E10). Historical (external) controls can be justified in some cases, but particular care is important to minimize the likelihood of erroneous inference.

3.2.2.3 *Number of subjects.* The size of a trial is influenced by the disease to be investigated, the objective of the study, and the study endpoints. Statistical assessments of sample size should be based on the expected magnitude of the treatment effect, the variability of the data, the specified (small) probability of error (see ICH E9), and the desire for information on subsets of the population or secondary endpoints. In some circumstances, a larger database may be needed to establish the safety of a drug. ICH E1 and ICH E7 suggest a minimum experience to assess safety for a registrational database for a new indication. These numbers should not be considered as absolute and may be insufficient in some cases (e.g., where long-term use in healthy individuals is expected).

3.2.2.4 *Response variables.* Response variables should be defined prospectively, giving descriptions of methods of observation and quantification. Objective methods of observation should be used where possible and when appropriate (see ICH E9).

Study endpoints are the response variables that are chosen to assess drug effects that are related to pharmacokinetic parameters, pharmacodynamic measures, efficacy and safety. A primary endpoint(s) should reflect clinically relevant effects and is typically selected based on the principal objective of the study. Secondary endpoints assess other drug effects that may or may not be related to the primary endpoint. Endpoints and the plan for their analysis should be prospectively specified in the protocol.

A surrogate endpoint is an endpoint that is intended to relate to a clinically important outcome but does not in itself measure a clinical benefit. Surrogate endpoints may be used as primary endpoints when appropriate (when the surrogate is reasonably likely or well known to predict clinical outcome).

The methods used to make the measurements of the endpoints, both subjective and objective, should be validated and meet appropriate standards for accuracy, precision, reproducibility, reliability, and responsiveness (sensitivity to change over time).

3.2.2.5 *Methods to minimize or assess bias.* The protocol should specify methods of allocation to treatment groups and blinding (see ICH E9 and E10).

(a) Randomization

In conducting a controlled trial, randomized allocation is the preferred means of assuring comparability of test groups and minimizing the possibility of selection bias.

(b) Blinding

Blinding is an important means of reducing or minimizing the risk of biased study outcomes. A trial where the treatment assignment is not known by the study participant because of the use of placebo or other methods of masking the intervention is referred to as a single blind study. When the investigator and sponsor staff who are involved in the treatment or clinical evaluation of the subjects and analysis of data are also unaware of the treatment assignments, the study is double blind.

(c) Compliance

Methods used to evaluate patient usage of the test drug should be specified in the protocol and the actual usage documented.

3.2.3 Conduct

The study should be conducted according to the principles described in this guidance and in accordance with other pertinent elements outlined in ICH E6 and other relevant ICH guidances (see Annex 1). Adherence to the study protocol is essential. If modification of the protocol becomes necessary, a clear description of the rationale for the modification should be provided in a protocol amendment (see ICH E6). Timely adverse event reporting during a study is essential and should be documented. Guidance is available on expedited reporting of safety data to appropriate officials, on the content of safety reports, and on privacy and confidentiality of data (see ICH E2A, E2B, and E6).

3.2.4 Analysis

The study protocol should have a specified analysis plan that is appropriate for the objectives and design of the study, taking into account the method of subject allocation, the measurement methods of response variables, specific hypotheses to be tested, and analytical approaches to common problems including early study withdrawal and protocol violations. A description of the statistical methods to be employed, including timing of any planned interim analysis(es), should be included in the protocol (see ICH E3, E6, and E9).

The results of a clinical trial should be analyzed in accordance with the plan prospectively stated in the protocol and all deviations from the plan should be indicated in the study report. Detailed guidance is available in other ICH guidances on planning of the protocol (ICH E6), on the analysis plan and statistical analysis of results (ICH E9), and on study reports (ICH E3).

Studies are normally expected to run to completion, although in some studies the possibility of early stopping is formally recognized. In such cases, this should be clearly described in the protocol with due statistical attention to the overall levels of statistical significance and to the need to adjust the estimates of the size of treatment effects (ICH E9).

Safety data should be collected for all clinical trials, appropriately tabulated and with adverse events classified according to their seriousness and their likely causal relationship (see ICH E2A).

3.2.5 Reporting

Clinical study reports should be adequately documented following the approaches outlined in other ICH guidances (see E3 and E6).

4. Annex 1

TABLE 2.—LIST OF RELEVANT ICH GUIDANCES AND TOPICS

Code	Topic
E1	The Extent of Population Exposure to Assess Clinical Safety for Drugs Intended for Long-Term Treatment of Non-Life-Threatening Conditions
E2A	Clinical Safety Data Management: Definitions and Standards for Expedited Reporting
E2B	Clinical Safety Data Management: Data Elements for Transmission of Individual Case Safety Reports
E2C	Clinical Safety Data Management: Periodic Safety Update Reports for Marketed Drugs
E3	Structure and Content of Clinical Study Reports
E4	Dose-Response Information to Support Drug Registration
E5	Ethnic Factors in the Acceptability of Foreign Clinical Data
E6	Good Clinical Practice: Consolidated Guideline
E7	Studies in Support of Special Populations: Geriatrics
E8	General Considerations for Clinical Trials
E9	Statistical Considerations in the Design of Clinical Trials
E10	Choice of Control Group in Clinical Trials
M3	Nonclinical Safety Studies for the Conduct of Human Clinical Trials for Pharmaceuticals
S6	Safety Studies for Biotechnology-Derived Products

Dated: December 10, 1997.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 97–32877 Filed 12–16–97; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–26]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request:

Extension of a currently approved collection; *Title of Information Collection:* Clinical Laboratory Improvement Amendment (CLIA) and the Information Collection Requirements (ICRs) contained in the Supporting Regulations 42 CFR 493.1–2001; *Form No.:* HCFA–R–26 (OMB# 0938–0612); *Use:* The ICRs referenced in 42 CFR 493.1–.2001 outline the requirements necessary to determine an entities compliance with CLIA. CLIA requires laboratories that perform testing on human specimens to meet performance requirements in order to be certified by HHS. HHS conducts inspections in order to determine a laboratory's compliance with the CLIA requirements. CLIA implements certificate, laboratory standards and inspection requirements.; *Frequency:* As needed; *Affected Public:* Individuals or Households, Business or other for profit, Not for profit institutions, Federal Government, State, local or tribal government; *Number of Respondents:* 149,700; *Total Annual Responses:* 631,459; *Total Annual Hours:* 9,133,625.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room C2–26–17, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 5, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–32859 Filed 12–16–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Document Identifier: HCFA–R–205 and HCFA–R–206

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. This is necessary to ensure compliance with section 111 of HIPAA necessary to implement congressional intent with respect to guaranteeing availability of individual health insurance coverage to certain individuals with prior group coverage. We cannot reasonably comply with the normal clearance procedures because public harm is likely to result because eligible individuals will not receive the health insurance protections under the statute.

HCFA is requesting OMB review and approval of this collection by 12/31/97, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by 12/29/97. It should be noted that HCFA will continue to consider and respond as appropriate to the public comments received in response to the 04/08/97 **Federal Register** notices requesting public comment on the collections referenced below. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: Extension, without change, of a currently approved collection.

Title of Information Collection: Individual Health Insurance. Reform: Portability from Group to Individual Coverage; Federal Rules for Access in the Individual Market; State Alternative Mechanisms to Federal Rules BPD–882–IFC.

Form Number: HCFA–R–205 (OMB approval #: 0938–0703).

Use: These information collection requirements help ensure access to the individual insurance market for certain individuals and allows the States to

implement their own program to meet the HIPAA requirements for access to the individual market. The information collection requirements outlined in this document are necessary for issuers and States to ensure individuals receive protection under section 111 of HIPAA.

Frequency: On occasion.

Affected Public: States, businesses or other for profit, not-for-profit institutions, Federal Government, individuals or households.

Number of Respondents: 1,035.

Total Annual Responses: 3.5 million in 1997; 3 million each in 1998 and 1999; Total Annual Hours Requested: 335,000 to 586,000 hours in 1997; 384,000 to 882,000 in 1998; and 377,000 to 882,000 in 1999.

Total Annual Cost: $4.9 million to $6.8 million in 1997; $5.1 million to $8.7 million in 1998; and $5.4 million to $8.7 million in 1999.

Section 148.120 Guaranteed Availability of Individual Health Insurance Coverage to Certain Individuals With Prior Group Coverage

States are given the flexibility either to enforce the Federal requirements set forth in Sec. 148.120, or to implement an alternative mechanism, under State law, that achieves the statutory mandate of providing eligible individuals with access to individual health insurance, or comparable coverage, without preexisting condition exclusions. However, a State could choose to do nothing, resulting in Federal enforcement of the individual market regulations under HIPAA. Thirty States have indicated to us an intent to implement an alternative mechanism under Sec. 148.128. The information collection requirements associated with implementing and enforcing the alternative mechanism are discussed below for Sec. 148.128.

If a State chooses to enforce the Federal guaranteed availability requirements (sometimes referred to as the ''Federal fall back'' requirements), the provisions of Sec. 148.120 apply, and must be enforced by the State under State law. Since many of these requirements are enforced under existing State law, for these instances, they are exempt from the Paperwork Reduction Act (PRA) as described under 5 CFR 1320.3(b)(3). Although applicable PRA burden will vary by State and issuer, we anticipate that ten States will be required to review materials submitted by at most 325 issuers per State on an annual basis to ensure compliance with the requirements of all products guaranteed or alternative coverage, which are not currently required under State laws and regulations. Therefore, the PRA burden imposed under this option is the time required by the ten States to review the materials submitted by the issuers. This burden is 1,625 hours based on each of the ten States reviewing the material for 30 minutes for each issuer on an annual basis. We estimate the cost associated with this burden to be $24,375.

If a State implements neither an alternative mechanism, nor the Federal fall back requirements, we will implement the Federal fall back provisions in that State and will enforce those requirements using the penalty provisions specified in Secs. 148.200 and 148.202. We anticipate that fewer than ten States will rely on Federal enforcement of the statute. In particular, the only jurisdictions that we believe will choose this option are the five U.S. territories.

This section also requires an issuer who elects the alternative coverage option to document any actuarial calculations necessary to satisfy State and/or Federal oversight provisions referenced in Sec. 148.120. Since the majority of issuers rely on automated means of storing their calculations, we estimate the annual burden for this record keeping activity to be 25 hours. This is based on the assumption that it will take approximately 10 issuers per State, in 15 States, on an annual basis, 10 minutes per issuer, to electronically store and verify the storage of their calculations. We estimate the cost associated with this burden to be $375.

Section 148.122 Guaranteed Renewability of Individual Health Insurance Coverage

In this section issuers are only required to report if they are discontinuing a particular type of coverage or discontinuing all coverage. This requirement exists in the absence of this regulation because under current insurance practices, State insurance departments oversee discontinuance of insurance products in their State as a normal business practice. Therefore, these information collection requirements are exempt from the PRA under 5 CFR 1320.3(b)(2) and 5 CFR 1320.3(b)(3). However, under HIPAA, States must review policies during their oversite process to make sure there is a guarantee renewability clause in each policy. For the 21 States that currently require guaranteed renewability, it is our understanding that this is normal business practice. For the other 34 States, however, we see this State burden to be about 10 minutes per policy, since States already review policies for other requirements and this process does not prescribe a timetable for reviewing the policies. We see this as a total annual burden of 20,000 hours. We estimate the cost associated with this burden to be $300,000. If the State identifies a violation and a State has to take some action, we believe that each State will be required to initiate fewer than 10 administrative actions on an annual basis against specific individuals or entities who failed to implement the Federal guarantee renewability requirements.

Section 148.124 Certification and Disclosure of Coverage

Section 148.124 specifies that an issuer in the individual market must provide a written certificate of creditable coverage, and, if required, make other certain disclosures regarding an individual's coverage under an individual policy. In general, the certification and disclosure requirements are substantially identical to the relevant provisions of Sec. 146.115 that apply to health insurance coverage offered by issuers in the group market. The preamble accompanying the group market regulation explains these procedures in detail. In general, the certificates from issuers in the individual market and other disclosure of information are intended to enable individuals to avoid or reduce preexisting condition exclusions included under subsequent group health insurance coverage the individual may obtain.

Individuals have the right to receive a certificate automatically (an automatic certificate) when they lose coverage under an individual policy. A certificate must also be provided upon a request by, or on behalf of, an individual for the period not later than 24 months after coverage ceases. The certificate must be provided at the earliest time that an issuer, acting in a reasonable and prompt fashion, can provide the certificate. The certificate must also be provided consistent with State law.

An issuer of an individual policy is required, to the same extent as an issuer of insurance in the group market, to prepare certificates with respect to the coverage of any of the individual's dependents that are covered under the individual policy.

We anticipate that 3 million individual market-based certificates will be generated on an annual basis. We are assuming that the majority of certificates issued in the individual market will require issuers to find out the application date since many individuals will have less than 18 months of credible coverage with that issuer.

The range of time estimates, shown in the table below, are based on

discussions with industry individuals. We believe that as a routine business practice, the issuers' administrative staff have the necessary information readily available to generate the required certificates. In addition, we have determined that the majority of issuers have or will have the capability to automatically computer generate and disseminate the necessary certification when appropriate.

	Total respondents	Total responses	Average time (in minutes) per response (range)	Burden hours (range)	Cost (range)
1997	1,000	3,418,052	4.63	263,548	$3,897,932
	.....	.....	8.95	509,665	5,716,826
1998	1,000	2,929,759	6.94	338,781	4,542,924
	.....	.....	17.11	835,517	8,035,131
1999	1,000	2,929,759	6.81	332,480	4,746,736
	.....	.....	17.11	835,517	8,035,131

Section 148.126 Determination of an Eligible Individual

In this section, issuers may maintain records for those individuals who they determine are not HIPAA eligible individuals. We estimate this to be on average less than 50 individuals per the 1,000 issuers nationwide each year. At 20 minutes per record, this represents an annual burden of 16,667 hours. We estimate the cost associated with this burden to be $183,000.

Section 148.128 State Flexibility in Individual Market Reforms—Alternative Mechanisms

As explained above, 30 or more States may implement acceptable alternative mechanisms as allowed under this section. It is estimated that this reporting burden will range from 33,000 to 38,500 hours depending on the number of States that choose to submit the required information. We estimate the cost associated with this burden to be $495,000 to $577,500.

Section 148.200 Enforcement and Section 148.202 Civil Money Penalties

We anticipate identifying violations through individual nonstandardized consumer complaints. Therefore, the complaints submitted and our enforcement activities do not fall within the requirements of the PRA, as outlined in 5 CFR 1320.3(c) and 5 CFR 1320.4(a).

Type of Information Request: Extension, *without change*, of a currently approved collection.

Title of Information Collection: Information Requirements Referenced in HIPAA for Group Health Plans.

Form Number: HCFA–R–206 (OMB approval #: 0938–0702).

Use: This regulation and related information collection requirements will ensure that group health plans provide individuals with documentation necessary to demonstrate prior creditable coverage, and that group health plans notify individuals of their special enrollment rights in the group health insurance market.

Frequency: On occasion.

Affected Public: State and local governments, Business or other for profit, not-for-profit institutions, individuals or households, Federal government.

Number of Respondents: 1,430.

Total Annual Responses: Due to the rolling effective dates in the statute, the number of annual responses is estimated to be 32.5 million in 1997, but will increase to 41 million in 1998 and 42.5 million in 1999.

Total Annual Hours Requested: 1.8 million to 3.6 million hours in 1997; 2.3 million to 5.8 million hours in 1998; and 2.6 million to 5.9 million hours in 1999.

Total Annual Costs: $36.8 million to $53.9 million in 1997; $42.4 million to $76.3 million in 1998; and $43.5 million to $77.3 million in 1999. 45 CFR Secs. 146.120, 146.122, 146.150, 146.152, 146.160, and 146.180 of this document contain information collection requirements.

45 CFR 146.120 Certificates and Disclosure of Previous Coverage

This section sets forth guidance regarding the certification and other disclosure of information requirements relating to prior creditable coverage of an individual. In general, the certificate must be provided in writing and must include the following information: (1) The date any waiting or affiliation period began, (2) the date coverage began, and (3) the date coverage ended (or indicate if coverage is continuing). The regulations also allow a plan or issuer in an appropriate case to simply state in the certificate that the individual has at least 18 months of creditable coverage that is not interrupted by a significant break and indicate the date coverage ended. In general, individuals have the right to receive a certificate automatically (an automatic certificate) when they lose coverage under a plan and when they have a right to elect COBRA continuation coverage.

We anticipate that approximately 1,400 issuers will be required to produce 30 million certifications per year based on the model certificate provided. Our estimate of issuers (1,400) includes commercial insurers and HMOs, but does not include some types of issuers, such as Preferred Provider Organizations (PPOs); however, these types of issuers are small in number. The time estimate includes the time required to gather the pertinent information, create a certificate, and mail the certificate to the plan participant. This time estimate is based on discussions with industry individuals. We believe that, as a routine business practice, the issuers' administrative staff have the necessary information readily available to generate the required certificates. In addition, we have determined that the majority of issuers have or will have the capability to automatically computer generate and disseminate the necessary certification when appropriate. These estimates include the certificates required by issuers acting as service providers on behalf of group health plans and state and local government health plans. We anticipate that most, if not all, state and local government health plans will contract with an issuer to develop the certificate.

ESTIMATES FOR CERTIFICATIONS

Year	Total respondents	Total responses	Average time per response (range) (minutes)	Burden hours (range)	Cost (range)
1997	1,400	32,698,845	3.32	1,809,119	$36,366,106
			6.34	3,456,036	53,434,628
1998	1,400	28,072,131	5.19	2,242,866	40,928,939
			12.23	5,720,198	74,859,759
1999	1,400	28,055,984	5.37	2,510,461	42,124,907
			12.41	5,804,408	75,760,119

Note: The costs above include the costs associated with issuers acting as service providers for group health plans. The costs are also included in the Department of Labor's estimates.

Notice to all participants: Under this section, issuers are required to notify all participants at the time of enrollment stating the terms of the issuer's pre-existing condition exclusion provisions, the participant's right to demonstrate creditable coverage, and that the issuer will assist in securing a certificate if necessary.

We have estimated the burden associated with this information collection requirement to be the time required for issuers to develop standardized language outlining the existence and terms of any preexisting condition exclusion under the plan and the rights of individuals to demonstrate creditable coverage. In specific, we anticipate that issuers will be required to develop approximately 660,000 notices in 1997; 5.6 million notices in 1998; and 6.2 million notices in 1999. At 30 seconds for each notice, we estimate the total hour burden to be 4,400 hours in 1997; 30,000 hours in 1998; and 34,000 hours in 1999. The respective costs will be $49,000 in 1997; $330,000 in 1998; and $377,000 in 1999. These estimates and subsequent estimates are based on an hourly wage of $11 for issuers and $15 for State and local government employees. These estimates include the notices required by issuers on behalf of state and local government health plans, since we anticipate that most, if not all state and local government health plans will contract with an issuer to develop the notice. The estimates have been disaggregated below:

Year	Issuers	State health plans	Local health plans	Total notices
Total notices:				
1997	320,000	129,826	214,880	664,706
1998	4,878,200	259,653	429,761	5,567,614
1999	5,734,300	259,653	429,761	6,189,714
Total burden hours:				
1997	1,592	1,078	1,784	4,454
1998	14,293	2,155	3,567	30,015
1999	28,557	2,155	3,567	34,279

Notice to individual of period of preexisting condition exclusion. Within a reasonable time following the receipt of the certificate, information relating to the alternative method, or other evidence of coverage, a plan or issuer is required to make a determination regarding the length of any preexisting condition exclusion period that applies to the individual and notify the individual of its determination. Whether a determination and notification is made within a reasonable period of time will depend upon the relevant facts and circumstances including whether the application of the preexisting condition exclusion period would prevent access to urgent medical services. The individual need only be notified, however, if, after considering the evidence, a preexisting condition exclusion period will be imposed on the individual. The basis of the determination, including the source and substance of any information on which the plan or issuer relied, must be included in the notice. The plan's appeals procedures and the opportunity of the individual to present additional evidence must also be explained in the notification.

We estimate that issuers will be required to develop approximately 29,000 notices in 1997; 425,000 notices in 1998; and 498,000 notices in 1999. At 2 minutes for each notice, we estimate the total hour burden to be 960 hours in 1997; 14,000 hours in 1998; and 16,600 hours in 1999. We estimate the respective costs associated with these burdens to be $10,600 in 1997; $156,000 in 1998; and $183,000 in 1999. These estimates include the notices required by issuers on behalf of state and local government health plans, since we anticipate that most, if not all state and local government health plans will contract with an issuer to develop the notice. The estimates have been disaggregated below:

Year	Issuers	State health plans	Local health plans	Total notices
Total notices:				
1997	27,650	588	766	29,004
1998	422,136	1,176	1,531	425,143
1999	496,182	1,176	1,531	498,889
Total burden hours:				

Year	Issuers	State health plans	Local health plans	Total notices
1997	921	20	25	29,004
1998	14,057	40	51	14,148
1999	16,553	40	51	16,644

45 CFR 146.117 Special Enrollment Periods

This section in the regulation provides guidance regarding new enrollment rights that employees and dependents have under HIPAA. A health insurance issuer offering group health insurance coverage is required to provide a description of the special enrollment rights to anyone who declines coverage at the time of enrollment. The regulations provide a model of such a description containing the minimum information mandated by the statute.

The first burden associated with this requirement is the time required for health insurance issuers and state and local government health plans to incorporate the model notice into the plan's standard policy information. We estimate the burden to be 2 hours annually per issuer, for a total burden of 2,800 hours. The cost associated with this hour burden is estimated to be $30,800 annually.

The second burden associated with this requirement is the time required to disseminate the notice to new enrollees. We estimate that issuers will be required to develop approximately 1 million notices in 1997; 5.3 million notices in 1998; and 5.9 million notices in 1999. At 30 seconds for each notice, we estimate the total hour burden to be 8,300 hours in 1997; 43,000 hours in 1998; and 48,000 hours in 1999. We have estimated the costs associated with these hour burdens to be $91,000 in 1997; $469,000 in 1998; and $527,000 in 1999. These estimates include the notices required by issuers on behalf of state and local government health plans, since we anticipate that most, if not all state and local government health plans will contract with an issuer to develop the notice. The estimates have been disaggregated below:

Year	Issuers	State health plans	Local health plans	Total notices
Total notices:				
1997	245,508	287,938	500,750	1,034,196
1998	3,750,024	575,875	1,001,500	5,327,399
1999	4,407,828	575,875	1,001,500	5,985,203
Total burden hours:				
1997	1,964	2,304	4,006	8,273
1998	30,000	4,607	8,012	42,619
1999	35,263	4,607	8,012	47,881

45 CFR 146.150 Guaranteed Availability of Coverage for Employers in the PHS Act Group Market Provisions

This section allows a health insurance issuer to deny health insurance coverage in the small group market if the issuer has demonstrated to the applicable State authority (if required by the State authority) that it does not have the financial reserves necessary to underwrite additional coverage and that it is applying this denial uniformly to all employers in the small group market in the State consistent with applicable State law and without regard to the claims experience of those employers and their employees (and their dependents) or any health status-related factor relating to those employees and dependents. Thus, issuers are only required to report to the applicable State authority if they are discontinuing coverage in the small group market.

This requirement exists in the absence of this regulation because under current insurance practices, State insurance departments oversee discontinuance of insurance products in their State as a normal business practice. Therefore, these information collection requirements are exempt from the PRA under 5 CFR 1320.3(b)(2) and 5 CFR 1320.3(b)(3). However, under HIPAA, States must review policies during their oversight process to make sure there is a guaranteed availability clause in each policy. For the 37 States that currently require guaranteed availability, it is our understanding that this is normal business practice. For the other 18 States, however, we see this State burden to be about 10 minutes per policy, since States already review policies for other requirements and this process does not prescribe a timetable for reviewing the policies. We see this as a total burden of 10,850 hours. We have estimated the cost associated with this hour burden to be $163,000. If the State identifies a violation and a State has to take some action, we believe that each State will be required to initiate fewer than 10 administrative actions on an annual basis against specific individuals or entities who failed to implement the Federal guarantee availability requirements.

45 CFR 146.152 Guaranteed Renewability of Coverage for Employers in the PHS Act Group Market Provisions

In this section issuers are only required to report if they are discontinuing a particular type of coverage or discontinuing all coverage. This requirement exists in the absence of this regulation because under current insurance practices, State insurance departments oversee discontinuance of insurance products in their State as a normal business practice. Therefore, these information collection requirements are exempt from the PRA under 5 CFR 1320.3(b)(2) and 5 CFR 1320.3(b)(3). However, under HIPAA, States must review policies during their oversight process to make sure there is a guaranteed availability clause in each policy. For the 43 States that currently require guaranteed renewability, it is our understanding that this is normal business practice. For the other 12 States, however, we see this State burden to be about 10 minutes per policy, since States already review policies for other requirements and this process does not prescribe a timetable for reviewing the policies. We see this

as a total burden of 6,700 hours. We have estimated the cost associated with this hour burden to be $100,500. If the State identifies a violation and a State has to take some action, we believe that each State will be required to initiate fewer than 10 administrative actions on an annual basis against specific individuals or entities who failed to implement the Federal guarantee renewability requirements.

45 CFR 146.160 Disclosure of Information by Issuers to Employers Seeking Coverage in the Small Group Market in the PHS Act Provisions

This section requires issuers to disclose information to employers seeking coverage in the small group market. This section requires information to be provided by a health insurance issuer offering any health insurance coverage to a small employer. This information includes the issuer's right to change premium rates and the factors that may affect changes in premium rates, renewability of coverage, any preexisting condition exclusion, any affiliation periods applied by HMOs, the geographic areas served by HMOs, and the benefits and premiums available under all health insurance coverage for which the employer is qualified. The issuer is exempted from disclosing information that is proprietary or trade secret information under applicable law.

The information described in this section must be language that is understandable by the average small employer and sufficient to reasonably inform small employers of their rights and obligations under the health insurance coverage. This requirement is satisfied if the issuer provides an outline of coverage, the minimum contribution and group participation rules that apply to any particular type of coverage, and any other information required by the State. An outline of coverage is defined as a general description of benefits and premiums. This would include an outline of coverage similar to the manner in which Medigap policies are presented, allowing the employer to easily compare one policy form to another to determine what is covered and how much the coverage will cost.

We have estimated the total burden associated with this activity to be 2,400 hours. We anticipate that 1,200 issuers will be required to provide disclosure to small employers on an annual basis. We estimate this time to be approximately 2 hours for each issuer to develop and update the standard information related to the general description of benefits and premiums on an annual basis and include this information in their policy information. We have estimated the cost associated with this hour burden to be $36,000.

45 CFR 146.180 Treatment of non-Federal Government Plans

Section 145.180(b) includes rules pertaining to nonfederal governmental plans, which are permitted under HIPAA to elect to be exempted from some or all of HIPAA's requirements in the PHS Act. The regulation establishes the form and manner of the election. In particular, a nonfederal governmental plan making this election is required to notify plan participants, at the time of enrollment and on an annual basis, of the fact and consequences of the election. The burden imposed by this is the requirement for plans to disseminate standard notification language describing the plans' election and the consequences of this election. We anticipate that between 3,500 and 5,000 nonfederal governmental plans will make this election and will therefore be required to disseminate notifications to their participants on an annual basis. Since this is standard language that will be incorporated into plans' existing policy documents, we see the burden as approximately 2 hours per plan to develop and update this standardized disclosure statement on an annual basis. Thus, we estimate the total burden for this activity to range from 7,000 to 10,000 hours. We estimate the cost associated with these hourly burdens to range from $77,000 to $110,000 per year.

The above estimate does not include the cost of disseminating the notices to all plan participants on an annual basis and to new enrollees at the time of enrollment. Although we do not have an accurate estimate of the number of nonfederal governmental plans will choose to opt out of these provisions, we have provided for a range of 50 to 100 percent. Using these ranges, we estimated 400,000 to 800,000 of these notices would need to be produced in 1997 and 800,000 to 1.6 million in 1998 and 1999. At 30 seconds per notice, we estimate the total burden hours to range from 3,400 to 6,800 in 1997; and 6,800 to 13,600 in 1998 and 1999. We have estimated the costs associated with these hour burdens to range from $37,400 to $74,800 in 1997; and from $74,800 to $149,600 in 1998 and 1999.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, by 12/29/97:

Health Care Financing Administration, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards, Room C2–26–17, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–1415, Attn: John Burke HCFA–R–205 and/or HCFA–R–206

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: December 10, 1997.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Information Technology Investment Management Group, Division of HCFA Enterprise Standards.

[FR Doc. 97–33063 Filed 12–16–97; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–41–5700; WYW136450]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW136450 for lands in Natrona County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16–⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to

reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW136450 effective September 1, 1997, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,

Chief, Leasable Minerals Section.

[FR Doc. 97–32862 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–930–1430–01; CACA 7569]

Public Land Order No. 7304; Partial Revocation of Secretarial Order dated September 14, 1942; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 138.90 acres of lands withdrawn for the Bureau of Reclamation's American River Investigations. The lands are no longer needed for the purpose for which they were withdrawn and the revocation is necessary to consummate pending land exchanges. The lands are temporarily closed to surface entry and mining due to the pending land exchanges. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: December 17, 1997.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2135 Butano Drive, Sacramento, California 95825; 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order, dated September 14, 1942 (CACA 7569), which withdrew public lands for the Bureau of Reclamation's American River Investigations, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 11 N., R. 10 E.,
Sec. 8, W½SW¼; Sec. 18, lots 5 to 10, inclusive (originally described as SW¼SW¼NE¼ and NW¼SW¼), and NW¼NE¼NW¼.

The areas described aggregate 138.90 acres in El Dorado County.

2. The above described lands are hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1716 (1994).

Dated: December 3, 1997.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 97–32913 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–069–1220–00–25.7]

Notice of Intent

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare proposed plan amendment for the San Juan Resource Management Plan (RMP).

SUMMARY: The Bureau of Land Management San Juan Field Office is proposing to amend the San Juan RMP in order to change certain specific management decisions regarding recreation and other programs.

DATES: Comments on these proposed amendments should be submitted no later than 30 days after publication of this notice or January 16, 1998 to the address listed below.

ADDRESSES: Comments and/or questions regarding this proposed amendment must be submitted to San Juan Field Office, Bureau of Land Management, 435 North Main Street, P. O. Box 7, Monticello, UT 84535.

FOR FURTHER INFORMATION CONTACT: Robin Fehlau, Outdoor Recreation Planner, Project Lead, San Juan Field Office, Bureau of Land Management, 435 North Main Street, P. O. Box 7, Monticello, UT 84535. Telephone (801) 587–1500.

SUPPLEMENTARY INFORMATION: The San Juan RMP was approved in March of 1991. Since that period there has been a significant increase in recreational use that has lead to degradation of sensitive resources including riparian areas, cultural sites, visual resources etc., in the Indian Creek Area and other areas of the Canyon Basins Special Recreation Management Area. Preliminary issues that have been identified for proposed plan amendment include camping restrictions and modifications to existing OHV designations in order to reduce resource degradation, firewood closures to reduce degradation in riparian areas, and the addition of specific management prescriptions in the Bridger Jack Mesa Areas of Critical Environmental Concern (ACEC), Lavender Mesa ACEC, and Shay Canyon ACEC to reduce resource degradation from uncontrolled recreation use.

No new planning criteria have been developed specifically for this proposed plan amendment. An interdisciplinary team will be used to analyze this proposed amendment in addition to other alternatives that may be considered.

Dated: December 10, 1997.

Linda Colville,

Acting State Director.

[FR Doc. 97–32915 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1420–00; ES–48892, Group 28, Illinois]

Notice of Filing of Plat of Survey; Illinois

The plat, in five sheets, of the dependent resurvey of the west boundary and subdivisional lines, and the survey of the Lock and Dam No. 26 Acquisition Boundary, Township 12 South, Range 1 West, and the dependent resurvey of portions of the north boundary, portions of the subdivisional lines, and the survey of the Lock and Dam Nos. 25 and 26 Acquisition Boundaries, Township 12 South, Range 2 West, and the dependent resurvey of the north and east boundaries and subdivisional lines, Township 12 South, Range 3 West, all of the Fourth Principal Meridian, Illinois, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on January 20, 1998.

The survey was requested by the U.S. Army Corps of Engineers.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., January 20, 1998.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: December 8, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–32912 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–960–1910–00–4488; ES–49260, Group 179, Minnesota]

Notice of Filing of Plat of Survey; Minnesota

The plat of the dependent resurvey and survey of the U.S. Bureau of Mines, Twin Cities Research Center, located within the Fort Snelling Military Reservation in Township 28 North, Range 23 West, Fourth Principal Meridian, Minnesota, will be officially filed in Eastern States, Springfield, Virginia at 7:30 a.m., on January 20, 1998.

The survey was requested by the U.S. Bureau of Mines.

All inquiries or protests concerning the technical aspects of the survey must be sent to the Chief Cadastral Surveyor, Eastern States, Bureau of Land Management, 7450 Boston Boulevard, Springfield, Virginia 22153, prior to 7:30 a.m., January 20, 1998.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $2.75 per copy.

Dated: December 5, 1997.

Stephen G. Kopach,

Chief Cadastral Surveyor.

[FR Doc. 97–32911 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Request for Determination of Valid Existing Rights Within the Monongahela National Forest

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of decision.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) has been ordered by the United States District Court for the Northern District of West Virginia to determine whether Walter D. Helmick has valid existing rights (VER) to surface mine coal on 1,045.3 acres of Federal lands within the Monongahela National Forest in Pocahontas County, West Virginia. Mr. Helmick claims to hold certain coal rights in these lands. Ernest J. Van Gilder had previously submitted a VER request in connection with the same property. Prior to the court order, OSM had suspended action on a VER determination request by Mr. Van Gilder for surface mining, on the basis that his request was administratively incomplete due to an unresolved dispute over whether he possessed all of the necessary property rights to mine coal by the intended method. Since there is still an unresolved property rights dispute as to whether the current mineral holder, Mr. Helmick, has the necessary property right to surface mine, OSM hereby determines that Mr. Helmick has not demonstrated VER to surface mine the coal on the 1,045.3 acres of Federal lands within the Monongahela National Forest.

FOR FURTHER INFORMATION CONTACT: Peter R. Michael, Office of Surface Mining Reclamation and Enforcement, Appalachian Regional Coordinating Center, Room 218, Three Parkway Center, Pittsburgh, PA 15200, Telephone: (412) 937–2867. E-mail address: pmichael@osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. VER Requirements on National Forest Lands

Section 522(e) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1272(e)) prohibits surface coal mining operations on certain lands unless a person has VER to conduct such operations or unless the operation was in existence on August 3, 1977. Section 522(e)(2), in relevant part, applies the prohibition to Federal lands within the boundaries of any national forest unless the Secretary of the Interior finds that there are no significant recreational, timber, economic, or other values that may be incompatible with surface coal mining operations and the surface operations and impacts are incident to an underground coal mine.

Under section 523 of the Act (''Federal Lands'') and 30 CFR 740.11, the approval State program (including the State definition of VER) applies to all Federal lands within States with regulatory programs approved under section 503 of SMCRA. However, under 30 CFR 745.13, the Secretary has exclusive authority to determine VER for surface coal mining and reclamation operations on Federal lands within the boundaries of the areas specified in paragraphs (e)(1) and (e)(2) of section 522 of the Act. OSM reaffirmed these basic principles in the preamble to the suspension notice concerning VER published on November 20, 1986 (51 FR 41954).

Subsection 2.130 of the West Virginia Surface Mining Reclamation Regulations provides, in relevant part, that VER exists in each case in which a person demonstrates that the limitation provided for in Section 22–3–22(d) of the West Virginia Surface Coal Mining and Reclamation Act (the State counterpart to section 522(e) of SMCRA) would result in the unconstitutional taking of that person's rights. OSM approved this definition as being no less effective than the 1983 version of the Federal definition of VER at 30 CFR 761.5. Paragraphs (a) and (d) of the 1983 Federal definition clarify that the takings standard for VER applies only to those property interests that existed on August 3, 1977 [paragraph (a)], or any subsequent date that the lands come under the protection of section 522(e) of SMCRA (paragraph (d)). *See also* 48 FR 41313, third column (September 14, 1983). The West Virginia program does not specifically address this issue. However, in accordance with OSM's basis for approval of the West Virginia provision, OSM is interpreting the West Virginia definition consistent with the 1983 Federal definition. Because the lands in question came under the protection of section 522(e) on August 3, 1977, OSM will consider only the property interests as they existed on that date.

In this case, the critical property interest is the coal rights beneath certain Federal lands within the Monongahela National Forest in the Little Levels District of Pocahontas County, West Virginia (hereafter, Tract 574). Administrative Record No. 2.1 (hereafter, ''A.R._____''). The threshold determation OSM must make is whether Mr. Helmick has demonstrated the property right to mine the coal. If so, OSM must then determine whether Mr. Helmick has demonstrated, as of 1977, that he or a predecessor in interest had the property right to surface mine the coal.

B. Factual Background

The record before OSM indicates that, in September of 1990, Walter D. Helmick acquired from Cecil Nichols certain mineral rights in Tract 574. This tract contains 1,045.3 acres and is situated seven miles west of Hillsboro, West Virginia, on the waters of Hills Creek and the waters of Robbins Run, a tributary of Spring Creek. The property is located on Briery Knob. It was mined during the 1940's surface mining methods.[1] The surface of this land is

[1] An additional property, Tract 372, was included in previous requests for VER determinations relating to Tract 574. This parcel is adjacent to Tract 574. However, neither the court order (A.R. 2.345) nor the materials submitted by Mr. Helmick (A.R. 2.368–2.510 and 2.516–2.523) mention or assert any interest in Tract 372. Mr. Helmick's counsel has confirmed that this tract is no longer a subject of this request. (A.R. 2.528).

owned by the United States of America and managed by the United States Forest Service. (A.R. 2.352).

One month before Mr. Helmick acquired the mineral rights, the documents submitted by Mr. Helmick indicate he had deeded an undivided one-half interest in those rights to Ernest J. Van Gilder. (A.R. 2.527). Mr. Van Gilder later requested a VER determination from OSM for a surface mining operation on the property in question.[2] (A.R. 2.317).

Five years later, in September of 1995, Mr. Helmick acquired the remaining mineral interests in the property, by partition deed. (A.R. 2.527).

On November 17, 1989, in regard to a then-pending VER request on Tract 574, the U.S. Department of Agriculture (USDA) Forest Service advised OSM of the USDA Office of General Counsel's opinion that ''. . . the owners did not reserve the right to remove the coal by surface mining when these lands were acquired by the United States.'' (A.R. 2.260). This opinion was reaffirmed on February 6, 1991, after Mr. Van Gilder asserted an interest in the coal and requested a VER determination. (A.R. 2.333). On April 23, 1991, OSM informed Mr. Van Gilder that the agency could not consider his request to be administratively complete in light of ''. . . the unresolved difference of opinion concerning the nature of the property rights you possess.'' (A.R. 2.337). In December 1995, Mr. Helmick filed an action in the United States District Court for the Northern District of West Virginia, claiming that his mineral interests had been taken without just compensation when the Forest Service determined that Mr. Van Gilder's interest in the tract did not include the right to conduct surface mining. *Helmick* versus *United States,* No. 95–0115 (N.D. W. Va.) After the Government filed a motion to dismiss for failure to state a claim on February 15, 1996, Mr. Helmick amended his complaint by adding the Department of the Interior as a party, by eliminating his claim of a taking under the Tucker Act, and by substituting three new counts seeking to review ''agency action'' under the Administrative Procedure Act (APA). On October 20, 1997, the court in *Helmick* ordered the Secretary of the Interior to render a final VER determination by December 8, 1997.

In order to comply with the Court's order in the *Helmick* litigation, and because of the time that had passed since OSM's last administrative action in this matter, OSM believed it was appropriate to reopen the administrative record to allow all interested persons to provide any additional factual information as to whether Mr. Helmick has the property right to mine by the proposed method, and as to whether he has VER under the applicable standards. In a notice published in the October 16, 1997, **Federal Register** (62 FR 53798), OSM provided opportunity for public comment on the Helmick request until October 31. In response to the request of Mr. Helmick's attorney, the public comment period was reopened from November 4 to November 12, 1997. (62 FR 59731).

After the close of the reopened comment period and upon reviewing the administrative record, OSM determined that the record contained no legally cognizable documentation of any current interest of Mr. Helmick in Tract 574. OSM therefore contacted Mr. Helmick's counsel and advised him of this lack of title documentation. Mr. Helmick's counsel subsequently provided OSM with relevant documentation. That documentation has been entered in the administrative record, and is reflected in this decision document.[3]

II. VER Determination

In order to establish that Mr. Helmick has VER for surface coal mining on the property in question, OSM must first determine that he has demonstrated all necessary property rights to surface mine the coal .

In a November 11, 1997, letter to OSM, Mr. Helmick provided comments pertaining to the disputed USDA title opinion and to OSM's responsibilities in VER determinations. (A.R. 2.517). Mr. Helmick claims he has the property right to surface mine by virtue of two things: first, the use of the word, ''stripping'' in a December 4, 1939, deed in which a predecessor in title conveyed the surface estate in Tract 574 to the United States of America; and second, evidence that allegedly shows that surface mining was a known and accepted method of mining in the area surrounding the subject property. Mr. Helmick also posits that ''. . . the OSM may not simply defer to an opinion of the Forest Service or the U.S. Department of Agriculture in rendering the property rights determinations which form the underlying basis of a VER determination.'' Further, he stated that, ''The OSM also may not refuse to render the necessary determinations in reliance upon a Memorandum of Understanding (MOU) between the Forest Service and the OSM, which was not adopted as a rule after notice and comment in accordance with the required procedures of the APA.''

OSM did not defer to the opinion of the U.S. Forest Service on Mr. Helmick's property rights; and does not rely on the MOU with the U.S. Forest Service to establish the basis and standards for OSM's actions in this case. Rather, the aforementioned MOU delineates the process by which OSM verifies whether a property rights dispute exists regarding requests for VER determinations on lands where the U.S. Forest Service is the surface owner. Under section 510(b)(6) of the Surface Mining Control and Reclamation Act of 1977, OSM is not authorized to adjudicate a property rights dispute. This section of SMCRA sets out specific requirements to be met prior to approval of a permit or revision application for surface mining and forbids approval in cases where ''. . .the private mineral estate has been severed from the private surface estate, . . .'' unless the applicant has submitted:

> ''(A) the written consent of the surface owner to the extraction coal by surface mining methods; or
>
> (B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods; or
>
> (C) if the conveyance does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with State law: *Provided,* That nothing in this act shall be construed to authorize the regulatory authority to adjudicate property rights disputes.''

OSM, which acts as a regulatory authority when it issues VER determinations, does not, and cannot, adjudicate property rights between competing claimants. *See* 30 U.S.C. 1260(b); 54 FR 52469. OSM regulations specifically provide that, when the Secretary acts in an enforcement capacity or other regulatory capacity, he

[2] It is not clear from the record before OSM what, if any, interest Mr. Van Gilder may have had in the property during the pendency request, as the transfer from Mr. Helmick to Mr. Van Gilder apparently occurred when Mr. Helmick had no documented interest in the property. On December 4, 1997, Mr. Van Gilder quitclaimed back to Mr. Helmick any interests ''that may have been acquired'' under the August, 1990 deed (A.R. 2.527).

[3] OSM does not believe that accepting this documentation after the close of the comment period affects the fairness of the proceedings. Because of the court's order in the pending *Helmick* litigation, OSM believes it would have been constrained to issue a VER determination even in the absence of the late documentation. If the record did not demonstrate that Mr. Helmick owned the property, OSM would have made its VER determination with regard to the most recent holder shown in the record before it. If the record established that VER existed in 1977, then VER would have conveyed in any subsequent conveyances. And if VER was not demonstrated as of 1977, then VER could not have been created in any subsequent conveyances.

constitutes the ''regulatory authority.'' 30 CFR 700.5; see also 44 FR 14913 (March 13, 1979). In his role with respect to federal lands programs, the Secretary of the Interior is a regulatory authority subject to SMCRA sections 507(b)(9) and 510(b)(6)(C). Thus, when the Secretary makes VER determinations on federal lands, he is acting as the regulatory authority. See *National Wildlife Federation* v. *Lujan,* 950 F.2d 765, 767 (D.C.Cir. 1991), citing 30 CFR 700.5.

Mr. Helmick argues that he has an express right to strip mine the subject property because a boiler plate regulation incorporated into the deed of severance references ''stripping.'' But that reference explicitly relates to a separate tract of property, Tract 574–I, that is not an issue in this determination. The deed is silent as to ''stripping'' on Tract 574. If any inference can be drawn from the reference to stripping for one tract (574–I) and exclusion of the language for the second tract (574), it is that strip mining was expressly not intended for the second tract (574).

A property rights dispute presently exists between the U.S. Forest Service and Mr. Helmick. Mr. Helmick has alleged in the 1995 lawsuit, that he has the right to surface mine the property in question. The U.S. Forest Service contested that allegation. The trial court has not ruled on the issue of whether the requester has the property right to surface mine. Moreover, the U.S. Forest Service has reiterated its position, in a letter to OSM, that it is of the opinion that Mr. Helmick does not possess the right to surface mine in the Monongahela National Forest. (A.R. 2.352). As a result, the dispute remains unresolved in the record before OSM. And, for the reasons set out above, section 510(b)(6) precludes OSM from adjudicating that property rights dispute. Thus the record before OSM does not demonstrate whether, under applicable State law, Mr. Helmick holds the property right to surface mine tract 574.

Consequently, based on the record before it, OSM has reached the following conclusions in this matter: First, the written consent of the surface owner to surface mine was not provided, and is not in the record. Second, the 1939 deed which severed the coal rights did not expressly reserve the right to extract the coal on Tract 574 by surface mining methods. Finally; in light of the pending unresolved dispute concerning the property right to surface mine this coal, Mr. Helmick has not met his burden of demonstrating the property right to mine by the method intended. Therefore, OSM must also conclude that Mr. Helmick has not demonstrated VER to surface mine the property in question.[4]

III. Summary and Disposition of Comments

OSM received numerous comments opposed to VER requests pertinent to Tract 574, most of which were submitted in January and February 1990, in response to an application by Cecil E. Nichols. (A.R. 2.73). The protests focus on property rights, environmental concerns, and economic issues. In this decision, OSM is not responding to comments as to whether the coal holder has the necessary rights, because, as explained above, OSM cannot adjudicate the property rights dispute between the U.S. Forest Service and the current requester, Mr. Helmick. OSM is not addressing the remaining comments, because this decision cannot reach the takings analysis to which those comments may relate.

IV. Appeals

Any person who is or may be adversely affected by this decision may appeal to the Interior Board of Land Appeals under 43 CFR 4.1390. Notice of intent to appeal must be filed within 30 days after receipt of the determination by a person who has received a copy by certified mail or overnight delivery service; or within 30 days of the date of publication of this notice of decision in the **Federal Register** by any person who has not received a copy by certified mail or overnight delivery service.

Dated: December 9, 1997.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 97–32850 Filed 12–16–97; 8:45 am]

BILLING CODE 4310–05–M

[4] Because the record does not demonstrate that Mr. Helmick holds the necessary property rights, OSM will not address the second stage of a takings analysis, the analysis of whether, as of 1977, application of the section 522(e) prohibition to Mr. Helmick's property rights would effect a compensable taking. (OSM notes that judicial case law concerning compensable takings would also require a threshold determination as to whether Mr. Helmick has demonstrated the property right to surface mine the coal. *See Lucas* v. *South Carolina Coastal Council,* 505 U.S. 1003, 1027 (1992).)

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–753–756 (Final)]

Certain Carbon Steel Plate From China, Russia, South Africa, and Ukraine

Determination

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury [2] by reason of imports from China, Russia, South Africa, and Ukraine of cut-to-length carbon steel plate,[3] provided for in provisions of headings 7208 through 7212 of the Harmonized Tariff Schedule (HTS) of the United States, [4] that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[5]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Commissioner Crawford determines that an industry in the United States is materially injured by reason of the subject imports. Pursuant to section 735(b)(4)(A) of the Act (19 U.S.C. 1673d(b)(4)(A)), Commissioner Crawford makes a negative determination regarding critical circumstances.

[3] For purposes of these investigations, cut-to-length carbon steel plate is hot-rolled iron and nonalloy steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1,250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain iron and nonalloy steel flat-rolled products not in coils, of rectangular shape, hot-rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 mm or more in thickness and of a width which exceeds 150 mm and measures at least twice the thickness. Included in this definition are flat-rolled products of nonrectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling''), such as products which have been bevelled or rounded at the edges. Excluded from this definition is grade X–70 plate.

[4] Cut-to-length carbon steel plate is currently covered by the following statistical reporting numbers of the HTS: 7208.40.3030; 7208.40.3060; 7208.51.0030; 7208.51.0045; 7208.51.0060; 7208.52.0000; 7208.53.0000; 7208.90.0000; 7210.70.3000; 7210.90.9000; 7211.13.0000; 7211.14.0030; 7211.14.0045; 7211.90.0000; 7212.40.1000; 7212.40.5000; and 7212.50.0000.

[5] The Commission further determines, pursuant to 19 U.S.C. 1673d(b)(4)(B), that it would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

Background

The Commission instituted these investigations effective November 5, 1996, following receipt of a petition filed with the Commission and the Department of Commerce by Geneva Steel Co., Provo, UT, and Gulf States Steel, Inc., Gadsden, AL. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of cut-to-length carbon steel plate from China, Russia, South Africa, and Ukraine were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of August 20, 1997 (62 FR 44287). The hearing was held in Washington, DC, on October 28, 1997, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on December 11, 1997. The views of the Commission are contained in USITC Publication 3076 (December 1997), entitled ''Certain Carbon Steel Plate from China, Russia, South Africa, and Ukraine: Investigations Nos. 731–TA–753–756 (Final).''

Issued: December 11, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–32950 Filed 12–16–97; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–358]

Notice of Commission Determination to Terminate the Investigation Based on Withdrawal of the Complaint; Vacatur of Alternative Findings; Denial of Respondents' Motion to Terminate; Denial of Motions for Leave to File Reply Briefs

In the matter of: Certain Recombinantly Produced Human Growth Hormones.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation on the basis of complainant's motion to withdraw its complaint and to vacate the alternative findings on the merits made by the presiding administrative law judge (ALJ) in his initial determination (ID) of November 29, 1994. The Commission has also determined to deny certain respondents' motion for termination of the investigation, as well as the various motions for leave to file reply briefs.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 29, 1993, based on a complaint filed by Genentech, Inc. of South San Francisco, California. 58 FR 50954. Six firms were named as respondents, *i.e.*, Novo Nordisk 2 A/S of Denmark; Novo Nordisk of North America, Inc. of New York; Novo Nordisk Pharmaceuticals, Inc. of New Jersey; ZymoGenetics, Inc. of Seattle, Washington (collectively, ''Novo''); Biotechnology General Corp. of New York; and Bio-Technology General Corp. (Israel) Ltd. (collectively, ''BTG'').

On November 29, 1994, the presiding ALJ issued an ID dismissing the complaint and terminating the investigation as a sanction for complainant's alleged misconduct in withholding certain documents during discovery. In the alternative, the ALJ reached the merits of the investigation, finding that there would have been a violation of section 337 based on the record as it closed on April 24, 1994, although noting that the record was incomplete because of complainant's conduct. On January 17, 1995, the Commission decided not to review the portion of the ID that dismissed the complaint as a sanction for discovery abuse, but took no position on the portion of the ID that found a violation of section 337 based on an incomplete record. 60 FR 4923 (January 25, 1995). Genentech appealed the Commission's determination to the U.S. Court of Appeals for the Federal Circuit (Federal Circuit). On August 14, 1997, the Federal Circuit reversed the Commission's decision to dismiss the investigation as a sanction and remanded the investigation to the Commission. *Genentech, Inc.* v. *USITC,* 43 USPQ2d 1722 (Fed. Cir. 1997). The court issued its mandate on September 4, 1997.

On September 22, 1997, Novo filed a motion to terminate the investigation with a finding of no violation based on certain findings adverse to Genentech that were made in the ALJ's ID of November 29, 1994, and on an unrelated intervening Federal Circuit decision concerning one of the patents asserted by Genentech in the Commission investigation. On September 30, 1997, BTG responded to Novo's motion that it had no objection to withdrawal of the complaint. On October 2, 1997, Genentech opposed Novo's motion and filed its own motion to terminate the investigation based on its withdrawal of its complaint. On October 4, 1997, the Commission investigative attorney (IA) opposed Novo's motion to terminate. On October 14, 1997, the IA supported Genentech's motion to withdraw. Between October 4 and October 30, 1997, the private parties filed four motions for leave to file additional briefs replying to the response briefs.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337, and Commission interim rule 210.51, 19 CFR 210.51 (1994).

Copies of the public version of the ALJ's ID, and all other nonconfidential documents filed in connection with this investigation, are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street S.W., Washington, D.C. 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov or ftp://ftp.usitc.gov).

Issued: December 11, 1997.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 97–32948 Filed 12–16–97; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act (''CAA'')

Notice is hereby given that a proposed Consent Decree in *United States* v. *Barber & Sons Tobacco Company, d.b.a. Barber & Sons Aggregates,* Civil Action No. 97–1540–CV–W–2, was lodged on November 25, 1997, with the United

States District Court for the Western District of Missouri. The proposed Consent Decree resolves claims brought by the United States, on behalf of the Environmental Protection Agency, pursuant to the Clean Air Act, 42 U.S.C. 7401 *et seq.*, arising from Barber & Sons Tobacco Company, d.b.a. Barber & Sons Aggregates' (''Barber'') ownership and operation of a non-metallic mineral processing plant, specifically a limestone quarry, located in Lee's Summit, Missouri.

The Complaint alleges that Barber is liable for violations of the CAA for failure to comply with notice and testing, reporting, and permitting requirements. The proposed Consent Decree requires Defendant Barber to pay a civil penalty of $300,865. The proposed Consent Decree further requires future compliance by Defendant Barber with the CAA, regulations promulgated thereunder, and the Missouri State Implementation Plan.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment & Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044, and refer to *United States* v. *Barber & Sons Tobacco Company, d.b.a. Barber & Sons Aggregates*, DOJ number 90–5–2–1–2119.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, 1201 Walnut Street, Suite 2300, Kansas City, Missouri; and the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $4.00 (25 cents per page reproduction costs) payable to the ''Consent Decree Library.''

Joel M. Gross,

Chief, Environmental Enforcement Section Environment & Natural Resources Division.

[FR Doc. 97–32906 Filed 12–16–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in United States v. J&D Enterprises of Duluth, Inc. under the Clean Air Act

Notice is hereby given that a Consent Decree in *United States* v. *J&D Enterprises of Duluth, Inc.*, No. 5–95–298 (PAM/RLE) (D. Minn.), has been entered into by the United States on behalf of U.S. EPA and J&D Enterprises of Duluth, Inc. (''J&D'') and lodged with the Court on November 21, 1997. The proposed Consent Decree resolves certain claims of U.S. EPA against J&D under Section 112 of the Clean Air Act and the asbestos NESHAP regulations, 40 C.F.R. Part 61, Subpart M, with respect to an operation located at 923 Shepard Road in Saint Paul, Ramsey County, Minnesota. Under the Decree, J&D will, *inter alia*, pay the United States a civil penalty of $27,500.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *J&D Enterprises of Duluth, Inc.*, D.J. Ref. No. 90–5–2–1–1427B.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the District of Minnesota, 300 South Fourth Street, Minneapolis, MN 55415; the Region 5 Office of the United States Environmental Protection Agency, 77 W. Jackson Blvd., Chicago, IL 60604; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005 (202–624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy of the proposed Consent Decree, please enclose a check in the amount of $9.75 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

Bruce S. Gelber,

Section Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 97–32904 Filed 12–16–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that on November 25, 1997, a proposed Consent Decree in *United States* versus *M & O Environmental Company, et al.*, Civil No. 1:96–CV–1786, was lodged with the United States District Court for the Northern District of Illinois. This Consent Decree resolves claims against M & O Environmental Company, Inc. (''M & O''), for violations of Sections 112 and 114 of the Clean Air Act (''Act''), 42 U.S.C. §§ 7412 and 7414, and various work practice standards and notice requirements promulgated as part of the National Emission Standard for Hazardous Air Pollutants for asbestos (''asbestos NESHAP'').

The Consent Decree requires M & O (1) pay $100,000 in civil penalties; (2) maintain compliance with the asbestos NESHAP and the Act; (3) report to EPA on a monthly basis the status of all asbestos abatement work undertaken by M & O in the previous month, and (4) implement certain managerial and operational measurements to ensure M & O's continuous compliance with the asbestos NESHAP and the Act.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer in *United States* versus *M & O Environmental Company, et al.*, D.J. Ref. 90–5–2–1–1885.

The Consent Decree may be examined at the Office of the United States Attorney, Northern District of Illinois, Everett McKinley Dirksen Building, Fifth Floor, 219 South Dearborn Street, Chicago Illinois 60604, at the Region V Office of the Environmental Protection Agency, 200 West Adams Street, Chicago, Illinois, and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy, please enclose a check in the amount of $26.75 (25 cents

per page reproduction cost) payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 97–32905 Filed 12–16–97; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR § 50.7, notice is hereby given that a proposed Consent Decree with ASARCO in *United States* v. *Trinity Industries, Inc., et al.*, No. 97–2598–EEO, was lodged on November 24, 1997, with the United States District Court for the District of Kansas.

In this action the United States sought the recovery of response costs it incurred at the Kansas City Structural Steel Site in Kansas City, Kansas. The Consent Decree provides that ASARCO will pay to the United States $318,212 of approximately $450,000 in outstanding costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to *United States* v. *Trinty Industries, Inc., et al.*, DOJ Ref. #90–11–2–789B.

The proposed Consent Decree may be examined at the office of the United States Attorney, 500 State Avenue, Suite 360, Kansas City, Kansas 66101; the Region 7 office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, Kansas 66101; and at the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 4th Floor, Washington, D.C. 20005. In requesting a copy refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section.

[FR Doc. 97–32907 Filed 12–16–7; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Emergency Review; Comment Request

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506]. OMB approval has been requested by January 2, 1998. A copy of the ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Todd R. Owen, at (202) 219–5095, ext. 143.

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, ATTN: OMB Desk Officer for the Employment and Training Administration, Office of Management and Budget, Room 10235, Washington, DC 20503, (202) 395–7316. The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment and Training Administration.

Title: Indian and Native American Welfare-to-Work Programs.

Frequency: Quarterly (report submission).

Affected Public: State, Local or Tribal Government.

Number of Respondents: 130 (estimated).

Total Responses: 1,040.

Estimated Time Per Respondent: 9 hours.

Total Burden Hours: 9,360.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): $3,000,000.00 per year (program administrative costs).

Description: This ICR is associated with the issuance of forms and instructions necessary to report on activity conducted under the Indian and Native American Welfare-to-Work (INA WtW) program. The ICR concerns the submission of program and financial reports by Federally-recognized tribes and Alaska Native entities (or consortia thereof) awarded grants under the INA WtW program. These reports will document employment activity conducted by INA WtW grantees who provide employment services to adult recipients of benefits under the Temporary Assistance for Needy Families (TANF) program, established by Pub. L. 104–193 (the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, commonly called the ''Welfare Reform Act'').

Information submitted on these reports will be utilized by the Department to evaluate the success of individual INA WtW programs and to provide data for reports to Congress and the White House on the success of the overall INA WtW program. These instructions and forms are being issued in conjunction with the publication of the Interim Final Rule governing the INA WtW program in compliance with the requirements of section 412(a)(3)(C)(iii) of the Social Security Act, as amended by section 5001(c) of Pub. L. 105–33 (the Balanced Budget Act of 1997). This emergency clearance is necessary to enable the Department to implement the INA WtW program as close to the legislatively-mandated beginning date of October 1, 1997 (Fiscal Year 1998) as possible. Also, quick implementation of the INA WtW program is desirable because many TANF recipients are reaching the exhaustion of their benefits, due to the time limits for receiving those benefits imposed by Pub. L. 104–193 (the ''Welfare Reform Act'').

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 97–32942 Filed 12–16–97; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Bureau of International Labor Affairs; U.S. National Administrative Office; North American Agreement on Labor Cooperation; Notice of Request for Comment

AGENCY: Office of the Secretary, Labor.

ACTION: Notice.

SUMMARY: Article 10(1)(a) of the North American Agreement on Labor Cooperation (NAALC) calls for the Council for the Commission for Labor Cooperation to review the operation and effectiveness of the NAALC within four years of its entry into force. In order to undertake the review, the Council agreed to a process which includes seeking public input. A notice was issued (62 Fed. Reg. 61552). The time period within which to comment is being extended. Written comments are requested.

DATES: Written comments on the operation and effectiveness of the NAALC should be submitted by January 30, 1998.

ADDRESSES: Send written comments to the U.S. National Administrative Office, U.S. Department of Labor, Room C–4327, 200 Constitution Avenue, NW., Washington, DC 20210 or the Secretariat, Commission for Labor Cooperation, 350 North St. Paul, Suite 2424, Dallas, Texas 75201–4240.

FOR FURTHER INFORMATION CONTACT: Irasema T. Garza, Secretary, U.S. National Administrative Office, Department of Labor, 200 Constitution Avenue, NW., Room C–4327, Washington, DC 20210. Telephone: (202) 501–6653 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The North American Agreement on Labor Cooperation (NAALC) was signed by the Presidents of the United States of America, and of the United Mexican States, and the Prime Minister of Canada in September 1993 and entered into force on January 1, 1994. Article 10(1)(a) of the NAALC provides that the Council shall ''oversee the implementation and develop recommendations on the further elaboration of this Agreement and, to this end, the Council shall, within four years after the date of entry into force of this Agreement, review its operation and effectiveness in light of the experience * * *.'' The Council agreed to a process of review that includes issuing an invitation for written public comments on the operation and effectiveness of the NAALC. Written comments may be made to the National Administrative Office or to the international Secretariat. Any comments received by the U.S. National Administrative office will be transmitted verbatim to the Secretariat, which has been delegated the responsibility by the Council to oversee the review process.

Signed at Washington, DC on December 11, 1997.

Irasema T. Garza,

Secretary, U.S. National Administrative Office.

[FR Doc. 97–32941 Filed 12–16–97; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR 97–46]

Agency Information Collection Activities: Proposed Collection; Comment Request; Hazard Communication

ACTION: Extension of comment period; Supplemental Information.

SUMMARY: On November 21, 1997, the Occupational Safety and Health Administration (OSHA) published a **Federal Register** notice soliciting comments concerning the proposed extension of the information collection request for the Hazard Communication Standard 29 CFR 1910.1200; 1915; 1918; 1926, and 1928. With this notice, OSHA is providing supplemental information and extending the close of the comment period from January 20, 1998 to February 19, 1998.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before February 19, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket No. ICR–97–46, U.S. Department of Labor, Room N–2625, 200 Constitution Ave. NW, Washington, D.C. 20210, telephone (202) 219–7894. Written comments limited to 10 pages or less in length may also be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Adrian Corsey, Directorate of Health Standards Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3718, 200 Constitution Ave. NW, Washington, D.C. 20210. Telephone: (202) 219–7075 extension 105. Copies of the referenced information collection request are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Adrian Corsey (202) 219–7057 extension 105, or Barbara Bielaski on 219–8076, extension 142. For electronic copies of the Hazard Communication Information Collection Request, contact the Labor News Bulletin Board (202) 219–4784; or OSHA's WebPage on Internet at http://www.osha.gov/ and click on standards.

SUPPLEMENTARY INFORMATION: OSHA requested public comment on the proposed extension of the Hazard Communication Standard (HCS) Information Collection Request on November 21, 1997 (92 FR 62355). The deadline for submitting comments was January 20, 1998. The November 21, 1997, **Federal Register** notice estimated the total burden hours for hazard communication to be 7,301,762 hours. This notice provides additional information reqarding the burden hour estimate. Specifically, the Agency is proposing to reduce the burden hours for HCS from 13,198,751 to 7,301,762 hours, a burden reduction of 5,896,991 hours. The majority of this burden reduction resulted when the Agency eliminated the burden it had assigned to the task of affixing labels to certain containers. Under the implementing rules and regulations of the Paperwork Reduction Act, activities that are normal and customary are not counted when assessing the burden associated with a collection of information. The Agency believes that placing labels on containers is a normal and customary business practice for manufacturers and importers of hazardous chemicals. OSHA's revised estimates include only the burden to develop (i.e., determine) the specific information required by OSHA's Hazard Communication Standard that is beyond normal and customary business practices. To support the Agency's belief that affixing labels in normal and customary, OSHA points out that the Environmental Protection Agency, the Department of Transportation, the Consumer Product Safety Commission, and the Food and Drug Administration require labeling. In addition, international standards require labeling. OSHA also believes that manufacturers normally affix labels to identify and promote their products.

In the November 21, 1997 **Federal Register** Notice on this collection of information, OSHA did not fully explain how it arrived at its estimated reduction. For this reason OSHA believes it is reasonable and appropriate to provide this supplemental information and to give commenters an additional 30 days to comment on the

Information Collection Request [paperwork package]. Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: December 9, 1997.

Adam M. Finkel,

Director, Directorate of Health Standards Programs.

[FR Doc. 97–32863 Filed 12–16–97; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Public Evaluation of NARA Archival Information Locator (NAIL)

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is inviting the public to participate in an evaluation of its prototype online information system, the NARA Archival Information Locator (NAIL).

As part of its Electronic Access Project, NARA is constructing a nationwide, integrated online information delivery system. The project, a priority under the agency's Strategic Plan, will eventually result in a virtual card catalog of all NARA holdings nationwide, including those in the Presidential libraries and regional archives. In addition, copies of some of NARA's most popular and significant manuscripts, photographs, sound recordings, maps, drawings and other documents will be digitized and available for researchers to view online through the catalog.

To complete the final functional requirements for the catalog, NARA is undertaking an evaluation of its prototype, the NARA Archival Information Locator (NAIL). All members of the public are invited to use NAIL and to comment on its ease of use, functionality, and terminology.

NAIL can be accessed on the World Wide Web at http://www.nara.gov/nara/nail.html.

DATES: Comments should be received by January 31, 1998.

ADDRESSES: Comments can be sent through the online comments link in NAIL or by e-mail to nail.mailbox@arch2.nara.gov.

Dated: December 10, 1997.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 97–32914 Filed 12–16–97; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 21, 1997, through December 5, 1997. The last biweekly notice was published on December 3, 1997 (62 FR 63970).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By January 16, 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 for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment request: February 28, 1997.

Description of amendment request: The proposed amendments would revise Byron and Braidwood Technical Specifications (TS) Sections 3/4.4.5, ''Steam Generators,'' and 3/4.4.8, ''Reactor Coolant System Specific Activity,'' for both the Byron Station, Units 1 and 2, and the Braidwood Station, Units 1 and 2. The intent of these proposed revisions is to restore for both Byron, Unit 1, and Braidwood, Unit 1, the original TS related to steam generator (SG) inspections and the primary coolant dose equivalent iodine-131 (DEI) concentrations. These amendments will become effective when the original steam generators (OSG) which are Westinghouse Model D4 SGs, are removed and the replacement steam generators (RSG) made by Babcock and Wilcox, International (BWI), are installed. The RSGs are presently being installed at Byron, Unit 1, while the RSGs will be installed at Braidwood, Unit 1, in fall 1998.

The SG inspection methodology, inspection frequency, reporting requirements and acceptance criteria for the RSGs in both Byron, Unit 1, and Braidwood, Unit 1, will revert to the TSs for the OSGs before several prior license amendments incorporated into the TSs: (1) The interim plugging criteria (IPC) consistent with Generic Letter (GL) 95–05; (2) the F* criteria for the SG tube expansions into the tubesheet; and (3) the criteria for repairing SG tubes using either Westinghouse laser welded sleeves or Combustion Engineering tungsten inert gas (TIG) welded sleeves. The TSs applicable to Byron, Unit 2, and Braidwood, Unit 2, both of which have Westinghouse Model D5 SGs, remain unchanged except for designating them in the TSs as model D5 SGs.

With respect to the limiting value of the DEI primary coolant concentration, both the Byron, Unit 1, TSs and the Braidwood, Unit 1, TSs will revert from their present TS limit of 0.35 to 1.0 microcuries per gram. A license amendment request to lower the Byron, Unit 1, TS DEI limit from 0.35 to 0.20 microcuries per gram was submitted on January 31, 1997, but this request was

subsequently withdrawn on November 11, 1997, because the RSGs were being installed in the Byron, Unit 1, refueling outage which started in early November 1997. A license amendment request to lower the Braidwood, Unit 1, TS DEI limit from 0.35 to 0.10 microcuries per gram was submitted on September 2, 1997. Action on this request is still pending but in any case, will not affect the subject license amendment request for Braidwood, Unit 1, because the September 2, 1997, request is only applicable to the OSGs which are presently using the IPC that were originally incorporated into the TSs on November 9, 1995. The applicable bases sections of the Byron, Unit 1, TSs and Braidwood, Unit 1, TS will also be revised to reflect the TS changes discussed above.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Due to design differences between the replacement Steam Generators (RSGs) and OSGs, the analyses supporting the application of the F* and voltage-based repair criteria do not apply to the RSGs. Also, the analyses supporting sleeving repair by the Westinghouse laser welded or Combustion Engineering Tungsten Inert Gas (TIG) welded sleeving methodologies do not apply to the RSGs due to the design differences. The RSG and OSG tube bundle configurations are similar, however, the RSG tubes are smaller in diameter, constructed of Inconel Alloy 690 instead of Alloy 600, and supported by stainless steel lattice grids instead of the drilled carbon steel plates used in the OSGs. The RSG tubes are hydraulically expanded into the tube sheet during initial assembly. The RSG upper tube bundle shape consists of tubes with continuous, smooth, long radius bends.

The structural analysis demonstrates that the tube integrity is maintained for a Main Steamline Break (MSLB) occurring during normal full power operation. The structural evaluation of the tubing for faulted conditions was performed in accordance with the ASME Boiler and Pressure Vessel Code Section III requirements. The tube material selection and size exceed the strength requirements of the existing steam generators. Comparison of the Alloy 690 tube material used in the RSGs with the Alloy 600 tube material in the OSGs show that the RSG material strength characteristics are as good as or better than those of the existing design. A comparison of the stress margins of the RSG and OSG show that the stress margin in the RSG tubes exceed the stress margin in the OSG tubes.

RSG portions of the reactor coolant pressure boundary are designed to permit periodic inspection and testing of important areas and features to assess structural and leak-tight integrity. ASME Section XI, provides the depth of an allowable outside diameter (O.D.) flaw for tubes in service. The RSG has tubing fabricated from SB–163 material (Inconel Alloy 690) which is examined by eddy current methods to the requirements of ASME Section III, NB–2550. The tubing has a radius to thickness (r/t) ratio less than 8.70. In accordance with ASME Section XI, for tubing having an r/t ratio of less than 8.70, the depth of an allowable O.D. flaw shall not exceed 40% of the nominal tube wall thickness.

The potential for tube rupture is not increased from the OSGs as demonstrated in the qualification analysis and testing for the RSGs. The program for periodic inservice inspection of the steam generators monitors the integrity of the SG tubing to ensure that there is sufficient time to take proper and timely corrective action if any tube degradation is detected. Therefore, installation of the RSGs will not increase the probability of the occurrence of primary-to-secondary leakage or a steam generator tube rupture (SGTR) during normal or accident conditions.

The design basis doses calculated for postulated accidents involving degradation of SG tubes, such as SGTR and MSLB accidents, as presented in UFSAR [Updated Final Safety Analysis Report] Chapter 15 accident analysis have been evaluated and are decreased by installation of the RSGs and restoration of the RCS activity limit to 1.0 microcuries/gm. The decrease in offsite dose is primarily due to the smaller RSG tube diameter and less primary-to-secondary transfer during the event. The dose calculations are performed consistent with NUREG–0800, ''Standard Review Plan'' and ensure site boundary doses are within a small fraction of the Title 10 Code of Federal Regulations Part 100 (10 CFR 100) requirements. Therefore, the change does not involve a significant increase in the consequences of an accident previously evaluated.

Limiting the applicability of TS provisions to a specific cycle or SG type are administrative changes in that they provide clarification consistent with current analyses and do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Restricting application of IPC, F* and sleeving methodologies to the OSGs and reinstating an RCS activity limit of 1.0 microcuries/gm upon installation of the RSGs will not introduce significant or adverse changes to the plant design basis that could lead to a new or different kind of accident being created. The RSG tubing meets the requirements of General Design Criteria (GDC) 14, 15, 30, 31, and 32 of 10 CFR 50, Appendix A. The RSG tubing has been designed and evaluated consistent with ASME Code Section III criteria and the inspection criteria for the RSGs is consistent with ASME Code Section XI criteria. The RSGs have thermally treated Inconel Alloy 690 tubes which are hydraulically expanded into the tube sheet during initial assembly. Alloy 690 is more resistant to stress corrosion cracking (SCC) than Alloy 600 which is used in the OSG tubing. Overall tube bundle structural and leakage integrity is maintained at a level consistent with or better than the originally supplied tubing during all plant conditions.

ComEd will continue to apply the TS maximum primary-to-secondary leakage limit of 150 gpd (0.1 gpm) through any one SG at Byron and Braidwood to help preclude the potential for excessive leakage during all plant conditions. The EPRI recommended 150 gpd limit provides for leakage detection and plant shutdown in the event of an unexpected tube leak and precludes the potential for excessive leakage or tube burst in the event of a Main Steam Line Break or under Loss of Coolant Accident conditions.

Limiting the applicability of TS provisions to a specific cycle or SG type are administrative changes in that they provide clarification consistent with current analyses.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Restricting application of IPC, F*, and sleeving methodologies to the OSGs for which the supporting analyses apply, does not involve a reduction in a margin of safety. The RSG tubing has been shown to retain adequate structural and leakage integrity during normal, transient, and postulated accident conditions consistent with GDC 14, 15, 30, 31, and 32 of 10 CFR 50 Appendix A. The RSG tubing has been designed and evaluated consistent with the margins of safety specified in ASME Code Section III. The proposed program for periodic inservice inspection of the replacement steam generators monitors the integrity of the SG tubing to ensure that there is sufficient time to take proper and timely corrective action if any tube degradation is present. The proposed program is consistent with the Standard Technical Specifications.

The Unit 1 RCS dose equivalent I–131 limit is being raised upon installation of the RSGs to eliminate the compensatory lower limit that was adopted in conjunction with IPC for the existing Westinghouse D4 SGs. With the RCS activity limit returned to the Standard Technical Specification value of 1.0 [mu]Ci/gm, the assessment of postulated UFSAR Chapter 15 accidents (including SGTR and MSLB) has concluded that the calculated design basis doses presented in Chapter 15 are not adversely impacted by the RSGs. This ensures that the resulting 2-hour dose rates at the Byron and Braidwood site boundaries will not exceed an appropriately small fraction of 10 CFR 100 dose guideline values.

Limiting the applicability of TS provisions to a specific cycle or SG type are

administrative changes in that they provide clarification consistent with current analyses.

Therefore, it is concluded that this change does not involve a significant reduction in a margin of safety with respect to plant safety as defined in the UFSAR or the Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: For Byron, the Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for Braidwood, the Wilmington Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Robert A. Capra.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: March 26, 1997.

Description of amendment request: The proposed amendment would revise the containment system technical specifications (TS) contained in TS Sections 3.6 and 4.5. The licensee has classified the changes as ''More Restrictive,'' ''Less Restrictive,'' and ''Administrative.'' ''More Restrictive'' changes include reduction of the allowable containment pressure, addition of an action statement defining action to be taken when the containment pressure limit is exceeded, addition of a restriction on containment temperature, and revision of the applicable conditions for the containment purge valves to require that the valves be operable above 210 degrees F versus the current requirement that they be operable above 525 degrees F. ''Less Restrictive'' changes include addition of an allowance to enter an air lock through a locked door to perform maintenance, addition of an allowance to open containment isolation valves under administrative control, revision of the applicable conditions for containment pressure to exclude the cold shutdown operating condition, and addition of an exception to the surveillance requirement requiring verification of the status of ''locked-closed'' manual isolation valves after a refueling outage to exclude requiring such verification for valves opened under administrative control. ''Administrative'' changes include the deletion of containment isolation valve tables and component identifiers from the TS in accordance with Generic Letter 91–08 (''Removal of Component Lists from Technical Specifications'') and editorial restructuring of the affected TS sections to clarify the remaining requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Each proposed change has been classified as ''Administrative,'' ''More Restrictive,'' or ''Less Restrictive.'' ''Administrative'' and ''More Restrictive'' changes are discussed generically; ''Less Restrictive'' changes are discussed individually.

Five of the proposed changes are classified as being ''Less Restrictive'':

(G.1) Allowance in LCO [Limiting Condition for Operation] 3.6.1 to enter an air lock to perform maintenance.

(G.2) Allowance in LCO 3.6.1 to open containment isolation valves under administrative control.

(I.2) Revising the applicable conditions of LCO 3.6.2, Containment Pressure to exclude Cold Shutdown.

(J.2) Exception in SR [Surveillance Requirement] 4.5.3d for valves opened under administrative control as allowed by LCO 3.6.1.

(P) Allowance in SR 4.5.2 to enter an air lock to perform maintenance.

Four of the proposed changes are classified as being ''More Restrictive'':

(I.1) Revising LCO 3.6.2 to reduce the allowable containment pressure.

(I.3) Addition of an action statement to LCO 3.6.2, Containment Pressure.

(K) Addition of a new LCO which restricts Containment Temperature.

(M.2) Revising the applicable conditions for LCO 3.6.5, Purge Valves.

The remaining changes are all classified as being ''Administrative''.

Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

1. Changes G.1, G.2, J.2, and P: Proposed changes G.1 and P allow limited access through the operable door of an air lock when the other door is inoperable; current Technical Specifications [TS] do not. Proposed changes G.2 and J.2 allow unisolating containment penetration flow paths intermittently under administrative control; current TS do provide a similar allowance, but only for one specific penetration. These changes cannot significantly increase the probability of an accident because opening an air lock door or a containment penetration is not, itself, an initiator and does not affect the items which are initiators of any analyzed accident.

The ability to open the operable door or to open a containment penetration, even if it means the containment boundary is temporarily not intact, does not significantly increase the consequences of an accident previously evaluated because of the low probability of an event that could pressurize the containment occurring during the short time the operable door or containment penetration is expected to be open. In a case where containment integrity (or containment operability) is lost due to excessive leakage, both the Palisades Technical Specifications and the Standard Technical Specifications [STS] allow one hour of continued operation for its restoration. That time period is allowed without regard to the magnitude of the potential leakage, and would be allowed even if both personnel air lock doors [were] leaking excessively. The additional allowance of permitting the operable door to be opened momentarily for entry or egress when the other door is inoperable due to excessive leakage would not significantly add to the probability of containment leakage and the resultant consequences of an accident. Similarly, the allowance to open any containment penetration intermittently under administrative control, which currently is allowed for one penetration, would not significantly add to the probability of containment leakage and the resultant consequences of an accident.

Therefore, operation of the Facility in accordance with proposed changes G.1, G.2, J.2, and P would not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Change I.2: Change I.2 alters existing LCO 3.6.2, Containment Pressure so that it no longer applies during Cold Shutdown. LCO 3.6.2 is intended to limit containment pressure to that value used as an initial condition in the safety analysis. Containment pressure is an initial condition in analyses which assure that containment internal pressure will not exceed the containment design values during a LOCA or MSLB. Containment pressure is not an initiator of any accident previously evaluated. Neither a LOCA [loss-of-coolant accident] nor a MSLB [main steam line break] occurring during Cold Shutdown would pressurize the containment. Therefore, a containment pressure LCO is not necessary, during Cold Shutdown, to assure that containment design pressure and temperature is not exceeded. The STS Containment pressure LCO is not applicable in Cold Shutdown.

Therefore, operation of the Facility in accordance with proposed change I.2 would not involve a significant increase in the probability or consequences of an accident previously evaluated.

3. More Restrictive Changes: ''More Restrictive'' changes only add new requirements, or revise existing requirements to result in additional operational restrictions. The TS, with all ''More Restrictive'' changes incorporated, will still contain all of the requirements which existed prior to the changes. Therefore, ''More Restrictive'' changes cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

4. ''Administrative'' changes make wording changes which clarify existing TS requirements, without affecting their

technical content. Since ''Administrative'' changes do not alter the technical content of any requirements, they cannot involve a significant increase in the probability or consequences of an accident previously evaluated.

Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

1. Changes G.1, G.2, J.2, and P: Proposed changes G.1 and P allow limited access through the operable door of an air lock when the other door is inoperable; current Technical Specifications do not. Proposed changes G.2 and J.2 allow unisolating containment penetration flow paths intermittently under administrative control; current TS do provide a similar allowance, but only for one specific penetration. Opening an air lock door or a containment penetration does not affect the operating conditions or operation of any plant systems (other than the containment); it does not create a threat to the integrity of any operating system or alter any system operating practice or settings.

Since the opening of an air lock door or a containment penetration only affects the potential leakage from the containment, and does not affect any of the operating plant systems, operation of the Facility in accordance with the proposed Technical Specifications change would not create the possibility of a new or different kind of accident from any previously evaluated.

2. Change I.2: Change I.2 alters existing LCO 3.6.2, Containment Pressure so that it no longer applies during Cold Shutdown. LCO 3.6.2 is intended to limit containment pressure to that value used as an initial condition in the safety analysis. Containment pressure is an initial condition in analyses which assure that containment internal pressure will not exceed the containment design values during a LOCA or MSLB. Neither a LOCA nor a MSLB occurring during Cold Shutdown would pressurize the containment. Therefore, a containment pressure LCO is not necessary, during Cold Shutdown, to avoid creation of a new or different kind of accident. The STS Containment pressure LCO is not applicable in Cold Shutdown.

Therefore, operation of the Facility in accordance with proposed change I.2 would not create the possibility of a new or different kind of accident from any previously evaluated.

3. More Restrictive Changes: ''More Restrictive'' changes only add new requirements, or revise existing requirements to result in additional operational restrictions. The TS, with all ''More Restrictive'' changes incorporated, will still contain all of the requirements which existed prior to the changes. Therefore, ''More Restrictive'' changes cannot create the possibility of a new or different kind of accident from any previously evaluated.

4. ''Administrative'' changes make wording changes which clarify existing TS requirements, without affecting their technical content. Since ''Administrative'' changes do not alter the technical content of any requirements, they cannot create the possibility of a new or different kind of accident from any previously evaluated.

Do the proposed changes involve a significant reduction in a margin of safety?

1. Changes G.1, G.2, J.2, and P: Proposed changes G.1 and P allow limited access through the operable door of an air lock when the other door is inoperable; current Technical Specifications do not. Proposed changes G.2 and J.2 allow unisolating containment penetration flow paths intermittently under administrative control; current TS do provide a similar allowance, but only for one specific penetration. The ability to open the operable door or a containment penetration, even if it means the containment boundary is temporarily not intact, does not involve a significant reduction in a margin of safety because of the low probability of an event that could pressurize the containment occurring during the short time the operable door or penetration is expected to be open.

Therefore, operation of the Facility in accordance with the proposed Technical Specifications change would not involve a significant reduction in a margin of safety.

2. Change I.2: Change I.2 alters existing LCO 3.6.2, Containment Pressure so that it no longer applies during Cold Shutdown. LCO 3.6.2 is intended to limit containment pressure to that value used as an initial condition in the safety analysis. Containment pressure is an initial condition in analyses which assure that containment internal pressure will not exceed the containment design values during a LOCA or MSLB. Neither a LOCA nor a MSLB occurring during Cold Shutdown would pressurize the containment. Therefore, elimination of a Cold Shutdown LCO for containment pressure would not affect the post-accident pressure or temperature. Since peak post accident [pressure] and temperature would be unaffected by the proposed change, operation of the Facility in accordance with proposed change I.2 would not involve a significant reduction in a margin of safety.

3. More Restrictive Changes: ''More Restrictive'' changes only add new requirements, or revise existing requirements to result in additional operational restrictions. The TS, with all ''More Restrictive'' changes incorporated, will still contain all of the requirements which existed prior to the changes. Therefore, ''More Restrictive'' changes cannot involve a significant reduction in a margin of safety.

4. ''Administrative'' changes make wording changes which clarify existing TS requirements, without affecting their technical content. Since ''Administrative'' changes do not alter the technical content of any requirements, they cannot involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: John N. Hannon.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: October 29, 1997.

Description of amendments request: The proposed amendments to the Technical Specifications (TS) for the Brunswick Steam Electric Plant (BSEP) Units 1 and 2 would revise the description of the control rod assemblies (CRAs) in TS 5.3.2. The proposed revision was requested to support replacement of a portion of the BSEP Unit 1 CRAs during that unit's next refueling outage with assemblies of a different design. Carolina Power & Light Company, the licensee, has proposed adopting the description of CRAs used in NUREG–1433, Revision 1, ''Standard Technical Specifications General Electric Plants, BWR/4,'' which includes the number and shape of CRAs and a stipulation that NRC-approved absorber material be used in CRAs. The more detailed description in the current TS of CRAs would be relocated to the Updated Final Safety Analysis Report. The licensee has stated that the CRA description proposed for TS 5.3.2 will be sufficient to ensure that any future changes in CRA design that may affect safety will require prior NRC review and approval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Relocation of the control rod assembly descriptive information from the Technical Specifications to the Updated Final Safety Analysis Report will ensure that adequate control of the information is maintained. Any changes to this design information must conform with the requirements of 10 CFR 50.59. Restricting use of control rod assembly absorber materials to those listed, or to materials that have been approved by the NRC, will ensure any changes which may affect safety to require prior NRC review and approval. Since the information with a potential to affect safety is sufficiently addressed by the Technical Specifications, the criteria of 10 CFR 50.36(c)(4) for

including the relocated information as Design Features are not met. Because the relocated information is not required to be in the Technical Specifications to provide adequate protection of the public health and safety, relocation of control rod assembly descriptive information will not increase either the probability or the consequences of an accident previously evaluated.

2. The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Relocation, to the Updated Final Safety Analysis Report, of the information pertaining to the control rod assembly designs ensures that adequate control of the information will be maintained. Since the information with a potential to affect safety is sufficiently addressed by the Technical Specifications, the criteria of 10 CFR 50.36(c)(4) for including the relocated information as Design Features are not met. Because the relocated information is not required to be in the Technical Specifications to provide adequate protection of the public health and safety, the proposed Technical Specification changes to relocate the control rod assembly design information to the Updated Final Safety Analysis Report does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendments do not involve a significant reduction in a margin of safety.

As discussed in Items 1 and 2 above, relocation of the control rod assembly descriptive information from the Technical Specifications to the Updated Final Safety Analysis Report will ensure that adequate control of the information is maintained. Any changes to this design information must conform with the requirements of 10 CFR 50.59. Restricting use of control rod assembly absorber materials to those listed, or to materials that have been approved by the NRC, will ensure any changes which may affect safety to require prior NRC review and approval. The information with a potential to affect safety is sufficiently addressed by the Technical Specifications, therefore, the proposed Technical Specification changes to relocate control rod assembly design information to the Updated Final Safety Analysis Report do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297

Attorney for licensee: William D. Johnson, Vice President and Senior Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: James E. Lyons.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: July 16, 1997, as supplemented October 30, 1997.

Description of amendment request: The amendment would update License condition 2.C(4) to reflect the latest revision levels of the Oyster Creek Security Training and Qualification Plan, License Amendment Request No. 252.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has concluded that the proposed changes to the Security Plan do not involve a significant hazard consideration. In support of this determination, an evaluation of each of the three standards set forth in 10 CFR 50.92 is provided below.

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Security Plan provisions are not associated with design basis accident initiators nor do they constitute part of any mitigation system. Therefore, the probability and consequences of accidents are not increased.

(2) The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The Security Plan changes do not create new or change existing physical interfaces with plant equipment. Therefore, the changes do not create the possibility of a new or different kind of accident.

(3) The proposed changes do not involve a significant reduction in a margin of safety.

Margins associated with reactor and fuel storage nuclear safety are not affected by the proposed Security Plan changes since neither physical nor procedural changes to associated systems, structures and components are involved. Vital area security measures, which are reduced, are compensated by commitments to hold contingency drills at a frequency sufficient to maintain response capability for response personnel and to use organic-type X-ray equipment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Ronald B. Eaton, Acting Director.

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: November 14, 1997.

Description of amendment request: The proposed change to Technical Specification 4.5.2.d.1 will clarify the wording and increase the setpoint for the open pressure interlock (OPI).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10 CFR 50.92 and has concluded that the revision does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not satisfied. The proposed revision does not involve [an] SHC because the revision would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated.

Increasing the Technical Specification Open Pressure Interlock (OPI) pressure to 412.5 psia [pounds per square inch—atmospheric] will still maintain the required function of preventing the MOVs [motor operated valves] from opening inadvertently. The increased pressure is within the design limits of the RHR [residual heat removal] piping system and components. The pressure signal is generated from a transmitter and results in an electronic input to the bistable. This is a clarification of the conditions under which the OPI is tested.

Therefore, the proposed revision does not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no change to the function of the OPI. The protection provided by the interlock remains intact. The Technical Specification OPI pressure has been raised to take into account instrument accuracies and reset deadbands. The RHR system design pressure remains protected from being exceeded by inadvertent opening of the isolation MOVs. The method for the OPI surveillance is clarified by clearly stating that the bistable receives a simulated transmitter signal representative of the process pressure.

Therefore, the proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The design pressure of the RHR system is 600 psig [pounds per square inch—gauge]. The most limiting case is to prevent the RHR pump developed head pressure from exceeding the design pressure when aligned to the RCS [reactor coolant system] as suction pressure. RHR pump testing has determined that a maximum pump differential pressure of 195 psi [pounds per square inch] exists for deadhead/no flow conditions. Therefore, to maintain the 600 psig design pressure limit, RCS/suction pressure must be limited to 405 psig (420 psia, assuming a 15 psi conversion from psig to psia). The proposed maximum pressure, including setpoint tolerances and reset deadbands, is less than this value; i.e. 412.5 psia. Head corrections due to elevation differences are considered to be insignificant.

Therefore, the proposed revision does not involve a significant reduction in a margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve an SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Deputy Director: Phillip F. McKee.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: November 3, 1997.

Description of amendment request: The proposed amendment would revise Sections 1, 3.1, 3.3, 4.3, and 6 of Appendix A of the Indian Point 3 Technical Specifications. These revisions extend the Heatup-Cooldown limits from 11 to 13 effective full power years (EFPYs), provide the corresponding Overpressure Protection System (OPS) limits, relocate the new pressure temperature limit curves and low-temperature overpressurization protection (LTOP) system limits to the pressure temperature limit report (PTLR) and include some minor revisions which ensure specification clarity and conservatism.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response: The proposed license amendment does not involve a significant increase in the probability or consequences of a previously analyzed accident. The pressure-temperature limit changes proposed by this amendment are based on supporting data and evaluation methodologies previously submitted to the NRC in Reference 3 [see application dated November 3, 1997] and approved as Amendments 109 and 121 (References 4 and 5) [see application dated November 3, 1997]. These limits are based upon the irradiation damage prediction methods of Regulatory Guide 1.99, Revision 2. The LTOPs changes contained in this submittal have been conservatively adjusted in accordance with the new pressure-temperature limits, in accordance with the methodology contained in Reference 3 and ASME Code Case N–514.

The relocation of the pressure-temperature and LTOPs limits from the Technical Specifications to the PTLR does not eliminate the requirement to operate in accordance with the limits specified in 10 CFR [Part] 50, Appendix G. The requirement to operate within the limits in the PTLR is specified in and controlled by the Technical Specifications.

The revised version of Section 3.1.A.8 clarifies existing requirements related to the OPS system and adds an eight hour completion time for compensating actions, consistent with the STS [standard technical specifications]. The changes to Section 3.1.A.1.h, i, and j revise the requirements associated with the start of an RCP [reactor coolant pump]. These changes improve specification clarity and do not increase the probability or consequences of an accident.

The Technical Specification changes associated with the restriction on SI [safety injection] pumps provides added conservatism to the Technical Specifications and limits the likelihood of an RHR [residual heat removal] overpressurization event. Current plant procedures prohibit actuation of any SI pumps when RHR is in service, except during testing, loss of RHR cooling, or reduced inventory operations. Therefore, the change to the Technical Specifications will not alter current plant operation.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously analyzed. The pressure-temperature limits are updating the existing limits by taking into account the effects of radiation embrittlement, utilizing criteria defined in Regulatory Guide 1.99, Revision 2, and extending the effective period to 13 EFPYs. The updated OPS limits have been adjusted to account for the effect of irradiation on the limiting reactor vessel material. These changes do not affect the way the pressure-temperature or OPS limits provide plant protection and no physical plant alterations are necessary. The relocation of the pressure-temperature and OPS limits from the Technical Specifications to the PTLR does not alter the requirements associated with these limits.

The revisions to Section 3.1.A.8 concerning the OPS system improve on the clarity of existing specifications and add a completion time for compensating actions that is consistent with the STS. These changes do not involve any hardware modifications and do not affect the function of the OPS system.

The revisions concerning the operation of SI pumps bring the Technical Specifications into line with current operating procedures. The changes to Specification 3.1.A.1.h, i, and j provide specification clarity and are more conservative than existing Technical Specifications. Therefore, the changes cannot create the possibility of a new or different kind of accident.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response: The proposed amendment does not involve a significant reduction in a margin of safety. The margins of safety against fracture provided by the pressure-temperature limits are those limits specified in 10 CFR Part 50, Appendix G and ASME Boiler and Pressure Vessel Code Section XI, Appendix G. The guidance in these documents has been utilized to develop the pressure-temperature limits with the requisite margins of safety for the heatup and cooldown conditions. The new LTOP limits are based upon Reference 3 and ASME Code Case N–514. The relocation of the pressure-temperature and OPS limits to the PTLR does not alter the requirements associated with these limits.

The revisions to Section 3.1.A.8 clarify the requirements associated with the OPS system. The revisions associated with the operation of SI pumps with RHR in service (Sections 3.3.A.8, 9 and 10) and the changes regarding RCP starts (Section 3.1.A.1.h, i, and j) are more conservative than the current Technical Specifications, and are consistent with plant operating procedures. Therefore, they do not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library,

100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. David Blabey, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: S. Singh Bajwa.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: October 24, 1997.

Description of amendment request: The amendments would increase the containment hydrogen analyzer surveillance frequency in Technical Specification 4.6.4.1 from once per refueling outage to quarterly.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The containment hydrogen analyzers provide control room indication of hydrogen concentration in the containment atmosphere. They do not affect the probability of any previously evaluated accident. The proposed change would increase the calibration frequency specified in TS 4.6.4.1 to make it consistent with manufacturer's recommendations and the current calibration frequency at [Salem Generating Station] SGS as imposed by administrative controls. The change in TS-required calibration frequency is in the conservative (more frequent) direction, to ensure that potential degradation of the sensor electrolyte over time would not result in unacceptable performance of the hydrogen analyzers. The change in specified frequency would not adversely affect the consequences of any previously evaluated accident.

2. Proposed change does not create the possibility of a new or different kind of accident from any accident previously analyzed [evaluated].

The proposed change affects only the specified calibration frequency of the containment hydrogen analyzers. The proposed change does not affect the design of any SGS structure, system or component, nor would it result in any new plant configuration. Therefore, it does not create the possibility of a new or different kind of accident.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change to the containment hydrogen analyzer calibration frequency does not affect the design or operating limits of any SGS structure, system or component. The change would make the specified calibration frequency more conservative, to ensure the hydrogen analyzers perform as designed over time. The proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: October 24, 1997.

Description of amendment request: The amendments would revise Technical Specification (TS) 3/4.7.7, ''Auxiliary Building Exhaust Air Filtration System.'' The revisions would: (1) Require both Auxiliary Building Ventilation (ABVS) supply fans to be operable, (2) require all three ABVS exhaust fans to be operable, (3) align ABVS TSs to be consistent with current TS bases and recently revised system descriptions in the Salem Updated Final Safety Analysis Report (UFSAR), (4) assure that negative pressure is maintained in the Auxiliary Building under all postulated single active failures, (5) clarify required Engineered Safety Feature filter testing, (6) provide consistency between Unit 1 and Unit 2 TSs, and (7) for Unit 2 only, remove the requirement to verify safety injection auto-start capabilities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change alters the number of fans which must be OPERABLE to ensure that a sufficient number of supply and exhaust fans will be operable, following a most limiting single failure, to mitigate the consequences of design basis accidents. The changes to the ABVS surveillance requirements still provide an appropriate means for demonstrating the operability of the ABVS.

The ABVS cannot initiate or otherwise cause any accident or operational transient evaluated in the UFSAR. Consequently, the probability of such events is not increased. The ABVS cannot increase the consequences of a design basis LOCA unless: (1) Auxiliary Building negative pressure is lost, resulting in uncontrolled, ground level release of radioactive material; (2) ABVS carbon adsorbers are bypassed, resulting in uncontrolled release of radioactive iodine from the plant vent; or (3) Auxiliary Building temperatures are not controlled, resulting in failure of accident mitigating equipment.

By requiring OPERABILITY of all ABVS supply and exhaust fans, the proposed changes contained in this submittal assures Auxiliary Building negative pressure is maintained under all postulated post-accident, single-failure scenarios. The proposed changes to ABVS will not affect the elemental iodine adsorption capability of the system. Finally, engineering analyses conclude that these fan combinations, with single-active failures of the fans or their support systems considered, provide sufficient Auxiliary Building ventilation. Under the most limiting temperature conditions, the fans will maintain room temperatures within design limits. Accordingly, the consequences of a design basis LOCA, hence applicable design basis accidents or operational transients, are not increased.

Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

ABVS supply fans are not considered essential to the primary safety-function of preventing or mitigating radioactive releases, nor are they currently required to be OPERABLE. Similarly, accident analyses take no credit for operation of supply fans. Accordingly, malfunctions of vital buses and ABVS exhaust fans are the only malfunctions of active ABVS related equipment important to safety that are previously evaluated.

The probability of failure of a vital bus is not increased by this proposal since the proposal has no direct effect on electrical power. Neither is the probability of exhaust fan failure increased by the proposal, since exhaust fans are not affected by this proposal, except that the number that must be OPERABLE is increased from two to three.

By requiring additional supply fans and exhaust fans to be OPERABLE, no single failure of either a vital bus or ABVS fan prevents (1) maintenance of negative Auxiliary Building pressure or (2) maintenance of temperatures within design limits. Since ABVS supply and exhaust fans cannot initiate accidents, increasing the number of fans required to be OPERABLE cannot create the possibility of a new or different kind of accident from any accident previously evaluated. In addition, the proposed changes to the ABVS surveillance testing concern ABVS leakage, HEPA filter and carbon adsorber capabilities, and laboratory test methods. Therefore, the proposed surveillance requirement changes would have no impact on the initiation of accidents.

Thus, the proposed changes do not create the possibility of a new or different kind of

accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety is dependent upon the maintenance of specific operating parameters within designated design limits. Since iodine removal capability is not affected by the proposed changes, and negative Auxiliary Building pressure and temperatures will continue to be maintained within existing design limits under post-accident conditions, including consideration of the most limiting single active failure, the margin of safety is not reduced. By imposing new restrictions on the allowed outage times of ABVS components, the margin of safety is increased with the proposed changes to the ABVS Technical Specification Limiting Condition for Operation (LCO).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 4, 1997.

Description of amendment request: The amendments would change Technical Specification (TS) 3/4.6.2, ''Containment Spray System,'' to verify on recirculation flow that the containment spray pumps develop a differential pressure of at least 204 psi.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the CS [containment spray] pump technical specification surveillance test acceptance from pump discharge pressure to pump differential pressure. This will account for the effect of RWST [refueling water storage tank] level on test results and provide acceptance criteria that verifies each CS pump performs as assumed in the accident analyses. This surveillance test is also being added to the Salem Unit 1 TS. The proposed change does not alter the physical plant arrangement or the method of CS pump inservice testing. Therefore it does not increase the probability of an accident. There is no change to pump performance requirements as assumed in the accident analyses. There is no change to CS system performance in response to an accident. Therefore, the proposed change does not involve an increase in the consequences of an accident previously evaluated.

The proposed change also corrects a typographical error by removing a repeated word. This change does not involve an increase in the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the Salem Unit 2 CS pump surveillance test acceptance criteria from pump discharge pressure to pump differential pressure. This will account for the effect of RWST level on test results and provide acceptance criteria that verify the CS pumps perform as assumed in the accident analyses. This surveillance test is also being added to the Salem Unit 1 TS. The proposed change does not alter the plant configuration. The change does not alter the method of performing inservice testing on the CS pumps. The change does not alter the CS pump performance assumed in the accident analyses. Therefore, the change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change also corrects a typographical error by removing a repeated word. This change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change ensures the CS pump Salem Unit 2 TS surveillance test acceptance criteria verify CS pump performance as assumed in the accident analyses accounting for RWST level effects. This surveillance test is also being added to the Salem Unit 1 TS. The proposal does not change the CS pump performance requirements assumed in the accident analyses and thus does not reduce the margin of safety.

The proposed change also corrects a typographical error by removing a repeated word. This does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 14, 1997.

Description of amendment request: The proposed changes to the Technical Specifications (TSs) include administrative and editorial changes to correct errors in the TSs that have either existed since initial issuance or were introduced during subsequent changes. In addition, surveillance requirements are added that are considered administrative changes since the surveillances should have been incorporated with the TS when the applicable amendment to the TSs was approved by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the TS are administrative or editorial changes to the TS and do not involve any physical changes to the plant. The administrative changes and editorial changes do not delete any existing surveillance requirements or delete any requirements from the Limiting Condition for Operations (LCOs) or Action Statements and therefore do not reduce the actions that are currently taken in the TS to demonstrate operability of plant structures, systems, or components (SSCs). The additional surveillance requirements that are being added to the TS including the new surveillances correct past administrative errors and should have been incorporated within the TS as part of the approved Amendments to the TS. These changes will provide additional assurance that SSCs perform their intended safety functions. Surveillance testing has been and is currently being performed for the surveillance requirements that should have been incorporated and are now administratively being added to the TS. Since these changes do not modify any SSCs or reduce the current requirements for demonstrating operability of these SSCs or reduce the current requirements for demonstrating operability of these SSCs, the proposed changes to the TS do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TS are administrative and editorial corrections to the TS that do not affect the ability of the plant systems to meet their current TS requirements or design basis functions. There is no reduction in the current surveillance requirements required to demonstrate the operability of plant SSCs. These changes also do not involve any physical changes to plant SSCs. Therefore the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes are administrative and editorial corrections to the TS that do not affect the ability of plant SSCs to perform their design basis accident functions. There is no reduction in the current surveillance requirements required to demonstrate the operability of plant SSCs. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of amendment request: November 14, 1997.

Description of amendment request: The proposed changes to the Technical Specifications (TSs) include administrative and editorial changes to correct errors in the TSs that have either existed since initial issuance or were introduced during subsequent changes. In addition, surveillance requirements are added that are considered administrative changes since the surveillances should have been incorporated with the TS when the applicable amendment to the TSs was approved by the NRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the TS are administrative or editorial changes to the TS and do not involve any physical changes to the plant. The administrative changes and editorial changes do not delete any existing surveillance requirements or delete any requirements from the Limiting Condition for Operations (LCOs) or Action Statements and therefore do not reduce the actions that are currently taken in the TS to demonstrate operability of plant structures, systems, or components (SSCs). The additional surveillance requirements that are being added to the TS including the new surveillances correct past administrative errors and should have been incorporated within the TS as part of the approved Amendments to the TS. These changes will provide additional assurance that SSCs perform their intended safety functions. Surveillance testing has been and is currently being performed for the surveillance requirements that should have been incorporated and are now administratively being added to the TS. Since these changes do not modify any SSCs or reduce the current requirements for demonstrating operability of these SSCs or reduce the current requirements for demonstrating operability of these SSCs, the proposed changes to the TS do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes to the TS are administrative and editorial corrections to the TS that do not affect the ability of the plant systems to meet their current TS requirements or design basis functions. There is no reduction in the current surveillance requirements required to demonstrate the operability of plant SSCs. These changes also do not involve any physical changes to plant SSCs. Therefore the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes are administrative and editorial corrections to the TS that do not affect the ability of plant SSCs to perform their design basis accident functions. There is no reduction in the current surveillance requirements required to demonstrate the operability of plant SSCs. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit–N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Public Service Electric & Gas Company, Docket No. 50–311, Salem Nuclear Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: October 29, 1997.

Description of amendment request: The proposed amendment would make a one-time change to Technical Specification 3/4.4.6, ''Steam Generators,'' to require that the next inspection be performed within 24 months of criticality for fuel cycle 10, rather than within 24 months from the previous inspection. The previous inspection was performed in May 1996; thus, adhering to the current Technical Specification would require inspection by May 1998 and would require a forced outage. It would also eliminate description of an alternate sampling plan that was applicable only to Unit 2's fourth refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Design Basis Accident (DBA) analyzed in UFSAR Chapter 15.4.4, is Steam Generator Tube Rupture. The Technical Specification steam generator tube inspection attempts to avoid this DBA by maintenance of the integrity of the primary to secondary coolant boundary represented by steam generator tubes. The process by which this integrity is maintained is inspection of steam generator tubes at prescribed intervals, and the removal of defective tubes from service. Inspection intervals are based on preventing corrosion growth from exceeding tube structural strength, thereby preventing tube failure. An extensive steam generator inspection in May of 1996 characterized existing steam generator tube degradation, and degraded tubes were removed from service at that time. Degradation growth rates were evaluated for the next operating interval and it was determined that full cycle operation would not challenge tube structural integrity. Because degraded tubes were plugged, the integrity of the steam generators has been restored, and, because further degradation was prevented by a strictly controlled wet lay-up program in place since the inspection, steam generator integrity has since been maintained at the May 1996 level. This is the level normally expected for commencement of full power operations at the beginning of a fuel cycle. Thus, it can be reasonably

concluded that this request to extend the inspection interval to conclude 24 months after the start of Unit 2 fuel cycle 10 does not involve an increase in the probability of an accident previously analyzed.

Salem UFSAR Chapter 15, Section 15.4.4., discusses the Design Basis Accident involving steam generator tube rupture. Since the Salem Unit 2 steam generators were extensively inspected and all degraded tubes were removed from service by plugging, integrity of the generators was restored to fully serviceable condition at that time. Degradation of steam generator tubes has been prevented since the inspection by a carefully controlled, EPRI Guidelines based, corrosion prevention program. It follows, then, that the Unit 2 steam generators were in the same condition immediately prior to fill and vent as if the inspection had just been concluded. This is the condition assumed for commencement of normal operation. Thus, it is reasonable to conclude that this proposal to extend the current steam generator inspection interval to end 24 months after start of Unit 2 fuel cycle 10 represents no significant increase in the consequences of an accident previously analyzed.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Steam generator tube inspections determine tube integrity and provide reasonable assurance that a tube rupture or primary to secondary leak will not occur. Accidents involving steam generator tube rupture are analyzed in Salem UFSAR Section 15.4.4, Steam Generator Tube Rupture. The only type of accident that can be postulated from extending the steam generator inspection interval would be a tube leak or rupture. Thus, it can be concluded that extending the steam generator inspection interval on a one-time basis cannot create the possibility of a different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The margin of safety, as with any TS, depends upon maintenance of specific operating parameters within design limits. In the case of steam generators, that margin is maintained through assurance of tube integrity as the primary to secondary boundary. Assurance of tube integrity is provided through periodic inservice testing of tube integrity and removal from service of defective tubes. Additional margin is provided through protection from possible consequences of steam generator tube failure by detection and mitigation systems. As discussed in 1., above, there was an extensive steam generator inspection, and the steam generators have been maintained since the inspection, using a lay-up program that complies with EPRI Guidelines, to prevent further tube degradation. Also, N–16 monitors were added, enhancing detection capabilities. The margin as established by the latest inspection has been maintained by the corrosion control program of EPRI Primary and Secondary Guidelines based on wet lay-up conditions. Thus, it can be reasonably concluded that this proposal to amend the Salem Unit 2 Technical Specifications, on a one-time basis, to extend the steam generator inspection interval to end 24 months after start of Unit 2 fuel cycle 10 does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: John F. Stolz.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: August 8, 1997.

Description of amendment request: The proposed amendment would revise the surveillance requirements (SR) of Technical Specification (TS) 3/4.7.4 ''Essential Service Water System'' by removing the requirement to perform SR 4.7.4.b.1, 4.7.4.b.2 and 4.7.4.c during shutdown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change to TS has no adverse impact on the probability of occurrence or the consequences of an accident. The proposed amendment does not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident and the methodologies used in the accident analysis remain unchanged. The operating limits and the radiological consequences will not be changed. No design basis accidents will be affected by this change since the required TS surveillances will continue to be performed on an 18 month frequency.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

All design and performance criteria continue to be met and no new failure mechanisms have been identified. The proposed change does not affect the design or operation of any system or component in the plant since the required TS surveillances will continue to be performed on an 18 month frequency. The safety functions of the related structures, systems or components are not changed in any manner, nor is the reliability of any structure, system or component reduced. Conducting these surveillances online will not increase the possibility of plant transients. Since the safety functions and reliability are not adversely affected, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change will not affect or change a safety limit or affect plant operations since the required TS surveillances will continue to be performed on an 18 month frequency. This change will not reduce the margin of safety assumed in the accident analysis nor reduce any margin of safety as defined in the basis for any TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: August 8, 1997.

Description of amendment request: The proposed amendment would revise Table 3.3–3, Functional Units 4.b.2 and 5.a.2 of the Callaway Technical Specifications (TS) by (1) changing the main steam and feedwater isolation system (MSFIS) channels to be consistent with the requirements for the solid state protection system (SSPS), (2) adding a clarifying note, and (3) deleting and replacing Action Statements 27a and 34a with Action Statements 27 and 34. In addition, Table 4.3–2, Functional Units 4.b and 5.a are proposed to be revised by changing the slave relay quarterly surveillance to a quarterly actuation logic test for the MSFIS actuation and relays.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the

issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to Technical Specifications (TS) have no adverse impact on the probability of occurrence or the consequences of an accident. The proposed amendment does not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident and the methodologies used in the accident analysis remain unchanged. The operating limits and the radiological consequences will not be changed. No design basis accidents will be affected by these changes. The proposed changes do not result in any hardware changes.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. All design and performance criteria continue to be met and no new failure mechanisms have been identified. The proposed changes do not affect the design or operation of any system or component in the plant. The safety functions of the related structures, systems or components are not changed in any manner, nor is the reliability of any structure, system or component reduced. However, these changes are consistent with the requirements for the SSPS. Since the safety functions and reliability are not adversely affected, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes will not affect or change a safety limit or affect plant operations. These changes will not reduce the margin of safety assumed in the accident analysis nor reduce any margin of safety as defined in the basis for any TS. The proposed changes do not affect the acceptance criteria for any analyzed event. No setpoints are revised and the system response time will not be affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: August 8, 1997.

Description of amendment request: The proposed amendment would revise Table 3.7–2 of the Technical Specifications to specify that the lift setting tolerance for the main steam line safety valves be +3/−1% as-found and plus or minus 1% as-left. Table 2.2–1 would be revised by reducing the sensor error for the pressurizer pressure-high trip.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The main steam line safety valves are designed to mitigate transients by preventing overpressurization of the main steam system. The proposed change does not alter this design basis. The revised analysis shows that the probability or consequences of all previously analyzed accidents are not changed by increasing the setpoint tolerance of the safety valves. Therefore, there is no increase in the probability of occurrence or the consequences of any accident.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no new type of accident or malfunction created, the method and manner of plant operation will not change nor is there a change in the method in which any safety related system performs its function. Any main steam safety valve lifting at the extremes of the proposed tolerance will not result in a low lift setpoint that is less than the normal no load system pressure or a high lift setpoint that allows main steam system overpressurization.

3. The proposed change does not involve a significant reduction in a margin of safety.

This is based on the fact that no plant design changes are involved and the method and manner of plant operation remains the same. With the increased setpoint tolerance, the main steam safety valves will still prevent pressure from exceeding 110 percent of design pressure in accordance with the ASME code. All FSAR accident analysis conclusions remain valid and unaffected by this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: William H. Bateman.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: August 8, 1997.

Description of amendment request: The proposed amendment application would revise feedwater isolation engineered safety feature actuation system (ESFAS) functions in Technical Specification Tables 3.3–3, 3.3–4 and 4.3–2 as follows:

(1) The Applicable MODES for Functional Units 5.a.1), Automatic Actuation Logic and Actuation Relays, and 5.a.2), Automatic Actuation Logic and Actuation Relays, in Tables 3.3–3 and 4.3–2 would be revised to add MODE 3.

(2) A new Functional Unit 5.d, Steam Generator (SG) Water Level Low-Low (for feedwater isolation only), would be added to Tables 3.3–3, 3.3–4, and 4.3–2.

(3) In conjunction with the changes under item (2), the Applicable MODES in Table 3.3–3 for AFW SG Water Level Low-Low Functional Units 6.d.1).c), Start Motor-Driven Pumps Vessel delta T (Power-1, Power-2), would be revised to delete MODE 3. Functional Unit 6.d.3) in Table 4.3–2 would also be revised to delete MODE 3.

(4) The Bases for Functional Unit 11.b, Reactor Trip P–4, in Table 3.3–3 would be revised to add a note allowing the feedwater isolation function on P–4 coincident with low T_{avg} to be blocked.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Actuation Logic Applicability and New SG Water Level Low-Low Functional Unit

1. The proposed change does not involve a significant increase in the probability or

consequences of an accident previously evaluated.

The proposed changes impose more stringent requirements and have been reviewed to ensure no previously evaluated accident has been adversely affected. The more stringent requirements are imposed to ensure the plant's operation and testing are consistent with the safety analysis and licensing basis. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve a physical alteration of the plant (no new or different type of equipment will be installed other than the bypass switch addressed in a separate 50.92 evaluation below) or changes in controlling parameters. The proposed changes do impose different requirements; however, these changes are consistent with assumptions made in the safety analysis and licensing basis. Actuation logic applicability is extended to MODE 3 and the SSPS slave relays that implement feedwater isolation on SG water level low-low will continue to be surveilled quarterly as they have always been tested. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The imposition of more stringent requirements does not reduce the margin of safety. The margin of safety would be increased since the scope of the Technical Specifications has been increased to include additional plant equipment and add additional Applicability requirements. The changes are consistent with the safety analysis and licensing basis. Therefore, the proposed changes do not involve a reduction in a margin of safety.

TTD Applicability

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses since no hardware changes are proposed. The proposed change adds a relaxation to the Applicability for the SG Water Level Low-Low Vessel delta T channels. The proposed change in the Applicability will not affect any of the analysis assumptions for any of the accidents previously evaluated. The proposed change will not affect the probability of any event initiators nor will the proposed change affect the ability of any safety-related equipment to perform its intended function. A Vessel delta T channel should only be tripped if it is inoperable and the reactor is operating, when the need to restrict trip time delays is applicable. There will be no degradation in the performance of nor an increase in the number of challenges imposed on safety-related equipment assumed to function during an accident situation. Accident analyses have been performed with the maximum trip time delays enabled at power levels up to 19% RTP (10% RTP plus uncertainty). Therefore, operation in MODE 3 with the maximum trip time delays is enveloped. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no hardware changes nor are there any changes in the method by which any safety-related plant system performs its safety function. The change in Applicability will not impact the normal method of plant operation. The maximum trip time delay should be enabled in MODE 3 to preclude an unnecessary feedwater isolation or auxiliary feedwater actuation from occurring prior to the expiration of the trip time delay previously analyzed for MODE 1 operation. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. Therefore, the proposed change does not create the possibility of a new of different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the acceptance criteria for any analyzed event. There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on any margin of safety.

Feedwater Isolation on P–4/Low T_{avg} Bypass Switch

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Overall protection system performance will remain within the bounds of the previously performed accident analyses. The P–4/Low T_{avg} Bypass Switch design change will not impact any accidents previously evaluated in the FSAR since feedwater isolation upon reaching this function was never credited.

The ESFAS will continue to function in a manner consistent with the accident analysis assumptions and the plant design basis. As such, there will be no degradation in the performance of nor an increase in the number of challenges to equipment assumed to function during an accident situation.

This Technical Specification change does not affect the probability of any event initiators. There will be no change to normal plant operating parameters or accident mitigation capabilities. Therefore, there will be no increase in the probability or consequences of any accident occurring due to this change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

There are no changes in the method by which any safety-related plant system performs its safety function and the normal manner of plant operation is unaffected, other than the proposed allowance to bypass feedwater isolation on P–4 coincident with low T_{avg}. This bypass switch modification will be performed under the design standards applicable to all safety system bypasses at Callaway, except for Section 4.12 of IEEE 279–1971. Section 4.12 of IEEE 279–1971 requires that an operating bypass of a protective function be automatically removed whenever permissive conditions are not met. However, the subject circuitry does not provide a protective function. It is not assumed or credited in any safety analysis. In addition, plant conditions that would call for the restoration of the feedwater isolation function cannot occur without operator action to close the reactor trip breakers. Administrative controls will govern the proper use of and restoration from the proposed bypass. Although the addition of the bypass switch introduces the potential for an equipment malfunction of a different type from any previously evaluated in the FSAR, the possibility of a new or different type of accident is not created. The switch functions only to allow a manual bypass of feedwater isolation. The failure of the switch or its improper use will not be an event initiator for the previously analyzed Loss of Normal Feedwater event in FSAR Section 15.2.7 since it cannot fail in such a manner as to cause feedwater isolation.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this change. There will be no adverse effect or challenges imposed on any safety-related system as a result of this change. Therefore, the possibility of a new or different type of accident is not created.

3. The proposed change does not involve a significant reduction in a margin of safety.

There will be no effect on the manner in which safety limits or limiting safety system settings are determined nor will there be any effect on those plant systems necessary to assure the accomplishment of protection functions. There will be no impact on DNBR limits, F_Q, F-delta-H, LOCA PCT, peak local power density, or any other margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Project Director: William H. Bateman.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 5, 1997.

Description of amendment request: The current Technical Specifications requirements prohibit loads in excess of 2500 pounds from traveling over irradiated fuel assemblies in the spent fuel pit. Due to the number of irradiated fuel assemblies currently stored in the spent fuel pit over years of operation, additional flexibility is needed to accomplish the movement of the spent fuel pit gates during refueling activities and to reduce fuel handling activities in preparation for refueling outages. In order to perform gate seal maintenance prior to each outage, a gate is moved across the irradiated fuel storage area to the cask handling area where it can be lifted out of the spent fuel pit. When a clear path of empty fuel storage cells cannot be established, seal maintenance cannot be performed unless relief from the current Limiting Condition of Operation is granted. The proposed changes will exempt these requirements for the movements of the spent fuel gates provided specific administrative controls are satisfied.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of the North Anna Power Station in accordance with the proposed changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The accident in question is a fuel handling accident in the spent fuel pit. The proposed changes will actually reduce the probability of a fuel handling accident by eliminating unnecessary fuel assembly movements. After this change is implemented, only those assemblies containing control rod assemblies will be subjected to such moves prior to movement of the gates instead of the current practice of moving all the fuel necessary to establish a load path of empty cells. A redundant rigging system will be provided which eliminates the possibility of a load drop due to a hoist failure. Furthermore, even though the double rigging system makes a load drop due to a hoist failure an incredible event, a calculation was performed to determine the effects of a direct impact load on a single fuel storage cell or the SFP [spent fuel pit] structure. The calculation concludes that there will be no adverse consequences to either irradiated fuel or the SFP structure. The plant design basis fuel handling accident will not be violated. Therefore, with the administrative controls in place to eliminate the possibility of a gate drop the probability of occurrence or the consequences of a fuel handling accident are not increased.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes establish adequate administrative controls over the spent fuel pit gate movements to prevent damage to stored irradiated fuel and fuel racks thereby ensuring the design basis fuel handling accident remains bounding and that fuel spacing is maintained in the racks precluding criticality.

3. Involve a significant reduction in any margin of safety.

The new administrative controls ensure that a postulated gate drop will not occur due to compliance with our licensing commitments to NUREG–0612 and the requirement to install a redundant rigging system to eliminate the possibility of a load drop initiated by hoist failure. Analysis has determined that in the event the gate was to be dropped from its controlled lift height: (1) There will be no damage to irradiated fuel caused by the direct impact loading on a single storage cell and (2) the fuel storage rack will maintain fuel in a non-critical array. A new criteria, demonstrating the ability of the pool floor to remain intact after a gate drop has been shown by analysis. New controls prevent the degradation of the existing margin of safety and ensure an adequate safety margin for the new criteria. The administrative controls added for the gate lift preclude the possibility of a load drop induced by a hoist failure and, therefore ensure the potential for radioactivity release and inadvertent criticality remain bounded by the present design basis. Therefore, the margin of safety is not reduced by the proposed change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: James E. Lyons.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: November 18, 1997.

Description of amendment request: The Technical Specifications surveillance requirements currently require testing and inspection of the Turbine Overspeed Protection System control valves, at least once per 31 days, to ensure their ability to prevent overspeeding of the turbine. Based on an analysis of Westinghouse BB–296 turbines with steam chests, the proposed change would increase the surveillance test interval from at least once per 31 days to at least once per 92 days.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of the North Anna Power Station in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

No new or unique accident precursors are introduced by these changes in surveillance requirements. The probability of turbine missile ejection with an extended test interval to 92 days for the turbine governor and throttle valves has been determined to remain within the applicable NRC acceptance criteria. The heavy hub design of the turbine rotors provides further assurance that the probability of ejection of turbine missiles due to destructive overspeed remains within the acceptance criteria. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The demonstrated high reliability of the turbine governor and throttle valves and the verification of the operability of the other turbine control valves provide adequate assurance that the turbine overspeed protection system will operate as designed, if needed. Turbine governor and throttle valve testing performed to date has demonstrated the reliability of these valves. In addition, the operability of the other turbine valves (i.e., reheat and intercept stop valves) will continue to be verified every 18 months as required by the Technical Specifications.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Since the implementation of the proposed change to the surveillance requirements will not require hardware modifications (i.e., alterations to plant configuration), operation of the facilities with these proposed Technical Specifications does not create the possibility for any new or different kind of accident which has not been already been evaluated in the Updated Final Safety Analysis Report (UFSAR). In addition, the results of the probabilistic evaluation indicate that no additional transients have been introduced.

The proposed revision to the Technical Specifications will not result in any physical alteration to any plant system, nor would there be a change in the method by which any safety-related system performs its function. The design and operation of the

turbine overspeed protection and turbine control systems are not being changed.

The proposed Technical Specifications changes do not affect the design, operation, or failure modes of the valves and other components of the turbine overspeed protection system. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not reduce the margin of safety as defined in the basis for any Technical Specifications. Furthermore, the total turbine missile ejection probability continues to be enveloped by the applicable acceptance criteria of 1E–5. The design and operation of the turbine overspeed protection and turbine control systems are not being changed and the operability of the turbine governor and throttle valves will be demonstrated on a refuelling outage basis. In addition, the results of the accident analyses, which are documented in the UFSAR, continue to bound operation with the proposed change in surveillance interval for the turbine throttle and governor valves, so that there is no safety margin reduction. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903–2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: James E. Lyons.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Tennessee Valley Authority, Docket Nos. 50–327, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendments: November 21, 1997.

Description of amendments request: Amend Technical Specifications to add a one-time allowance through Operating Cycle 9 to Surveillance Requirement 4.4.3.2.1.b to perform stroke testing of the power-operated relief valve in Mode 5 rather than in Mode 4.

Date of publication of individual notice in the **Federal Register**: December 1, 1997 (62 FR 63565).

Expiration date of individual notice: December 31, 1997.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 30, 1995, as supplemented March 15, 1996, March 6, 1997, and June 27, 1997.

Brief description of amendments: The amendments incorporate references to a new Combustion Engineering, Inc. topical report describing steam generator tube sleeves, delete references to the previous CE topical report, incorporate sleeve/tube inspection scope and expansion criterion, revise the plugging limit for a CE sleeve to 28% of the nominal sleeve wall thickness, and incorporate a post weld heat treatment for free span welds.

Date of issuance: November 18, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 223 and 199.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 3, 1996 (61 FR 176). The March 15, 1996, March 6, 1997, and June 27, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated November 18, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: August 6, 1997.

Brief description of amendments: The amendments address an unreviewed safety question associated with the handling of the spent fuel shipping cask at the Brunswick Steam Electric Plant, Units 1 and 2.

Date of issuance: December 2, 1997.

Effective date: December 2, 1997.

Amendment Nos.: 190 and 221.

Facility Operating License Nos. DPR–71 and DPR–62: Amendments authorize changes to the facility's Updated Final Safety Analysis Report.

Date of initial notice in **Federal Register**: September 17, 1997 (62 FR 48897) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 2, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: February 18, 1997.

Brief description of amendment: This amendment revises the maximum allowable power range neutron flux high setpoints (percent of rated thermal power) shown in Technical Specification Table 3.7–1.

Date of issuance: November 25, 1997.

Effective date: November 25, 1997.

Amendment No.: 75.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 9, 1997 (62 FR 17225) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 25, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: April 7, 1997, as supplemented on August 7, 1997.

Brief description of amendments: The amendments revise the technical specifications to permit installation and use of C&D Charter Power Systems, Inc., batteries.

Date of issuance: November 25, 1997.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 93 and 93.

Facility Operating License Nos. NPF–37 and NPF–66: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54868). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 25, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Byron Public Library District, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: October 13, 1997, as supplemented by letters dated October 28 and November 5, 1997.

Brief description of amendments: The amendments revise TS Table 3.3–4, ''Engineered Safety Features [ESF] Actuation System Instrument Trip Setpoints.'' Specifically, the amendments support the replacement of three safety-related narrow range Refueling Water Storage Tank level instruments with three safety-related wide range level instruments. The ESF trip setpoint for the refueling water automatic switchover to recirculation is revised to account for the difference in instrument uncertainty associated with wide range level instruments and provides additional operator response time margin.

Date of issuance: November 25, 1997.

Effective date: Unit 1—As of the date of issuance to be implemented consistent with the refueling outage scheduled for June 1998; Unit 2—As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: 177 (Unit 1); 159 (Unit 2).

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54859). The October 28 and November 5, 1997, letters provided additional and clarifying information that did not change the scope of the October 13, 1997, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 25, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application for amendments: October 10, 1997, as supplemented by letters dated November 3, 6, and 10, 1997.

Brief description of amendments: The amendments revise Technical Specifications to implement alternate repair criteria for steam generator tubes that have degraded roll joints inside of the upper tubesheet. The alternate repair criteria would allow new roll joints to be installed below the degraded roll joints in the upper tubesheet.

Date of issuance: November 21, 1997.

Effective date: November 21, 1997.

Amendment Nos.: Unit 1—227; Unit 2—227; Unit 3—224.

Facility Operating License Nos. DPR–38, DPR–47, AND DPR–55: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. (62 FR 55835 dated October 28, 1997). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by November 28, 1997, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendments.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and a final determination of no significant hazards consideration are contained in a Safety Evaluation dated November 21, 1997.

Attorney for licensee: M. J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: March 10, 1997, as supplemented July 28 and September 17, 1997.

Brief description of amendment: The amendment modifies Technical Specification 3/4.4.5, ''Steam Generators,'' and its associated Bases

and adds a new license condition to Appendix C for Beaver Valley Power Station, Unit No. 1 (BVPS–1) to allow repair of steam generator tubes by installation of sleeves developed by ABB Combustion Engineering. In addition, the amendment deletes the option for using the kinetic sleeving methodology previously approved for use at BVPS–1.

Date of issuance: November 25, 1997.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No.: 208.

Facility Operating License No. DPR–66: Amendment revised the Technical Specifications and License.

Date of initial notice in **Federal Register**: April 23, 1997 (62 FR 19829). The July 28 and September 17, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the April 23, 1997, **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 25, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: September 12, 1997, as supplemeneted November 7, 1997.

Brief description of amendment: The proposed amendment involves a revision to the Emergency Diesel Generator protective relaying scheme at Crystal River Unit 3, to be reflected in the next revision to the Final Safety Analysis Report (FSAR).

Date of issuance: December 1, 1997.

Effective date: Effective upon issuance.

Amendment No.: 159.

Facility Operating License No. DPR–72:. Amendment revises the FSAR.

Date of initial notice in **Federal Register**: September 30, 1997 (62 FR 51165). By letter dated November 7, 1997, the licensee provided additional information which did not affect the original no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 1, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

GPU Nuclear Corporation, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: October 10, 1996, as supplemented March 25, June 6, and August 29, 1997.

Brief description of amendment: The amendment extends the instrumentation surveillances for the condenser low vacuum, high temperature main steamline tunnel, recirculation flow, and reactor coolant leakage. Additionally, the change extends the equipment test/operability checks for containment vent and purge isolation, electromagnetic relief valve operability, and drywell to torus leakage test.

Date of Issuance: November 26, 1997.

Effective date: November 26, 1997, with full implementation within 60 days.

Amendment No.: 193.

Facility Operating License No. DPR–16: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 6, 1996 (61 FR 57485). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 26, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit 2, New London County, Connecticut

Date of application for amendment: May 20, 1997, as supplemented on September 23, 1997.

Brief description of amendment: The amendment changes the Technical Specifications (TSs) by relocating the containment isolation valve (CIV) list from the TSs to the Technical Requirements Manual in accordance with Generic Letter 91–08, ''Removal of Component Lists from the Technical Specifications.'' The amendment also changes the surveillance requirement for valves, blind flanges, and deactivated automatic valves located inside containment that are locked, sealed, or otherwise secured in the closed position from once every 31 days to during each cold shutdown, but no more than once per 92 days. The TS Bases is changed to reflect the relocation of the containment isolation valve list from the TSs to the Technical Requirements Manual and dicusses administrative controls for CIV operation in Modes 1 through 4. Also, a license condition has been added to paragraph 2.C. of the Operating License to ensure enforceability and to provide a method of tracking the license condition back to the license amendment.

Date of issuance: November 19, 1997.

Effective date: As of the date of issuance, to be implemented within 90 days.

Amendment No: 210

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications and License Conditions.

Date of initial notice in **Federal Register**: June 18, 1997 (62 FR 33128). The September 23, 1997, letter provided clarification of the initial submittal and did not affect the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut.

Date of application for amendment: September 16, 1997.

Brief description of amendment: The amendment changes the main steam line American Society of Mechanical Engineers Code (Code) safety valves Technical Specifications (TSs) by: (1) Deleting TS Table 3.7.1, ''Maximum Allowable Power Level-High Trip Setpoint with Inoperable Steam Line Safety Valves During Operation with Both Steam Generators,'' by not allowing operation in Mode 1 or 2 with inoperable Code safety valves while allowing operation in Mode 3 with up to three Code safety valves inoperable per steam generator, (2) modifing the associated action statement in TS 3.7.1.1 to reflect the operational changes, and (3) updating the TS Bases to reflect the proposed changes and include the correct amendment history numbers to

reflect previously approved amendments.

Date of issuance: November 19, 1997.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 211.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 8, 1997 (62 FR 52582). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 19, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2, Goodhue County, Minnesota

Date of application for amendments: September 26, 1997.

Brief description of amendments: The amendments revise Technical Specification (TS) 3.4.B, ''Auxiliary Feedwater System,'' to provide specific guidance for conducting post-maintenance operational testing of the turbine-driven auxiliary feedwater pump and associated system valves to meet operability requirements and limiting conditions for operation during unit startup. Additionally, the amendments revise Table TS.3.5.2B to allow the auxiliary feedwater pump auto-start actuation instrumentation to be bypassed during startup and shutdown operations when the main feedwater pumps are not required to supply feedwater to the steam generators.

Date of issuance: November 25, 1997.

Effective date: November 25, 1997, with full implementation within 30 days.

Amendment Nos.: 134 and 126.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: October 22, 1997 (62 FR 54874). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 25, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: May 20, 1996.

Brief description of amendment: The amendment revises the technical specifications to correct and clarify surveillance test requirements for the reactor protective system and other plant instrumentation and control systems.

Date of issuance: November 24, 1997.

Effective date: November 24, 1997, to be implemented within 120 days of the date of issuance.

Amendment No.: 182.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 28, 1996 (61 FR 44361). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 24, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Public Service Electric & Gas Company, Docket No. 50–272, Salem Nuclear Generating Station, Unit No. 1, Salem County, New Jersey

Date of application for amendment: May 10, 1996, as supplemented March 19 and August 29, 1997.

Brief description of amendment: The amendment incorporates into the Technical Specifications the Margin Recovery portion of the Fuel Upgrade Margin Recovery Program and support increased steam generator plugging, improved fuel reliability, reduced fuel costs, longer fuel cycles, reduced spent fuel pool storage, and enhanced reactor safety.

Date of issuance: November 26, 1997.

Effective date: As of date of issuance. To be implemented on Unit 1 prior to entry into Mode 2 from the current outage.

Amendment No.: 201.

Facility Operating License No. DPR–70: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 3, 1996 (61 FR 34898). The March 19 and August 29, 1997, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 26, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, NJ 08079.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: January 4, 1996.

Brief description of amendments: These amendments delete License Condition 2.C(26) for SONGS Unit 2 and License Condition 2.C(27) for SONGS 3. These license conditions require that Southern California Edison implement and maintain a plan for scheduling all capital modifications based on an NRC approved Integrated Implementation Schedule Program Plan.

Date of issuance: December 3, 1997.

Effective date: December 3, 1997.

Amendment Nos.: Unit 2—137; Unit 3—129.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Facility Operating Licenses.

Date of initial notice in **Federal Register**: April 10, 1996 (61 FR 15997). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 3, 1997.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P.O. Box 19557, Irvine, California 92713.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: January 20, 1997.

Brief description of amendment: This amendment revises Technical Specification (TS) Section 3/4.5.2, ''Emergency Core Cooling Systems, ECCS Subsystems $-$ T_{avg} greater than or equal to 280°F,'' TS Section 3/4.5.3, ''Emergency Core Cooling Systems, ECCS Subsystems $-$ T_{avg} less than 280 °F,'' and TS Section 3/4.7, ''Plant Systems.'' Several surveillance intervals were changed from 18 months to once each refueling interval.

Date of issuance: December 2, 1997.

Effective date: December 2, 1997.
Amendment No.: 216
Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: March 12, 1997 (62 FR 11498). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1997.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: September 17, 1996, as supplemented by letters dated November 27, 1996, and October 14, 1997.
Brief description of amendment: This amendment revises the surveillance interval from 18 months to less than or equal to 730 days, nominally 24 months, for Technical Specification (TS) 3/4.5.2, ''Emergency Core Cooling Systems—ECCS Subsystems—T_{avg} greater than or equal to 280 degrees F''; TS 3/4.6.5.1, ''Containment Systems—Shield Building—Emergency Ventilation System''; TS 3/4.7.6.1, ''Plant Systems—Control Room Emergency Ventilation System''; TS 3/4.7.7, ''Plant Systems—Snubbers''; TS 3/4.9.12, ''Refueling Operations—Storage Pool Ventilation''; and TS Bases 3/4.7.7—''Snubbers.''
Date of issuance: December 2, 1997.
Effective date: Immediately, and shall be implemented no later than 120 days after issuance.
Amendment No.: 217.
Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.
Date of initial notice in **Federal Register**: October 9, 1996 (61 FR 52972). The supplemental information submitted by the licensees did not impact the initial proposed no significant hazards consideration determination.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1997.
No significant hazards consideration comments received: No.
Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, Ohio 43606.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: December 11, 1996 (as supplemented by letter dated January 6, 1997), January 30, 1997 (as supplemented by letter dated September 15, 1997), and April 18, 1997.
Brief description of amendment: This amendment extends surveillance requirement intervals from 18 to 24 months, revises setpoints, and revises TS 2.2, ''Limiting Safety System Settings.'' Administrative changes have also been made.
Date of issuance: December 2, 1997.
Effective date: December 2, 1997.
Amendment No.: 218.
Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.
Dates of initial notice in **Federal Register**: January 15, 1997 (62 FR 2194), March 12, 1997 (62 FR 11498) and June 4, 1997 (62 FR 30654). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 2, 1997.
No significant hazards consideration comments received: No. The supplemental information provided by the licensees did not affect the proposed no significant hazards consideration.
Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Dated at Rockville, Maryland, this 10th day of December 1997.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32763 Filed 12–16–97; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

American Electric Power Company; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated October 9, 1997, David A. Lochbaum, on behalf of the Union of Concerned Scientists, has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to Donald C. Cook Nuclear Plant, Units 1 and 2, operated by American Electric Power Company (the Licensee).

The Petition requests that the operating licenses for D.C. Cook, Units 1 and 2, be modified, revoked, or suspended until there is reasonable assurance that the Licensee's systems are in conformance with design-and licensing-bases requirements. The Petition requests that systems with a safety function at D.C. Cook be qualified and capable of performing their required function under all design conditions before restart. The Petition also requests that a public hearing into this matter be held in the Washington, DC, area before the first unit at D.C. Cook is authorized to restart.

As the basis for these requests, the Petition states that the NRC recently completed an architect/engineer design inspection at D.C. Cook. The Licensee had previously reviewed the same systems as part of its design-basis documentation reconstitution program. Findings by the NRC inspection team led to a shutdown of both units and has necessitated changes to the plant's physical configuration. Therefore, the Petition asserts that the Licensee's design-basis documentation reconstitution and updated final safety analysis report validation programs lack the necessary rigor and focus. The Petition further asserts that deficiencies in the Licensee's design control programs may also be responsible for similar problems in its safety systems, which were not examined by the NRC.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by 10 CFR 2.206, appropriate action will be taken on this Petition within a reasonable time. A copy of the Petition is available for public inspection at the Commission's Public Document Room, located at the Gelman Building, 2120 L Street, NW., Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 9th day of December 1997.

For The Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 97–32878 Filed 12–16–97; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange

Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 17Ad–2(c), (d), and (h), SEC File No. 270–149 OMB Control No. 3235–0130
Rule 17Ad–10, SEC File No. 270–265 OMB Control No. 3235–0273

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below.

Rule 17Ad–2(c), (d) and (h) Transfer Agent Turnaround, Processing and Forwarding Requirements

Rule 17Ad–2(c), (d), and (h), under the Securities Exchange Act of 1934, enumerate the requirements with which transfer agents must comply to inform the Commission or the appropriate regulator of a transfer agent's failure to meet the minimum performance standards set by the Commission rule by filing a notice.

While it is estimated there are 1,326 transfer agents, approximately ten notices pursuant to 17Ad–2(c), (d), and (h) are filed annually. In view of (a) the readily available nature of most of the information required to be included in the notice (since that information must be compiled and retained pursuant to other Commission rules); (b) the summary fashion that such information must be presented in the notice (most notices are one page or less in length); and (c) the experience of the staff regarding the notices, the Commission staff estimates that, on the average, most Notices require approximately one-half hour to prepare. The Commission staff estimates a cost of approximately $30.00 for each half hour spent preparing the notices per year, transfer agents spend an average of five hours per year complying with the rule at a cost of $300.

Rule 17Ad–10 Prompt Posting of Certificate Detail to Master Securityholder Files; Maintenance of Accurate Securityholder Files and Control Book; and Retention of Certificate Detail

Rule 17Ad–10, under the Securities Exchange Act of 1934, requires approximately 1,326 registered transfer agent to create and maintain minimum information on securityholders' ownership of an issue of securities for which it performs transfer agent functions, including the purchase, transfer and redemptions of securities. In addition, the rule also requires transfer agents that maintain securityholder records to keep certificate detail that has been cancelled from those records for a minimum of six years and to maintain and keep current an accurate record of the number of shares or principle dollar amount of debt securities that the issuer has authorized to be outstanding (a ''control book''). These recordkeeping requirements assist in the creation and maintenance of accurate securityholder records, the ability to research errors, and ensure the transfer agent is aware of the number of securities that are properly authorized by the issuer, thereby avoiding overissuance.

The staff estimates that the average number of hours necessary for each transfer agent to comply with Rule 17Ad–10 is approximately 20 hours per year, totalling 26,520 hours industry-wide. The average cost is approximately $20 per hour, with the industry-wide cost estimated at approximately $530,400. However, the information required by Rule 17Ad–10 generally already is maintained by registered transfer agents. The amount of time devoted to compliance with Rule 17Ad–10 varies according to differences in business activity.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: December 8, 1997.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32826 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application to Withdraw From Listing and Registration; (Ballantyne of Omaha, Inc., Common Stock, $.01 Par Value) File No. 1–13906

December 11, 1997.

Ballantyne of Omaha, Inc. (''Company'') has filed an application with the Securities and Exchange Commission (''Commission''), pursuant to Section 12(d) of the Securities Exchange Act of 1934 (''Act'') and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security (''Security'') from listing and registration on the American Stock Exchange, Inc. (''Amex'' or ''Exchange'').

The reasons cited in the application for withdrawing the Security from listing and registration include the following:

The Security recently was listed for trading on the New York Stock Exchange (''NYSE'') pursuant to a Registration Statement which became effective December 1, 1997. Trading in the Security commenced on the NYSE on December 5, 1997. The Company's Board of Directors determined that in order to avoid the costs and the division of the market resulting from a dual-listing, the Security should be withdrawn from listing and registration on the Amex.

The Company has complied with Amex Rule 18 by filing with the Exchange a certified copy of the resolutions adopted by the Company's Board of Directors authorizing the withdrawal of the Security from listing and registration on the Amex, and by setting forth in detail to the Exchange the reasons and facts supporting the withdrawal.

In making the decision to withdraw its Security from listing and registration on the Amex, the Company also considered the increased visibility and liquidity that a listing on the NYSE may provide.

By letter dated November 14, 1997, the Amex informed the Company that it had no objection to the withdrawal of the Company's Security from listing and registration on the Amex.

By reason of Section 12(b) of the Act and the rules thereunder, the Company shall continue to be obligated to file reports with the Commission and the Exchange under Section 13 of the Act.

Any interested person may, on or before January 6, 1998, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street,

N.W., Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 97–32820 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IA–1686/803–116]

ProFutures Capital Management, Inc.; Notice of Application

December 11, 1997.

AGENCY: Securities and Exchange Commission (''SEC'').

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (''Advisers Act'').

Applicant: ProFutures Capital Management, Inc. (''PMC'').

Relevant Advisers Act Sections: Exemption requested under section 203A(c) from section 203A(a).

Summary of Application: Applicant requests an order to permit it to register with the SEC as an investment adviser.

Filing Dates: The application was filed on July 8, 1997, and amended on October 3, 1997 and December 2, 1997.

Hearing or Notification of Hearing

An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the requests, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 7, 1998, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, D.C. 20549. Applicant, ProFutures Capital Management, Inc., Suite 200, 1310 Highway 620 South, Austin, Texas 78374.

FOR FURTHER INFORMATION CONTACT: Robert J. Leonard, Attorney, at (202) 942–0646, or Jennifer S. Choi, Special Counsel, at (202) 942–0716 (Division of Investment Management, Task Force on Investment Adviser Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Texas corporation with its principal place of business in Austin, Texas. Applicant researches and evaluates the performance and trading programs of other investment advisers who manage client accounts on a discretionary basis and refers clients to those advisers selected by applicant.

2. Applicant assists prospective clients in identifying their investment objectives and risk tolerance, and provides information on investment advisers whose trading programs seek to meet those objectives. Applicant provides clients with account opening documents and reviews all account documents for accuracy before forwarding them to the adviser that the client has selected. Applicant also reviews all accounts for client suitability. Additionally, applicant assists clients in allocating assets among the selected investment advisers and suggests adjustments to the allocations. Applicant does not have discretionary authority on behalf of clients to select the advisers or allocate client funds to selected advisers.

3. Applicant is compensated for referring clients to selected advisers by sharing in up to one half of the management fee charged by such adviser. Applicant has over 700 clients located nationwide. These clients include individuals, financial institutions, pension and profit sharing plans, trusts, estates and other corporate entities

4. Applicant is legally obligated to be registered in at least 30 states as an investment adviser, taking into account the national de minimis standard in section 222(d) of the Advisers Act and all applicable exemptions and exclusions under the securities laws and regulations of such states. Applicant is currently registered in 46 states. Applicant was registered as an investment adviser with the SEC until July, 1997.

Applicant's Legal Analysis

1. On October 11, 1996, the National Securities Markets Improvement Act of 1996 was enacted. Title III of the Act, the Investment Advisers Supervision Coordination Act (''Coordination Act''), added new section 203A to the Advisers Act. Under section 203A(a)(1),[1] an investment adviser that is regulated or required to be regulated as an investment adviser in the state in which it maintains its principal office and place of business is prohibited from registering with the SEC unless the investment adviser (i) has assets under management of not less than $25 million or (ii) is an adviser to an investment company registered under the Investment Company Act of 1940 (''Investment Company Act''). Section 203A(a)(2) defines the phrase ''assets under management'' as the ''securities portfolios with respect to which an investment adviser provides continuous and regular supervisory or management services.'' [2]

2. applicant states that it does not qualify for registration as an investment adviser with the SEC. Applicant states that it has no assets under management, does not act as an investment adviser to an investment company registered under the Investment Company Act, and does not qualify for exemption from the prohibition on SEC registration as provided in rule 203A–2 under the Advisers Act. Applicant also maintains its principal place of business in Texas, which regulates applicant as an investment adviser.

3. Section 203A(c) of the Advisers Act authorizes the SEC to permit an investment adviser to register with the SEC if prohibiting registration would be ''unfair, a burden on interstate commerce, or otherwise inconsistent with the purposes of [section 203A].'' [3]

4. Applicant states that Congress noted that ''the definition of 'assets under management' . . . may, in some cases, exclude firms with a national or multistate practice from being able to register with the SEC.'' [4] Applicant asserts that to remedy any unfairness, burdens or inconsistencies caused by the assets under management requirement, Congress intended the SEC to use its exemptive authority to ''permit, where appropriate, the registration of such firms with the [SEC].'' [5]

5. Applicant believes that Congress in adopting section 203A intended the SEC

[1] 15 U.S.C. 80b–3a(a)(1).

[2] 15 U.S.C. 80b–3a(a)(2).

[3] 15 U.S.C. 80b–3a(c).

[4] S. Rep. No. 293, 104th Cong., 2d Sess. 4 (1996).

[5] *Id.* at 5.

to grant these exemptions to advisers having a ''national or multistate practice'' and that ''[l]arger advisers, with national businesses, should be registered with the [SEC] and be subject to national rules.'' [6] Applicant notes that Congress chose an assets under management requirement as a rough proxy that would divide responsibilities between the SEC and the states; investment advisers managing $25 million or more of assets under management are more likely to be national investment advisers.

6. Applicant asserts that prohibiting it from registering with the SEC would be a burden on interstate commerce in that applicant would be subject to the regulations and oversight of at least 30 jurisdictions, which would impede applicant's ability to operate its national business on a uniform basis. Applicant states that it is legally obligated to be registered in at least 30 jurisdictions as an investment adviser, taking into account the national de minimis standard in section 222(d) of the Advisers Act and all applicable exemptions and exclusions under the securities laws and regulations of such states. Applicant states that the extent of its investment advisory services means that it does not qualify for the national de minimis exemption, as set forth in section 222(d) of the Advisers Act, in at least 30 states because it has provided investment advisory services to more than five clients during the preceding twelve months who are residents of those states.

7. Section 222(d) of the Advisers Act makes state investment advisers statutes inapplicable to investment advisers that do not have a place of business located within that state and, during the preceding twelve month period, have fewer than six clients who are residents of that state.

8. Applicant also asserts that to prohibit it from registered with the SEC would be unfair because applicant's investment advisory business is substantially similar to that of other national investment advisers who are eligible for SEC registration and oversight. Moreover, applicant believes that it would be inconsistent with the purposes of section 203A if it is prohibited from being registered with the SEC.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32919 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

[6] *Id.*

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39418; File No. SR–CBOE–97–58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to Margin and Net Capital Requirements for Joint Back Office Arrangements

December 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 27, 1997, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange Rule 12.3 and adopt new Exchange Rule 13.4 to establish margin and net capital requirements for Joint Back Office (''JBO'') participants and clearing firms.

The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to revise Exchange Rule 12.3 and adopt new Exchange Rule 13.4 to establish margin and net capital requirements for JBO participants and clearing firms. JBO arrangements permit a participating broker-dealer to be deemed self-clearing for margin purposes and entitle the participating broker-dealer to good faith credit.[2]

In recent amendments to Regulation T,[3] the Board of Governors of the Federal Reserve System (''FRB'') placed its reliance on the authority of self-regulatory organizations (''SROs'') to ensure the reasonableness of JBO arrangements.[4] When the provision permitting JBO arrangements was first adopted, the FRB assumed there would be a reasonable relationship between the good faith credit extended to a JBO participant and its ownership interest in the clearing firm. Consequently, the FRB did not establish any explicit requirement for the amount of ownership each participant should have in the JBO. Because Regulation T does not provide an ownership standard,[5] however, good faith credit has been extended to ''owners'' holding merely a nominal interest in a clearing firm.

In conjunction with other SROs and representatives from the securities industry, the Exchange has established standards for JBO participants and clearing firms. These standards will permit the extension of good faith credit to clearing firm ''owners'' only when the owners maintain meaningful assets on deposit with the JBO clearing firm, and the clearing firm maintains sufficient net capital and risk control procedures to carry such accounts. The Exchange's proposed rule change would establish the following requirements:

Net Capital Requirements. As proposed, Exchange Rule 13.4 will require each JBO participant [6] to be a registered broker-dealer subject to the net capital requirements prescribed by Commission Rule 15c3–1 (''Rule 15c3–1'').[7] JBO participants may not claim the

[1] 15 U.S.C. 78s(b)(1).

[2] Under the proposed rule change, JBO participants would not be considered self-clearing for any purpose other than the extension of credit under Exchange Rule 12.3, as revised, or under the comparable rules of another self-regulatory organization.

[3] 12 CFR 220 *et seq.* Regulation T is entitled ''Credit by Brokers and Dealers.'' The Board of Governors of the Federal Reserve System issued Regulation T pursuant to the Act.

[4] *See* Board of Governors of the Federal Reserve System Docket No. R–0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

[5] Section 220.11(a)(2) of Regulation T only requires that a JBO clearing firm be ''a clearing and servicing broker or dealer owned jointly or individually by other [broker-dealers].'' 12 CFR 220.11(a)(2).

[6] The proposed rule change allows members and member organizations to establish JBO arrangements with JBO clearing members.

[7] 17 CFR 240.15c3–1.

net capital exemption available to option market makers under Commission Rule 15c3–1(b)(1).[8] JBO participants will be required to deposit and maintain minimum account equity of $1,000,000, and also will be subject to Financial and Operational Combined Uniform Single Report (''FOCUS'') filings and certified audits. In addition, each JBO participant must meet and maintain the ownership standards established by the JBO clearing member. To ensure that adequate procedures exist for complying with these requirements, JBO participants will be required to employ or have access to a qualified Series 27 principal.

In addition, the proposed rule change will require a clearing member carrying JBO accounts to notify its Designated Examining Authority in writing of its intention to clear such accounts and will require the clearing member to comply with additional net capital requirements prescribed by the Exchange. Such a clearing member must maintain either: (i) tentative net capital of $25 million; [9] or (ii) net capital of $10 million, if the clearing member's primary business is the clearance of option market maker accounts. A clearing member will be deemed to conduct a primary options market maker business if at least 60% of the gross haircuts calculated for all options market maker and JBO participant accounts, in aggregate, is attributable to options market maker transactions. A JBO clearing firm conducting a primary options market maker business must include the gross deductions calculated for all JBO participant accounts in its ratio of gross options market maker deductions to adjusted net capital.

Further, each JBO clearing member shall adjust its net worth daily by deducting any deficiency between a JBO participant's account equity and the proprietary haircut calculated pursuant to Rule 15c3–1 for the positions maintained in the JBO account. As previously referenced, each clearing member which maintains JBO accounts must require and maintain equity of $1,000,000 for each JBO participant, over all related funds. The clearing member is required to issue a margin call if the JBO participant's account equity falls below the $1,000,000 threshold. Finally, each JBO clearing member will be required to establish and maintain written ownership standards for JBO accounts.[10] The clearing member also must develop risk analysis standards which are acceptable to the Exchange and comply with the requirements of Exchange Rule 15.8.

Margin Requirements. The Exchange proposes to revise Exchange Rule 12.3, Margin Requirements, to permit a member organization to carry the accounts of JBO participants on a good faith margin basis. The JBO accounts must comply with the requirements established in Regulation T, Section 220.11,[11] and Exchange Rule 13.4, as modified above. JBO participants must maintain equity of at least $1,000,000 in their accounts. If the equity falls below $1,000,000, the JBO clearing firm must issue a margin call for additional funds or securities which must be satisfied within 5 business days.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(5),[13] in particular, in that it is designed to perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. The Exchange further believes that the proposed rule change is designed to ensure the reasonableness of JBO arrangements in accordance with the FRB's directive in its recent amendments to Regulation T.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and argument concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–97–58 and should be submitted by January 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32823 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

[8] 17 CFR 240.15c3–1(b)(1).

[9] The term ''tentative net capital'' refers to a clearing member's net capital before the application of haircuts and undue concentration deductions.

[10] The Exchange will not require JBO clearing members to establish ownership standards that meet any minimum guidelines in addition to the rules of the Exchange. As a result, clearing members will possess the discretion to develop the ownership criteria governing their JBO accounts. However, should the Exchange learn of any inappropriate ownership standards through its audit and surveillance activities, the Exchange will move to correct the impropriety. Telephone conversation between Timothy Thompson, Senior Attorney, Exchange, and Michael L. Loftus, Attorney, Division of Market Regulation, Commission (November 25, 1997).

[11] 12 CFR 220.11.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(5).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39433; File No. SR–CBOE–97–62]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Transaction Fees for Options on the Three Dow Jones Averages

December 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 3, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to modify the Exchange transaction fees applicable to transactions in options based on Dow Jones & Company indexes (''Dow Jones'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to modify the large trade discount program applicable to transactions in options based on Dow Jones indexes, three of which began trading on October 6, 1997.[3] The fee changes, implemented by the Exchange pursuant to CBOE Rule 2.22, will be made retroactive to the launch of these products on October 6, 1997.

The Exchange believes that because of the relatively small size of the option contracts on the Dow Jones indexes, the current transaction fees have been somewhat of a disincentive for institutional trading. Consequently, the Exchange has decided to reduce the fees applicable to large trade (*i.e.* those trades of over 1000 contracts) for all market participants. Under the current Dow Jones large trade discount program, customer orders in excess of one thousand contracts have received a fifty percent discount on all contracts in excess of one thousand. As before, the Dow Jones program will be separate and distinct from the Large Trade Discount Program currently applicable to all other CBOE products.

Retroactive to the launch date of October 6, 1997,[4] the large trade discount program for the Dow Jones products will be:

Customer Orders

- First 1,000 contracts of an order are assessed regular transaction fees (same as current program):
- $0.40 per contract when the premium is $1 or more;
- $0.20 per contract when the premium is under $1.
- Contracts 1,001 and above of an order will receive a 100% discount. (The current program provides a 50% discount.)

Member Firm Proprietary Orders

- First 1,000 contracts are assessed regular transaction fees of $0.10 (same as current program).
- Contracts 1,001 and above will receive a 100% discount. (The current program does not provide a discount.)

Market-Makers on the Other Side of Large Orders

- All market-maker contracts on the other side of a Dow Jones customer or member firm proprietary order of more than 1,000 contracts will receive a 100% discount on transaction fees. The waiver of the transaction fee is applicable to all market-makers on the other side of the trade and is applicable to the entire order, not just the portion over 1,000 contracts.

Trade match fees of $0.04 per contracts and floor brokerage fees of $0.03 per contracts under the original program will not be changed. Large trade discounts will be calculated after each month end. Discounts will be credited to clearing firms in the following month's Exchange billing statements.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(4) of the Act[6] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other changes among CBOE members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and subparagraph (e) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] On September 3, 1997, the Commission approved CBOE's request to trade options on the following Dow Jones indexes, the Dow Jones Industrial Index (''DJX''), the Dow Jones Utilities Index (''DUX''), and the Dow Jones Transportation Index (''DTX''). *See* Securities Exchange Act Release Nos. 39011, 62 FR 47841 (September 11, 1997) (order approving File No. SR–CBOE–97–26); 39013, 62 FR 47845 (September 11, 1997) (order approving File No. SR–CBOE–97–28); and 39012, 62 FR 47850 (September 11, 1997) (order approving File No. SR–CBOE–97–27).

[4] The Exchange will recalculate October discounts with the intent of including credits in November billing statements sent to clearing firms. If programming changes are not completed by the end of November, the Exchange will endeavor to send checks to clearing firms in early December for October discounts.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 19b–4(e).

or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing also will be available for inspection and copying at the CBOE. All submissions should refer to File No. SR–CBOE–97–62 and should be submitted by January 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32918 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39435; File No. SR–CBOE–97–55]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Telephone Policy for the S&P 100 Index (''OEX'') Options Post

December 11, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 9, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and approving this proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its current policy governing the use of member-owned or Exchange-owned telephones located at the post where Standard & Poor's 100 Index (''OEX'') options are traded to allow market makers to receive incoming telephone calls from locations outside the CBOE building on telephones at the OEX post.[1]

The text of the regulatory circular is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend the Exchange's current regulatory circular (Regulatory Circular 96–73) governing the use of telephones at the OEX option trading post by eliminating the restriction against market makers receiving incoming calls at the OEX post from locations outside of the Exchange building. According to the CBOE, when the OEX Floor Procedure Committee (''Committee'') recommended that the Exchange adopt a policy prohibiting market makers from receiving incoming calls at the OEX post, the Committee was concerned that the receipt of telephone calls would interfere with the market makers' fulfillment of their duties to make markets and fill orders. However, the CBOE notes that all other trading posts on the CBOE's floor have successfully allowed market makers to receive incoming calls without any detrimental effects on the conduct of business at those locations. In fact, the Exchange has found that allowing market makers to receive incoming calls can allow them to stay in contact with outside parties who can provide information to the market makers that may assist them in performing their duties.

The proposed change to allow market makers to receive incoming calls will make the OEX telephone policy consistent with the telephone policy at all other trading locations on the CBOE's floor in this respect. Under the proposal, the Exchange will allow market makers to have their own dedicated telephone or telephone line if space permits. The Exchange will retain the discretion to decide whether a market maker may have its own telephone or a dedicated line on an Exchange telephone depending on the space restrictions in the post.

The Exchange also is amending the OEX telephone installation application and agreement to reflect the proposed change.

The Exchange believes the proposed rule change will allow market makers to better perform their duties by giving them more open access to outside information. In addition, the proposed change will make the OEX telephone policy consistent with the policies elsewhere on the Exchange floor. For the foregoing reasons, the Exchange believes the rule proposal is consistent with and furthers the objectives of Section 6(b)(5) of the Act, in that it is designed to perfect the mechanisms of a free and open market and to protect investors and the public interest by providing better access to the OEX post.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to

[9] 17 CFR 200.30–3(a)(12).

[1] The Commission approved the Regulatory Circular (Regulatory Circular 96–73) containing the current OEX telephone policy on July 26, 1996. *See* Securities Exchange Act Release No. 37487 (July 26, 1996), 61 FR 40686 (August 5, 1996) (order approving File No. SR–CBOE–96–14).

Section 19(b)(2) of the Act. According to the CBOE, the proposed change is consistent with the use of telephones at other locations on the CBOE floor, including at the equity option telephone posts, where the use of telephones is governed by a policy approved by the Commission.[2]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5)[3] in that it is designed to promote just and equitable principles of trade, prevent fraudulent and manipulative acts and practices, and maintain fair and orderly markets.[4] Specifically, the CBOE has represented that allowing OEX market makers to receive incoming calls from outside the CBOE building may allow OEX market makers to receive information that will assist OEX market makers in performing their duties. In addition, the proposal will make the OEX telephone policy regarding market makers' receipt of incoming calls consistent with the telephone policies at all other trading locations on the CBOE floor.

The Commission believes that it is reasonable for the Exchange to amend its telephone policy for OEX market makers to make the policy consistent with the procedures applicable to all other trading locations on the CBOE has indicated that market makers' receipt of incoming calls at other trading posts on the CBOE floor. In this regard, the Commission notes that the CBOE floor has produced no detrimental effect on the conduct of business at those trading posts. In addition, the CBOE states that the Exchange has not detected any improper trading activity resulting from its telephone policies.[5] The Commission believes, as it found in approving the CBOE's telephone policy for equity options, that the Exchange's existing surveillance procedures will ensure that the CBOE is aware of any options transactions that raise manipulation concerns.[6] Accordingly, the Commission believes that the CBOE's modification of its telephone policy for OEX market makers will not diminish the Exchange's ability to detect and deter manipulation.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerated approval will allow the CBOE to implement a uniform policy regarding market makers' receipt of incoming calls at their trading posts. Accordingly, the Commission believes that granting accelerated approval to the proposal is appropriate and consistent with Section 6 of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and argument concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–CBOE–97–55 and should be submitted by January 7, 1998.

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CBOE–97–55) is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32920 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission approved the CBOE's proposal to incorporate its telephone policy for equity options into the rules of the Exchange in 1994. *See* Securities Exchange Act Release No. 33701 (March 2, 1994), 59 FR 11336 (March 10, 1994) (order approving File No. SR–CBOE–93–24) (''Equity Option Approval Order'').

[3] 15 U.S.C. 78f(b)(5)(1988).

[4] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(b)(5).

[5] Telephone conversation among Timothy Thompson, Senior Attorney, CBOE, Pat Cerny, Market Surveillance, CBOE, and Yvonne Fraticelli, Attorney, Office of Market Supervision, Division of Market Regulation, Commission, on November 18, 1997 (''November 18 Conversation'').

[6] *See* Equity Option Approval Order, *supra* note 2.

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39422; File No. SR–DTC–97–20]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Order Granting Accelerated Approval of a Proposed Rule Change Expanding the Money Market Instrument Settlement Program

December 19, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on September 22, 1997, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') and on November 13, 1997, amended the proposed rule change (File No. SR–DTC–97–20) as described in Items I and II below, which items have been primarily prepared by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change on a permanent basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks permanent approval of DTC's expanded money market instrument (''MMI'') settlement program. The Commission previously approved DTC's expanded MMI program on a temporary basis.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments that it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's expanded MMI program is an extension of DTC's same-day funds settlement (''SDFS'') system. The proposed rule change seeks permanent approval of DTC's expanded MMI settlement program for transactions in institutional certificates of deposit, municipal commercial paper, and bankers' acceptances.[3] The proposed rule change also seeks to permanently approve changes made to DTC's MMI programs for corporate commercial paper (''CP''), medium term notes, preferred stock in a CP-like mode, short term bank notes, and discount notes.[4]

The Commission previously granted only temporary approval to the expansion of DTC's MMI settlement program because at the time DTC had not yet implemented the largest provisional net credit (''LPNC'') control. The LPNC control consists of two new risk management features which are designed to protect DTC against the combined failure of a MMI issuer and a participant.

Under the first LPNC risk management feature, DTC subtracts from a participant's actual overall SDFS net debit or credit the amount of the participant's largest provisional net credit due to transactions in any single issuer's MMI program. If a transaction causes the resulting net debit (''simulated net debit'') to exceed the participant's net debit cap, the transaction will be blocked until the account receives sufficient credits to complete the transaction.

Under the second LPNC risk management feature, DTC subtracts from the participant's collateral monitor the amount of a participant's largest provisional net credit due to transactions in any single issuer's MMI program. If a transaction will cause the resulting collateral monitor (''simulated collateral monitor'') to become negative (*i.e.*, the participant's collateral would be insufficient to cover its simulated net debit after the transaction), the transaction will be blocked until the account receives sufficient collateral to complete the transaction.[5]

DTC has reported that MMI issuers have defaulted both before and after the LPNC controls were implemented in September 1995. However, since the implementation of the LPNC controls, DTC stated that it has not had any problems with liquidity or blocked transactions. DTC indicated that the application of LPNC controls may cause some participants to reach their net debit cap and as a result, block the completion of further transactions. However, DTC reported that participants generally complete blocked transactions by sending intraday funds to DTC for credit to their participant settlement account.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act[6] and the rules and regulations promulgated thereunder because it promotes the prompt and accurate clearance and settlement of transactions in MMIs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impact or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not solicited comments on the proposed rule change. Discussions with DTC participants indicate continued wide support for the MMI programs.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Section 17A(b)(3)(F)[7] of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission believes that DTC's proposed rule change is consistent with DTC's obligations under the Act.

Because the Commission was concerned that the proposed expanded MMI settlement program increased risks associated with the use of provisional credits, the Commission previously approved the proposed rule change on a temporary basis until the new LPNC controls could be implemented and monitored for their effectiveness. During the temporary approval period, the LPNC risk management features have helped minimize the impact of a default by an MMI issuer. In this regard, since the LPNC controls were implemented in September 1995, DTC has reported that it has had no problems with liquidity or blocked transactions. Thus, the Commission finds that DTC's expanded MMI settlement program, with the addition of the LPNC controls, is consistent with its obligations under the Act to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

DTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the filing. The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing because accelerated approval will allow DTC to continue to use its MMI program without interruption.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–DTC–97–20) be and hereby is permanently approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

[3] Securities Exchange Act Release Nos. 33958 (April 22, 1994), 59 FR 22878; and 35655 (April 28, 1995), 60 FR 22423.

[4] *Id.*

[5] Because transactions in a failing MMI issue would be reversed by DTC only if DTC is informed of the default by 3:00 PM (Eastern Time), LPNC procedures remain in effect only until approximately 3:05 PM (Eastern Time). After this time, collateralization and net debit cap controls are applied to net debits incurred by participants as a result of transactions that have actually completed.

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78q–1(b)(3)(F).

[8] 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39423; File No. SR–NASD–97–04]

Self-Regulatory Organizations; Order Approving Proposed Rule Changes and Amendment No. 1 Thereto by the National Association of Securities Dealers, Inc. and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 2 Thereto Regarding Excused Market Maker Withdrawals and Reinstatements

December 10, 1997.

On January 24, 1997, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') proposed rule changes [1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [2] and Rule 19b–4 thereunder.[3] The proposal amends NASD Rule 4619 (excused market maker withdrawals), NASD Rule 4620 (voluntary termination of market maker registrations), and NASD Rule 4730 (reinstatement of market makers that have been ''SOESed out of the Box'' [4] or that accidentally withdrew from a security). Notice of the proposed rule changes, including the substance of the proposal and Amendment No. 1 thereto, was published for comment in the **Federal Register**.[5] No comments were received. On December 3, 1997, the NASD filed with the Commission Amendment No. 2.[6] The Commission is hereby approving the proposed rule changes, including Amendment No. 1 thereto. In addition, the Commission is publishing this notice to solicit comments from interested persons on Amendment No. 2; the Commission hereby approves that amendment.

I. Description of Rule Changes

To ensure that market makers are complying with their obligation to maintain continuous, firm, two-sided quotations,[7] NASD Rule 4620 provides that a market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for 20 business days. This rule is commonly referred to as the ''20-Day Rule.'' With respect to SOES, withdrawal from participation as a market maker in a Nasdaq National Market (''NNM'') security constitutes termination of registration as a market maker in that security for purposes of NASD Rule 4620. NASD Rule 4730(b)(6), an SOES rule, provides that for NNM securities a market maker will be suspended from SOES if its bid or offer has been decremented to zero due to SOES executions. If this occurs, the market maker will be permitted a standard grace period (*i.e.*, five minutes) within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. A market maker that fails to reenter a two-sided quotation in an NNM security within the allotted time will be deemed to have withdrawn as a market maker. Unless the market maker's withdrawal is ''excused,'' that market maker may not reenter SOES as a market maker in that security for twenty (20) business days.[8] When a market maker is deregistered from a security because it failed to restore its quotation, it is referred to as being ''SOESed out of the Box.'' [9]

Notwithstanding NASD Rules 4620 and 4730(b)(6), NASD Rule 4619 permits market makers to obtain an ''excused'' withdrawal in certain limited circumstances. Under NASD Rule 4619, a market maker may withdraw quotations in a security without being subject to the 20-Day Rule or NASD Rule 4730(b)(6) (for SOES market makers). A market maker that withdraws from a security for a reason permitted by NASD Rule 4619 may re-enter its quotes once the circumstances justifying the withdrawal no longer exist.[10] The rule currently allows excused withdrawals for:

(1) Physical circumstances beyond the market maker's control (NASD Rule 4619(b));

(2) Demonstrated legal or regulatory requirements (*e.g.*, the market maker is in possession of material non-public information regarding the issue) (NASD Rule 4619(b));

(3) Religious holidays (provided the request is submitted five business days in advance of the holiday) (NASD Rule 4619(b));

(4) Vacations (provided the request is received 20 business days in advance of the vacation and is made by a market maker with three or fewer Nasdaq level 3 terminals) (NASD Rule 4619(b));

(5) A market maker that has withdrawn from an issue prior to the public announcement of a merger or acquisition and wishes to re-register in that issue pursuant to applicable NASD rules;

(6) Involuntary failures to maintain clearing arrangements (NASD Rule 4619(c)); and

(7) The duration of the ''cooling off'' periods mandated by certain rules under Regulation M under the Exchange Act (NASD Rule 4619(d)).

The SEC criticized the NASD's handling of excused withdrawal requests and the reinstatement of market makers that had been ''SOESed out of the Box'' in the SEC's 21(a) Report on the NASD and The Nasdaq Stock Market.[11] The SEC found, among other things, that the NASD had improperly granted waivers of the 20-Day Rule for market makers that were ''SOESed out of the Box'' and that the NASD had not followed its own rules when granting excused withdrawals. Until 1995, the 21(a) Report found, the practice of Nasdaq Market Operations was to grant SOES withdrawal waivers as a matter of course without inquiring into the reasons for the withdrawals. A market maker merely had to request the waive and Nasdaq Market Operations granted it. Beginning in 1995, Nasdaq Market Operations started to make some inquiry into the reasons for the SOES withdrawals, granting waivers based upon an examination of four factors.[12]

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[1] On September 30, 1997, the NASD submitted an amendment (''Amendment No. 1'') to the proposed rule change to make technical amendments to the text of the proposed rule change. *See* Letter from Robert E. Aber, Vice President and General Counsel, The Nasdaq Stock Market, Inc. (''Nasdaq''), to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated September 30, 1997.

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] ''SOES'' refers to Nasdaq's Small Order Execution System.

[5] Securities Exchange Act Release No. 39218 (October 8, 1997) 62 FR 53675 (October 15, 1997).

[6] Letter from Robert E. Aber, Vice President and General Counsel, Nasdaq, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated December 3, 1997 (''Amendment No. 2''). In Amendment No. 2, the NASD made certain technical changes to NASD Rules 4620 and 4730 as well as clarified certain issues involving NASD Rule 4730. These points are discussed in detail below.

[7] *See* NASD Rule 4613.

[8] NASD Rule 4730(b)(6).

[9] To avoid being ''SOESed out of the Box,'' members can elect not to have their quote size decremented (''no dec'') upon the execution of SOES orders, provided the market maker's quote size is equal to or greater than the applicable SOES tier size (*i.e.*, the maximum SOES order size). *See* NASD Rule 4730; *see also* Nasdaq *Subscriber Bulletin*, vol. 15, July 1997, at page 2. In the alternative, the market maker may use Nasdaq's auto-refresh feature, which automatically updates a market maker's quote after its quote size has been decremented. NASD Rule 4730(b)(2).

[10] *See* NASD Rule 4730(b)(7).

[11] *See* Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market (''21(a) Report''), SEC, August 8, 1996, at p. 91–95.

[12] The factors were (1) the timeliness of the market maker's call to Market Operations; (2) the

These factors, however, are not generally relevant to the permissible reasons, as articulated in the NASD's rules, for granting excused withdrawal status.[13] Nor were these factors included in any filing made by the NASD with the Commission pursuant to Section 19(b) of the Exchange Act, as amendments or interpretations of its rules. The NASD's willingness to grant waivers for reasons other than those listed in the applicable rules,[14] allowed market makers to avoid suspension penalties.

As a result, the SEC stated in its 21(a) Report that:

[t]he NASD's failure to enforce its excused withdrawal rules has fostered an environment that allowed market makers to avoid their responsibilities to maintain continuous quotes in the securities in which they made markets. Market makers were able to withdraw voluntarily from SOES beyond the permitted five-minute window, or otherwise withdraw from the market during periods of volatility without substantial risk that the NASD will enforce a twenty-day suspension.[15]

The Commission also found that the NASD did not place administration of the excused withdrawal rule with its enforcement or regulatory staff, but rather with its market and trading services staff. The Commission noted that the excused withdrawal rule ''should be administered from a regulatory standpoint.''[16]

Accordingly, to ensure that market makers are not able to avoid or circumvent their market making obligations through inappropriate excused maket maker withdrawals or inappropriate market maker reinstatements, the NASD submitted this rule proposal. As detailed below, the proposal makes changes in the following areas:

(1) Bases for excused withdrawals;

(2) Market maker reinstatements upon being ''SOESed out of the Box'' or after accidental market maker withdrawals; and

(3) The jurisdiction of the Market Operations Review Committee (''MORC'') over excused market maker withdrawals and reinstatements.

By modifying the rules to reflect better the operational realities of the marketplace, as well as establishing more objective standards for the reinstatement of market makers that either have been ''SOESed out of the Box'' or have accidentally withdrawn from a security, the NASD believes that the proposed modifications are responsive to the deficiencies noted in the Commission's 21(a) Report.

A. Bases For Excused Withdrawal

The proposed changes to NASD Rule 4619 are intended to bring the rule more in line with the realities of the marketplace. NASD Rule 4619(b) presently provides that excused withdrawal status may be granted for a variety of reasons provided that certain conditions, with are discussed above, are satisfied. While the NASD continues to believe that it is critical for the maintenance of the integrity of the market for Nasdaq to grant excused withdrawals only when warranted, particularly in light of the Commission's 21(a) Report, the NASD contends that the present excused withdrawal rule is not broad enough to encompass all of the legitimate reasons for granting an excused withdrawal. The NASD also believes that the time parameters for advance notice of vacations and religious holidays are unnecessarily long.

Accordingly, the NASD proposes a number of amendments to NASD Rule 4619(b). First, excused withdrawals may be granted for ''circumstances'' beyond the market maker's control instead of for just ''physical circumstances'' beyond its control as is currently the case. With this amendment, unpredictable events, such as jury duty, bomb threats, the birth of a child, or a sudden illness, could be used as a basis for an excused withdrawal. Second, requests for excused withdrawals based on vacations (currently 20 days) and religious holidays (currently five days) may be submitted one business day in advance of the proposed withdrawal. Requests for excused withdrawals based on legal or regulatory requirements will continue to be made in writing, although Nasdaq acknowledges that counsel to market makers often do not want to disclose the specific legal basis for their clients' withdrawal requests, particularly when the basis for the withdrawal is that the market maker is in possession of material, non-public information. In this connection, Nasdaq would continue its current practice of apprising NASD Regulation, Inc. of all such requests.[17]

B. Reinstatement of Market Makers Upon Being ''SOESed Out of the Box'' and for Accidental Withdrawals

1. Reinstatements Upon Being ''SOESed Out of the Box''

The proposed rule changes to NASD Rule 4730 are designed to ensure that a market maker is not reinstated without the required 20 day suspension unless the market maker withdrew for an excused reason. Specifically, the proposed changes to NASD Rule 4730 provide that a market maker can be reinstated under only one of two circumstances: (1) pursuant to NASD Rule 4730(b)(7), the market maker obtains an excused withdrawal pursuant to NASD Rule 4619; or (2) the market maker satisfies criteria set forth in NASD Rule 4730(b)(6). Under NASD Rule 4730(b)(6), a market maker can be reinstated after being SOESed out of the Box with respect to a particular security if:

(1) The market maker notifies Nasdaq Market Operations to request reinstatement within one hour of being ''SOESed out of the Box,'' and immediately thereafter provides written notification of the request;

(2) It was a Primary Market Maker at the time it was SOESed out of the Box; [18]

(3) The reinstatement would not result in the market maker's firm exceeding certain limitations on the

volatility of the stock; (3) the liquidity of the market and the number of market makers in the stock; and (4) the number of Nasdaq terminals at the market makers to which the orders could be routed (which was relevant in cases where the market maker requested an excused withdrawal due to mechanical or electronic failure of a Nasdaq terminal).

[13] *See, e.g.,* NASD Rule 4619(b)(3), which states in part: ''[t]he withdrawal of quotations because of pending news, a sudden influx of orders or price changes, or to effect transactions with competitors shall not constitute acceptable reasons for granting excused withdrawal status.''

[14] For example, market makers were granted waivers after their SOES exposure was exhausted because they were away from their desks, working another order, or covering other trades' stocks. Appendix 21(a) Report at A–78 and note 217.

[15] Appendix to 21(a) Report at A–78.

[16] *Id.*, note 220.

[17] As discussed below, the proposal also adds a new paragraph (e) to Rule 4619 to give the MORC jurisdiction over proceedings to review denials of excused withdrawals or conditions imposed on reentry under Rule 4619.

[18] In Amendment No. 2, the NASD states that the Primary Market Maker standards currently contained in NASD Rule 4612 have been suspended on a temporary basis since February of this year. (*See* Securities Exchange Act Release Nos. 38294 (February 14, 1997) 62 FR 8289 (February 24, 1997); 39198 (October 3, 1997) 62 FR 53365 (October 14, 1997)). The suspension was necessary because the previous numerical criteria used to establish Primary Nasdaq Market Maker status was rendered significantly less relevant due to implementation of the new SEC Order Execution Rules (*i.e.*, the Limit Order Display Rule and amendments to the Quote Rule). (This is because the old standards were based primarily on [a] market maker's quotes in relation to the inside quote and the quotes of other market makers, and the ratio of executions to quote changes. Because the new SEC rules, implemented in January of this year, are designed to incorporate customer limit orders in a market maker's quote, a market maker's proprietary activity has become indistinguishable from its customer activity.) As a result, all market makers are deemed Primary Market Makers until new standards can be implemented. Accordingly, all market makers similarly will be deemed to be in satisfaction of the Primary Market Maker provision in Rule 4730(b)(6)(A), until such time that new standards are imposed. (Footnotes incorporated into text.)

number of reinstatements per year; [19] and

(4) a designated Nasdaq officer determines that the withdrawal was not an attempt by the market maker to avoid its obligations to make a continuous two-sided market, taking into account factors including market conditions at the time, the frequency with which the firm has been SOESed out of the Box in the past, procedures adopted by the firm to avoid being SOESed out of the Box inadvertently, and the length of time before the firm sought reinstatement.

Decisions to reinstate a market maker would be made by Nasdaq Market Operations staff and appeals of such decisions would be considered by the MORC.

2. Reinstatements for Accidental Withdrawals

There have been instances in the past when a market maker accidentally withdrew from a security because someone associated with the firm inadvertently typed the wrong symbol for the security or made a similar mistake. The NASD believes that it would be appropriate for the market maker to be reinstated in such circumstances, but NASD rules currently do not provide that market makers can be reinstated in these instances. As a result, the NASD proposal amends NASD Rule 4620 to permit reinstatements in such instances provided the withdrawal was clearly accidental and did not reflect an attempt by the market maker to avoid its market making obligations. Specifically, under the proposal, a market maker that accidentally withdraws as a market maker may be reinstated if:

(1) The market maker notifies Nasdaq Market Operations of the accidental withdrawal within one hour of such withdrawal, and immediately thereafter provides written notification of the withdrawal and request for reinstatement;

(2) It is clear that the withdrawal was inadvertent and the market maker was not attempting to avoid its market making obligations; and

(3) The market maker's firm would not exceed specific reinstatement limitations per year.[20]

If the above conditions are satisfied, Nasdaq will consider the following factors, among others, in deciding whether to grant a reinstatement in a given case:

(1) The number of accidental withdrawals by the market maker in the past as compared to other market makers making markets in a comparable number of stocks;

(2) The similarity between the symbol of the stock that the market maker intended to withdraw from and the symbol of the stock that the market maker actually withdrew from;

(3) Market conditions at the time of the withdrawal;

(4) Whether the withdrawal served to reduce the market maker's exposure to market risk; and

(5) The timeliness with which the market maker notified Nasdaq Market Operations of the error.

Determinations initially would be made by Nasdaq Market Operations staff and be subject to review by the MORC.

C. Jurisdiction of the MORC Over Excused Market Maker Withdrawals and Market Maker Reinstatements

Presently, appeals of Nasdaq staff determinations concerning excused withdrawal requests and market maker reinstatements are within the purview of the NASD's Qualifications Committee pursuant to NASD Rule 4730(b)(8). Pursuant to the Plan of Allocation and Delegation of Functions by NASD to Subsidiaries, however, The Board of Directors of Nasdaq has delegated its authority over such matters to the MORC. Accordingly, the NASD proposes to amend its Rules 4619, 4620, and 4730, to effectuate the transfer of jurisdiction over these matters from the Qualifications Committee to the MORC. Under the recently revised NASD Delegation Plan, the MORC's compositional and quorum requirements now provide for member diversity, as well as non-industry and public participation. Further, NASD Regulation is to receive weekly reports of MORC determinations; [21] it cannot, however, overturn MORC decisions.

II. Discussion

It is a fundamental premise of the dealer market that market makers stand willing to buy and sell securities at all times. Permitting market makers to evade this responsibility could reduce liquidity in the market and threaten the ability of investors to execute trades.[22] The Commission finds that proposed rule changes, by helping to ensure that market makers stand willing to buy and sell securities at all times, are consistent with the Exchange Act and in particular with Sections 15A(b)(6), 15A(b)(7), 15A(b)(9), 15A(b)(11) and 11A(a)(1)(C) of the Exchange Act.

Among other things, Section 15A(b)(6) requires that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities. Section 15A(b)(6) also requires that the rules of a national securities association be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system and in general to protect investors and the public interest. Section 15A(b)(7) requires that the rules of the association provide that its members shall be appropriately disciplined for violations of the rules of association. Section 15A(b)(9) provides that the rules of the association may not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. Section 15A(b)(11) requires the NASD, as an association, to adopt rules governing the form and content of quotations relating

[19] In particular, under the proposal, including minor modifications made by Amendment No. 2, firms that simultaneously made markets in less than 250 securities during the previous calendar year could receive no more than four reinstatements per year. Firms that simultaneously made markets in more than 250 but less than 500 securities during the previous calendar year could receive no more than six reinstatements per year. Firms that simultaneously made markets in 500 or more securities during the previous calendar year could receive no more than 12 reinstatements per year.

Notwithstanding a market maker's exhaustion of these numerical limitations, in certain instances the designated Nasdaq officer may grant a reinstatement request if he or she finds that such action is necessary for the protection of investors or the maintenance of fair and orderly markets. In addition to making these findings, the designated officer also must determine that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where (1) a member firm experiences a documented problem or failure (other than a chronic failure within the firm's control) impacting the operation or use of any automated system operated by or for the firm or involving an automated system operated by Nasdaq; (2) the market maker is a manager or co-manager of a secondary offering from the time the offering is announced until ten days after it is complete; or (3) absent the reinstatement, the number of market makers in a particular issue is less than or equal to two or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter. if a market maker has a regular pattern of being frequently SOESed out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.

[20] In particular, firms that simultaneously made markets in less than 250 securities during the previous calendar year could receive no more than two reinstatements per year. Firms that simultaneously made markets in 250 or more but less than 500 securities could receive no more than three reinstatements per year. Firms that simultaneously made markets 500 or more securities could receive no more than six reinstatements per year. *See* minor modifications made by Amendment No. 2.

[21] *See* Appendix to 21(a) Report at A–78.

[22] *Id.* A–76–79.

to securities in the Nasdaq market. Such rules must be designed to produce fair and informative quotations, prevent fictitious and misleading quotations, and promote orderly procedures for collecting, distributing, and publishing quotations. Section 11A(a)(1)(C) provides that, among other things, it is in the public interest to assure the economically efficient execution of securities transactions and the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Commission believes that the proposed amendments will help to ensure that market makers will only be relieved of their market making obligations for legitimate reasons and that waivers of the ''20-day rule'' will only be made when Nasdaq has determined that the market maker receiving the waiver was not attempting to avoid its market making obligations when it withdrew or was withdrawn from the security. As a result, the proposed rule changes should increase market makers' compliance with their obligation to make continuous, two-sided markets and promote quote competition among market makers. Such competition among market makers should, in turn, enhance the integrity of the Nasdaq market, the best execution of customer orders, and the price discovery process for Nasdaq securities.

Thus, the proposed changes to NASD Rules 4620 (reinstatement for accidental withdrawal) and 4730 (reinstatement upon being SOESed out of the Box) are consistent with the Exchange Act and in particular with the following sections of that Act:

(1) Section 15A(b)(6) because they are designed to prevent market makers from failing to meet their market making obligations;

(2) Section 15A(b)(11), because they are designed to produce fair and informative quotations and prevent fictitious or misleading quotations by eliminating opportunities for market makers to back away from what otherwise may be effectively fictitious quotes; and

(3) Section 11A(a)(1)(C)(i)–(iii), because they are in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets; they assure fair competition among brokers and dealers by encouraging fair and accurate quotations, economically efficient executions based on these fair and accurate quotations; and they improve the availability to brokers, dealers, and investors of information concerning these fair and accurate quotations.

Further, the proposed changes to NASD Rule 4619 relating to the advance notice market makers must provide before withdrawing quotations in securities for an excused reason, as well as expanding those excused purposes, are consistent with the Exchange Act, and in particular with Section 15A(b)(9), because they do not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act, but merely add additional legitimate reasons for granting an excused withdrawal and make the time provisions of NASD Rule 4619 more fair and reasonable. Finally, the proposal to amend NASD Rules 4619, 4620, and 4730 to grant the MORC jurisdiction over proceedings brought by market makers seeking review of a:

(1) Denial of a reinstatement pursuant to NASD Rule 4619 or the conditions imposed on a reentry;

(2) Denial of a reinstatement pursuant to NASD Rule 4620(b); or

(3) Removal from SOES pursuant to NASD Rule 4730(6) or (7)

is consistent with the Exchange Act. In particular, these amendments are consistent with Exchange Act Section 15A(b)(7) in that they will help to ensure that NASD members are appropriately disciplined for violations of the rules of the association.

Finally, the Commission finds good cause for approving Amendment No. 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. The NASD's proposal, along with Amendment No. 1 thereto, was published in the **Federal Register** for the full statutory period.[23] In Amendment No. 2, the NASD merely makes a technical correction to NASD Rules 4620(b)(3)(B) and 4730(b)(6)(A)(iii)(b) and (c) to replace ''more than 250'' with ''250 or more'' and to replace ''more than 500'' with ''500 or more.'' In Amendment No. 2, the NASD also notes that the Primary Market Maker criterion in NASD Rule 4730(b)(6)(A) currently applies to all Nasdaq market makers. (*See* note 18). Finally, the NASD notes that the Nasdaq officers referred to in NASD Rule 4730(b)(6) are those senior officers specifically designated by the President of The Nasdaq Stock Market, Inc., for this purpose.[24] The list is maintained by the NASD Corporate Secretary's Office, and is part of the procedures of Nasdaq Market Operations. Consequently, lack of prior notice of these changes will not disadvantage any market participant. Based on the above, the Commission finds that there is good cause, consistent with the Exchange Act, to accelerate approval of Amendment No. 2.

[23] *See* Securities Exchange Act Release No. 39218, *supra* note 5.

[24] This list coincides with the list of officers similarly appointed for adjudicating erroneous trades pursuant to NASD Rule 11890.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 2. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–04 and should be submitted by January 7, 1998.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act, that the proposed rule change (SR–NASD–97–04) be, and hereby is, approved.[25]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32822 Filed 12–16–97; 8:45 am]

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[25] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change likely will enhance the efficiency and fairness of the process by which market maker withdrawals are handled by Nasdaq. It likely also will enhance the competition between market makers by strengthening enforcement of their requirement to display continually two-sided quotes. These rule changes should also lead to more accurate quotes being disseminated to the public. The net effect of approving the proposed rule change will be positive. 15 U.S.C. 78c(f).

[26] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39421; File No. SR-NASD–97–77]

Self-Regulatory Commission Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Arbitration of Employment Discrimination Claims

December 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 17, 1997,[1] the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organizations Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend Rule 10201 of the NASD's Code of Arbitration Procedure (''Code'') to remove the requirement to arbitrate claims of statutory employment discrimination. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

CODE OF ARBITRATION PROCEDURE

10200. INDUSTRY AND CLEARING CONTROVERSIES

10201. Required Submission

(a) *Except as provided in paragraph (b),* [Any] *a* dispute, claim or controversy eligible for submission under the Rule 10100 Series between or among members and/or associated persons, and/or certain others, arising in connection with the business of such member(s) or in connection with the activities of such associated person(s), or arising out of the employment or termination of employment of such associated person(s) with such member, shall be arbitrated under this Code, at the instance of:

(1) a member against another member;

(2) a member against a person associated with a member or a person associated with a member against a member; and (3) a person associated with a member against a person associated with a member.

(b) A claim alleging employment discrimination or sexual harassment in violation of a statute is not required to be arbitrated. Such a claim may be arbitrated only if the parties have agreed to arbitrate it, either before or after the dispute arose.

[(b)] *(c)* Any dispute, claim or controversy involving an act or failure to act by a clearing member; a registered clearing agency; or participants, pledgees, or other persons using the facilities of a registered clearing agency, under the rules of any registered clearing agency with which the Association has entered into an agreement to utilize the Association's arbitration facilities and procedures shall be arbitrated in accordance with such agreement and the rules of such registered clearing agency.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule change

1. Purpose

The proposed rule change will modify the current requirement that associated persons arbitrate all disputes arising out of their employment or termination of employment with a member broker/dealer. The proposed rule provides that associated persons are no longer required, solely by virtue of their association of their registration with the NASD, to arbitrate claims of statutory employment discrimination. Associated persons still will be required to arbitrate other employment-related claims, as well as any business-related claims involving investors or other persons.

Background

Although most arbitration claims submitted to the NASD involve disputes between members and customers, a growing number of matters involve employment-related disputes between members and their associated persons.[2] The growth in this area is the result of several recent court decisions concerning the requirement of persons associated with a broker/dealer to arbitrate their employment disputes.

The requirement for associated persons to register with the NASD arises from Section 15A(g)(3)(B) of the Act, which provides that the NASD may ''require a natural person associated with a member, or any class of such natural persons, to be registered with the association in accordance with procedures so established [by the rules of the association].'' The registration requirement was made mandatory by Exchange Act Rule 15b7–1 in 1993.[3] The NASD, other self-regulatory organizations (''SROs''), and state regulatory authorities require all applicants for registration as persons associated with a broker/dealer (registered representatives, assistant representatives or principals) to complete and sign the Form U–4, the ''Uniform Application for Securities Industry Registration or Transfer.'' [4] Form U–4 requires registered persons to submit to arbitration any claim that is eligible under the rules of the organizations with which they register (as indicated in Item 10 of the Form U–4). The relevant language on the Form U–4 states:

I agree to arbitrate any dispute, claim or controversy that may arise between me and my firm, or a customer, or any other person, that is required to be arbitrated under the rules, constitutions, or by-laws of the organizations indicated in Item 10 as may be amended from time to time and that any

[1] The NASD filed Amendment No. 1 to the proposed rule filing on November 21, 1997, the substance of which is incorporated into the notice. *See* letter from Joan C. Conley, Corporate Secretary, NASD Regulation, to Katherine A. England, Assistant Director, Market Regulation, Commission, dated November 20, 1997 (''Amendment No. 1'').

[2] The number of employment discrimination claims filed with the NASD rose from 4 to 1991 to 109 in 1996. The latter figure represents, however, less than 2 percent of all arbitration claims filed with the NASD in 1996

[3] 17 C.F.R. 240.15b7–1. The rule provides as follows: ''No registered broker or dealer shall effect any transaction in, or induce the purchase or sale of, any security unless any natural person associated with such broker or dealer who effects or is involved in effecting such transaction is registered or approved in accordance with the standards of training, experience, competence, and other qualification standards (including but not limited to submitting and maintaining all required forms, paying all required fees, and passing any required examinations) established by the rules of any national securities exchange or national securities association of which such broker or dealer is a member or under the rules of the Municipal Securities Rulemaking Board (if it is subject to the rules of that organization).''

[4] The Form U–4 was adopted effective October 1, 1975.

arbitration award rendered against me may be entered as a judgement in any court of competent jurisdiction.[5]

Thus, the Form U–4 incorporates by reference the rules of the SRO with which the individual is to be registered. NASD Rule 10101 provides as follows:

This Code of Arbitration Procedure is prescribed . . . for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance company . . . between or among members and associated persons . . . .

For industry and clearing controversies, Rule 10201 requires that all matters eligible under Rule 10101 be submitted to arbitration at the request of any member or associated person.[6] Rules 10101 and 10201 were amended in 1993 to include the language relating to disputes ''arising out of the employment or termination of employment'' of an associated person. This language was added in order to clarify that employment disputes were required to be arbitrated, since a California court had held that the Code of Arbitration Procedure did not cover such disputes, but only covered disputes arising out of or in connection with business transactions.[7] The Commission found the amendment to be consistent with Section 15A(b)(6) of the Act and approved the rule change.[8]

Over the past several years, employees have raised several challenges to the mandatory arbitration of employment discrimination disputes. Such challenges were addressed by the Supreme Court in *Gilmer* v. *Interstate/Johnson Lane Corp.*[9] In *Gilmer,* which involved a person registered with the New York Stock Exchange, the Court examined many challenges to the adequacy of arbitration procedures raised by the registered representative and found that none was sufficient to prevent the Court from enforcing the representative's agreement, pursuant to his signing of the Form U–4, to arbitrate his federal age discrimination claim. Therefore, the Court held that Mr. Gilmer had not met his burden of showing that Congress intended to preclude arbitration of claims under the Age Discrimination in Employment Act of 1967.[10]

Subsequent to the *Gilmer* decision, courts have declined to find a Constitutional or statutory bar to enforcement of the agreement to arbitrate contained in the Form U–4.[11] They have extended the reasoning of *Gilmer* to cover disputes arising under Title VII of the Civil Rights Act of 1964,[12] the Americans with Disabilities Act,[13] and state statutes of similar nature.[14] Courts also have extended the application of *Gilmer* to the NASD, since its rules are similar to the NYSE rule at issue in *Gilmer.*[15] Nevertheless, registered persons and others have continued to challenge the requirement to arbitrate claims of statutory employment discrimination.[16]

Task Force Views

In January 1996, the NASD's Arbitration Policy Task Force (''Task Force'')[17] released its Report on Securities Arbitration Reform (''Report''). The Task Force's Report made numerous recommendations to improve the arbitration process. Since the Report was released, NASD Regulation has been engaged in a major effort to implement the Task Force recommendations.

Employment arbitration was not an area of major focus for the Task Force.[18] The Task Force found, however, that such arbitration offers the advantages of speed and cost that are identified with customer arbitration, and observed that statutory discrimination claims are almost always interwoven with industry-specific issues. Moreover, the Task Force believed that arbitration's equitable approach to dispute resolution is fully capable of vindicating the important public rights expressed in the anti-discrimination statutes. The Task Force, therefore, found compelling reasons to keep employment-related disputes within NASD arbitration. The Task Force Report recommended that employment-related disputes, including statutory discrimination claims, remain eligible for arbitration with certain enumerated enhancements, many of

[5] From page 4 of the Form U–4 as revised in November 1991. A new version of the Form U–4 was approved by the Commission on July 5, 1996. Securities Exchange Act Release No. 37407 (July 5, 1996), 61 FR 36595 (July 11, 1996). Use of the revised form has been deferred pending related changes to the Central Registration Depository (''CRD''). Securities Exchange Act Release No. 37994 (November 27, 1996), 61 FR 64549 (December 5, 1996). The substance of the quoted language was not changed in the revision.

[6] As one court explained, ''Section 1 [now Rule 10101] defines the general universe of issues that *may* be arbitrated, and Section 8 [now Rule 10201] describes a subset of that universe that *must* be arbitrated under the Code.'' *Armijo* v. *Prudential Ins. Co., of Am.,* 72 F.3d 793, 798 (10th Cir. 1995).

[7] *Higgins* v. *Superior Court of Los Angeles County,* No. B057028 (Cal. App. Oct. 8, 1991), *review denied and decision ordered not officially published,* 1 Cal. Rptr. 2d 57 (1992). The state court noted the difference between the NYSE rule (at issue in the Supreme Court's *Gilmer* decision, discussed below), which refers to disputes arising out of the employment or termination of employment of an associated person, and the NASD rule, which at the time did not contain the phrase relating to employment. A federal court reached the same conclusion while the rule change was pending approval. *Farrand* v. *Lutheran Bhd.,* 993 F.2d 1253 (7th Cir. 1993). The Association stated in its rule filing that the amendment was a clarification of existing intent rather than a new policy; some courts accepted this view, while other courts interpreted the rule amendment as a change in policy. See *Kuehner* v. *Dickinson & Company,* 84 F.3d 316, 320 n.1 (9th Cir. 1996) (describing splits in the Seventh, Tenth and Eleventh Circuits of this issue).

[8] Securities Exchange Act Release No. 32802 (August 25, 1993), 58 FR 45932 (August 31, 1993). In its order approving this change and a related change in the composition of arbitration panels to hear employment disputes, the Commission recognized that claims based on allegations of age, sex, or race discrimination, or relating to sexual harassment, were subject to the arbitration requirement.

[9] 500 U.S. 20 (1991). Those challenges included contentions that anti-discrimination laws are designed to further important social policies that should be addressed in a public forum, that arbitration panels may be biased, that discovery is more limited in arbitration than in court, that arbitrators often do not issue written opinions, that arbitration procedures do not provide for broad equitable relief and class actions, and that there is unequal bargaining power between employers and employees. The Court noted that most of these contentions were generalized attacks on arbitration that had been rejected in prior Supreme Court decisions. *Id.* at 30.

[10] *Id.* at 35. The Court cited its earlier holding that, ''So long as the prospective litigant effectively may vindicate [his or her] statutory cause of action in the arbitral forum, the statute will continue to serve both its remedial and deterrent function.'' 500 U.S. at 28, quoting *Mitsubishi Motors Corp.* v. *Soler Chrysler-Plymouth, Inc.,* 473 U.S. 614, 637 (1985).

[11] The U.S. Court of Appeals for the Ninth Circuit has held that a registered person's waiver of the right to adjudication in court through signing of the Form U–4 must be ''knowing'' in order for the arbitration requirement to be enforced. *Prudential Ins. Co. of Am.* v. *Lai,* 42 F.3d 1299, 1305 (9th Cir. 1994), *cert. denied,* 116 S. Ct. 61 (1995). *But see Prudential Ins. Co. of Am. Sales Prac. Litig.,* 924 F. Supp. 627, 642 (D.N.J. 1996) (''. . . *Lai* has been rather extensively criticized''), and cases cited therein.

[12] *See, e.g., Alford* v. *Dean Witter Reynolds, Inc.,* 939 F.2d 229 (5th Cir. 1991).

[13] *See, e.g., Austin* v. *Owens-Brockway Glass Container, Inc.,* 78 F.3d 875, 881 (4th Cir.), *cert. denied,* 117 S. Ct. 432 (1996).

[14] *See, e.g., Kaliden* v. *Shearson Lehman Hutton, Inc.,* 789 F. Supp. 179, 180 (W.D. Pa. 1991).

[15] *See, e.g., Metz* v. *Merrill Lynch Pierce, Fenner & Smith, Inc.,* 39 F.3d 1482, 1488 (10th Cir. 1994).

[16] *See, e.g.* Commission on Future of Worker-Management Relations (''Dunlop Commission''), *Report and Recommendations* 33 n.15 (1994); Equal Employment Opportunity Commission, *Policy Statement on Mandatory Binding Arbitration of Employment Discrimination Disputes as a Condition of Employment* n.2 (1997).

[17] The NASD formed the Arbitration Policy Task Force in September 1994 for the purposes of studying the securities arbitration process administered by the NASD and of making suggestions for reform. The Task Force, chaired by David S. Ruder, former Chairman of the Securities and Exchange Commission, delivered its Report to the NASD Board in January 1996.

[18] The Task Force directed its attention primarily to customer-member arbitration. *See* Task Force Report at 123.

which had been recommended elsewhere in the Report in the context of customer arbitration.[19] The NASD intends to implement many of the recommended enhancements to its arbitration forum in the next year.[20]

Controversy Surrounding the Issue

In the past year, there has been a great deal of activity and public discussion about the arbitration of employment discrimination disputes. In February of 1997, three members of Congress wrote to the SEC and questioned the authority of the NASD and other SROs to require arbitration of discrimination claims in employment disputes through an associated person's signing of the Form U–4.[21] Legislation was introduced this year in both the House and the Senate [22] that would prohibit employers and employees from entering into predispute arbitration agreements concerning claims of unlawful employment discrimination. Under the proposed legislation, the parties could agree, after a dispute arose, whether to resolve it by arbitration or to go to court.

The NASD has received letters on this subject from groups with differing points of view, such as the Securities Industry Association, the Equal Employment Opportunity Commission (''EEOC''), the National Women's Law Center, the Women's Legal Defense Fund, the American Civil Liberties Union, the National Employment Lawyers Association, the National Association of Investment Professionals, several members of Congress, and attorneys representing parties in employment disputes.

Recent NASD Actions

To gather a wide assortment of views on this issue, NASD staff met with various groups and individuals, including national and regional member firms, members of NASD Regulation District Committees, attorneys representing employees and attorneys representing employers in employment litigation, members of the Bar of the City of New York Labor and Employment Committee, and staff of the New York Stock Exchange. In general, the groups from or representing the securities industry believed the current practice is fair, and that it is more cost-effective for all parties than going to court. The groups representing employees were unanimous in believing that the NASD and other SROs should remove the requirement for registered persons to arbitrate employment discrimination disputes as a condition of registration in the industry.

Many persons meeting with NASD staff recommended that the SROs adopt the Due Process Protocol endorsed by the American Bar Association and various dispute resolution organizations. Some attendees expressed a willingness to work with the SROs in revising the process if arbitration of discrimination claims were made voluntary.

In May 1997, NASD Regulation formed an Advisory Committee to assist it in reaching a decision on the outstanding questions. The Advisory Committee consisted of six persons of varying and distinguished backgrounds. The Advisory Committee held a meeting in Washington, D.C. on June 16, 1997 and invited to speak representatives of civil rights organizations, the EEOC, general counsels of member firms, attorneys who represent employees, representatives of employee organizations, and attorneys who represent member firms. Afterward, the Advisory Committee spoke with neutral experts in the alternative dispute resolution field, and discussed the issues with NASD management and staff.

After consideration of all the views presented, and in light of the public perception that civil rights claims may present important legal issues better dealt with in a judicial setting, the NASD determined that the appropriate action was to remove the arbitration requirement for such claims, but to further improve the forum so that it is viewed by both registered employees and firms as the fairest and most efficient forum for resolving all employment disputes. In August 1997, proposals were presented to the NASD Regulation and NASD Boards, which authorized the proposed rule change.[23]

Details of the Proposed Rule Change

Paragraph (a) of the proposed rule adds a prefatory phrase indicating that the requirement to arbitrate employment disputes contains an exception, set forth in paragraph (b).

New paragraph (b) provides that claims alleging employment discrimination or sexual harassment in violation of a statute are not required to be arbitrated by NASD rules. This means that such claims may be filed in the appropriate court, if the employee chooses to do so and is not under a separate predispute obligation to arbitrate the dispute.[24] An employee also may agree to arbitrate after a dispute arises, and may choose to do so for a number of reasons.[25]

Paragraph (b) applies only to claims alleging employment discrimination or sexual harassment [26] in violation of a statute.[27] Paragraph (b) does not apply

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[19] The Task Force noted that employment arbitration, and in particular the issue of whether cases that raise statutory civil rights claims should remain subject to predispute arbitration agreements, is an area in which the law and commentary are rapidly evolving. Therefore, the Task Force recommended that the NASD closely monitor developments in employment arbitration and look to other sources in formulating future recommendations for the direction the NASD should pursue in this area. Task Force Report at 123 and n.164.

[20] The Task Force recommended certain changes that would enhance the NASD's ability to handle employment-related arbitrations, including expanded arbitrator education, greater disclosure to registered person, the inclusion of employment-related disputes in the early neutral evaluation pilot, and development of a list of documents that parties should produce during discovery for various kinds of employment-related claims. In addition, the Task Force felt that its other recommendations relating to early automatic document production, mediation, simplified arbitration, punitive damages, and list selection should apply to arbitration of employment-related disputes.

[21] Letter from Representatives Edward J. Markey, Anna G. Eshoo, and Jesse L. Jackson, Jr., to Arthur Levitt, Chairman, SEC (February 3, 1997). With regard to whether the mandatory arbitration requirement was within the scope of the NASD's authority, the Commission's response stated that sound arguments could be made on both sides of the issue. Letter from Chairman Levitt to Representative Markey (March 17, 1997). The Commission acknowledged that the NASD rule requiring registered persons to arbitrate employment disputes was approved by the Commission as being consistent with the Act, and that it would not be unreasonable to conclude that SROs do have the authority to mandate the arbitration of discrimination claims, provided that fair procedures are in place. The response also acknowledged the concerns of the Equal Employment Opportunity Commission, members of Congress, and others about the special role of civil rights legislation. The Commission concluded that, given the self-regulatory scheme of the Act, it would be premature for the Commission to take any action, and suggested that it would defer expressing any conclusions until the matter was sent to the Commission by the NASD in the form of a proposed rule change.

[22] H.R. 983 and S. 63, 105th Cong. (1997).

[23] The text of the proposed rule change was provided to the NASD Regulation Board at its meeting on September 22, 1997, and the NASD Board had an opportunity to review the final rule language at its meeting on October 9, 1997.

[24] The NASD takes no position regarding private agreements between employees and firms to arbitrate employment disputes.

[25] The Task Force Report observed that arbitration of employment related disputes offers advantages in terms of speed and cost, and that arbitration's essentially equitable approach to dispute resolution is fully capable of vindicating the important public rights expressed in anti-discrimination statutes. Task Force Report at 119. Therefore, the NASD expects that many employees will continue to file their discrimination claims in arbitration if the proposed rule becomes effective, and the NASD intends to make further enhancements to its arbitration forum to make it even more attractive to parties.

[26] Sexual harassment has been held to be a form of sex discrimination, and thus a violation of Title VII. *Meritor Savings Bank* versus *Vinson*, 477 U.S. 57, 64 (1986).

[27] the term ''statute'' is intended to be interpreted in its broad sense, as defined in *Black's Law Dictionary* 1410 (6th Ed. 1990): ''A formal written enactment of a legislative body, whether federal, state, city, or county.''

to causes of action created solely by judicial precedents.[28] Similarly, it does not apply to other causes of action under state or federal law, which remain subject to mandatory arbitration under paragraph (a).

Paragraph (c) of the proposed rule is former paragraph (b), which is unchanged except for the renumbering.

Effective Date and Related Issues

The NASD has requested that the proposed rule become effective one year from the date of Commission approval for several reasons. The NASD believes that a one year period from the date of Commission approval would permit employees and firms to determine what agreements they might wish to reach with regard to dispute resolution. During this period, the NASD will make related enhancements to the forum so that employees will have confidence that there are adequate procedures and safeguards of their rights in NASD arbitration. The NASD has formed an advisory working group to explore various options for the employment arbitration area, including additional due process standards, standard discovery lists, arbitrator list selection, and other related issues. It is expected that the working group will be able to provide advice to NASD management and the Boards during 1998. Such enhancements to the NASD's arbitration forum are expected to be the subject of future rule proposals.

In this connection, the NASD also plans to provide improved disclosure to employees of the effect of signing the Form U–4, their rights under the proposed rule, and the features of arbitration, so that they can make informed decisions.

Finally, the NASD intends to work with other regulators to consider expanded disclosure on the Form U–4 itself. Amendment to the Form U–4, an industry-wide form, requires the agreement of the SROs, the state regulatory authorities, and NASAA, as well as approval by the Commission. This process could take several months or longer.

2. Statutory Basis

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[29] in that the amendment will protect the public interest by allowing associated persons to choose whether to pursue their statutory claims of employment discrimination in court or in arbitration, and by improving parties' confidence in the arbitration process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–97–77 and should be submitted by January 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[28] Such judicially created causes of action might include, for example, claims alleging ''wrongful discharge'' without any accompanying claim of discrimination on account of age, sex, race, or other status protected by a specific law.

[29] 15 U.S.C. 78*o*-3.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39420; File No. SR–OCC–97–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving a Proposed Rule Change to Create a New Office of Management Vice Chairman and to Change the Title of Vice Chairman to Member Vice Chairman

December 10, 1997.

On May 9, 1997, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') and on May 12, 1997, amended [1] a proposed rule change (File No. SR–OCC–97–08) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[2] Notice of the proposal was published in the FEDERAL REGISTER on August 29, 1997.[3] On September 29, 1997, OCC filed a second amendment to the proposed rule change. No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

The proposal amends OCC's by-laws to create a new office of Management Vice Chairman and to change the title of Vice Chairman to Member Vice Chairman. The proposal amends Article IV, Section 1 to clarify that the existing Vice Chairman is elected by the Board of Directors from among OCC's Member Directors [4] and will be renamed the Member Vice Chairman. Article IV, Section 1 is also amended to create the position of Management Vice Chairman which will be elected at the discretion of the Board of Directors. The board will not be required to fill this position. Only OCC staff members will be eligible to serve as the Management Vice Chairman, and any person serving in

[1] The amendment was technical in nature and therefore did not require republication of notice of filing.

[2] 15 U.S.C. 78s(b)(1)(1988).

[3] Securities Exchange Act Release No. 38954 (August 23, 1997) 62 FR 45901.

[4] To distinguish the title of the current Vice Chairman from the staff position of Management Vice Chairman, the modifier ''Member'' has been added to the office's title. Conforming changes have also been made to several other sections of OCC's by-laws to reflect addition of the modifier ''Member'' to the office's title.

this office shall not be eligible to serve concurrently in any other OCC office.

Article IV, Section 7, paragraphs (a) and (b) are amended to provide for the duties and responsibilities of the Management Vice Chairman and to clarify the duties and responsibilities of the Member Vice Chairman. The duties of the Management Vice Chairman include assuming all of the Chairman's responsibilities in the absence or disability of the Chairman, including presiding over meetings of the Board of Directors and the shareholders.[5] The Member Vice Chairman presides at such meetings and assumes all of the Chairman's responsibilities only in the absence of the Chairman and Management Vice Chairman. The Member Vice Chairman remains the chair of any committee responsible for evaluating the performance of OCC or the compensation of OCC's officers.[6]

The proposal also amends Article III, Section 15 paragraphs (a), (b), and (e) to add the office of Management Vice Chairman to the list of officers who may be granted emergency powers to declare the existence of an emergency, call special meetings during such emergency, and who may be empowered to act on behalf of any other officer who is unable to fulfill any emergency powers granted to such officer. Accordingly, the Management Vice Chairman position adds another person to OCC's line of succession, which reduces the risk that OCC would be without qualified leadership. The proposals establish a clear line of succession. Article II, Section 4 is amended to add the office of the Management Vice Chairman to the list of officers who may direct the notice of meetings of shareholders. The purpose of this change is to ensure the managerial readiness of OCC in the event the Chairman is unavailable.

A technical correction to Article IV, Section 1 deletes the requirement that the Board of Directors elect a senior management officer of OCC to be in charge of each OCC office that is (i) responsible for 20% or more of the volume of exchange transactions cleared through OCC or (ii) located in the same city as an exchange on which 20% or more of the volume of the exchange's transactions are cleared through OCC. This requirement is no longer necessary due to advances in systems design.

Article IX, Section 1(a) is amended to add the office of the Management Vice Chairman to the list of officers who may, in conjunction with at least one director, access or withdraw securities owned by OCC from the appropriate safekeeping vault or account. Article IX, Section 11 is similarly amended to give the Management Vice Chairman the authority to sign OCC's share certificates.

Interpretations and Policies .03 to Article V, Section 1 is amended to add the office of the management vice Chairman to the list of officers authorized to approve or disapprove applications for clearing membership on a temporary basis. Interpretations and Policies .01 to Article V, Section 3 is similarly amended with respect to approvals and disapprovals of deadline extensions for satisfaction of the preconditions for qualification as a clearing member.

Interpretations and Policies .01 to Article VI, Section 17 is amended to include the Management Vice Chairman as one who may act on behalf of OCC in imposing exercise restrictions pursuant to Section 17(b).

In addition to the changes to OCC's by-laws, the proposal also makes several conforming changes to OCC rules. Spxeifically, Rule 305 paragraphs (a), (b), and (c) are amended to authorize the management vice chairman to impose restrictions on clearing members' transactions, positions, and activities. Interpretations and Policies .07 and .10 to Rule 305 are amended to include the Management Vice Chairman. Rule 309(d) is amended to enable the Management Vice Chairman to act pursuant to Rule 305(a) in the event a managing clearing member's net capital shall fall below a prescribed minimum level.

Certain Interpretations and Policies to Rules 601 and 602, and Rules 608, 609, and 609A, are amended to add the office of the Management Vice Chairman to the list of officers authorized to act pursuant to such rules in connection with members' margin positions, the withdrawal of margin, intra-day margin, and the waiver of margin.

Rules 801(e), 804, and 1905 are amended to authorize the Management Vice Chairman to permit clearing members to file, revoke, or modify eligible exercise notices and to require clearing members to file certain reports with respect to the allocation of exercises, including allocations of IP exercises.

Rule 913(d) is amended to permit the Management Vice Chairman to extend or postpone the deadline for the delivery of securities in the event that certain settlement arrangements are revoked. Rule 1312 is amended to authorize the Management Vice Chairman to determine whether good cause exists for any delay in delivery or payment for transactions in GNMA options by its clearing members. Rules 1411, 1512, 1610, 2110, and 2408 are similarly amended for such determinations regarding the settlement of transactions in treasury security options, certificate of deposit options, foreign currency options, cross-rate foreign currency options, and flexibily structured index options denominated in a foreign currency, respectively.

Rule 1104(b) and Rule 1106 paragraphs (d) and (e) are amended to authorize the Management Vice Chairman to take certain actions with respect to the suspension of a clearing member and the creation of a liquidating settlement account. These changes permit the Management Vice Chairman to determine whether it is in the best interest of OCC, its clearing members, or the general public to convert to cash a suspended clearing member's margin deposits and whether to close out such member's unsegregated long or short positions. If such margin is not converted to cash, or such long or short position is not closed out, the change to Rule 1106(e) permits the Management Vice Chairman to engage in hedging transactions to reduce the risk to OCC resulting from such decisions.

II. Discussion

Section 17A(b)(3)(A) requires that a clearing agency have the capacity to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible.[7] The Commission believes that the proposal is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the addition of the position of Management Vice Chairman should strengthen the line of succession in the absence or disability of the Chairman of the Board and should ease any transition from an existing Chairman of the Board to his or her successor. As a result, these changes should promote the efficiency of OCC's operations and therefore should support the goals of Section 17A of the Act.

[5] A conforming change is being made to Article IV, Section 9 to clarify that the office of the Management Vice Chairman shall be in the line of succession in the absence of the Chairman.

[6] As proposed, the rule change would have also included a conforming amendment to Article IV, Section 8 that would have added the Member Vice Chairman to the line of succession in the event of the absence or disability of the Chairman. This proposed change would have additionally clarified that the President's duty to act in the place of the Chairman would arise only in the absence of the Chairman, the Management Vice Chairman, and the Member Vice Chairman. In accordance with OCC's second amendment, Article IV, Section 8 will not be amended.

[7] 15 U.S.C. 78q–1(b)(3)(A).

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–97–08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32827 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–39419; File No. SR–Phlx 97–56]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to Margin and Net Capital Requirements for Joint Back Office Arrangements

December 10, 1997.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on November 7, 1997, the Philadelphia Stock Exchange, Inc. (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On November 24, 1997, the Exchange filed with the Commission Amendment No. 1 to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend Exchange Rules 703 and 722 to establish margin and net capital requirements for Joint Back Office (''JBO'') participants and clearing firms.

The text of the proposed rule change is available at the office of the Secretary, the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to revise Exchange Rules 703 and 722 to establish margin and net capital requirements for JBO participants and clearing firms. JBO arrangements permit a participating broker-dealer to be deemed self-clearing for margin purposes and entitle the participating broker-dealer to good faith credit.[3]

In recent amendments to Regulation T,[4] the Board of Governors of the Federal Reserve System (''FRB'') placed its reliance on the authority of self-regulatory organizations (''SROs'') to ensure the reasonableness of JBO arrangements.[5] When the provision permitting JBO arrangements was first adopted, the FRB assumed there would be a reasonable relationship between the good faith credit extended to a JBO participant and its ownership interest in the clearing firm. Consequently, the FRB did not establish any explicit requirement for the amount of ownership each participant should have in the JBO. Because Regulation T does not provide an ownership standards,[6] however, good faith credit has been extended to ''owners'' holding merely a nominal interest in a clearing firm.

In conjunction with other SROs and representatives from the securities industry, the Exchange has established standards for JBO participants and clearing firms. These standards will permit the extension of good faith credit to clearing firm ''owners'' only when the owners maintain meaningful assets on deposit with the JOB clearing firm, and the clearing firm maintains sufficient net capital and risk control procedures to carry such accounts. The Exchange's proposed rule change would establish the following requirements:

Net Capital Requirements. As proposed, Exchange Rule 703 will require each JBO participant[7] to be a registered broker-dealer subject to the net capital requirements prescribed by Commission Rule 15c3–1 (''Rule 15c3–1).[8] JBO participants may not claim the net capital exemption available to option market makers under Commission Rule 15c3–1(b)(1).[9] JBO participants will be required to deposit and maintain minimum account equity of $1,000,000, and also will be subject to Financial and Operational Combined Uniform Single Report (''FOCUS'') filings and certified audits. In addition, each JBO participant must meet and maintain the ownership standards established by the JBO clearing member. To ensure that adequate procedures exist for complying with these requirements, JBO participants will be required to employ or have access to a qualified Series 27 principal.

In addition, the proposed rule change will require a clearing member carrying JBO accounts to notify its Designated Examining Authority in writing of its intention to clear such accounts and will require the clearing member to comply with additional net capital requirements prescribed by the Exchange. Such a clearing member must maintain either: (i) tentative net capital of $25 million;[10] or (ii) net capital of $10 million, if the clearing member's primary business is the clearance of option market maker accounts. A clearing member will be deemed to conduct a primary options market maker business if at least 60% of the

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[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] Amendment No. 1 modified the proposed rule change to require Joint Back Office clearing members to develop risk analysis standards which are acceptable to the Exchange. *See* Letter from Michele R. Weisbaum, Vice President and Associate General Counsel, Exchange, to Michael L. Loftus, Attorney, Division of Market Regulation, Commission, dated November 21, 1997.

[3] Under the proposed rule change, JBO participants would not be considered self-clearing for any purpose other than the extension of credit under Exchange Rule 722, as revised, or under the comparable rules of another self-regulatory organization.

[4] 12 CFR 220 *et seq.* Regulation T is entitled ''Credit by Brokers, and Dealers.'' The Board of Governors of the Federal Reserve System issued Regulation T pursuant to the Act.

[5] *See* Board of Goverors of the Federal Reserve System Docket No. R–0772 (Apr. 26, 1996), 61 FR 20386 (May 6, 1996).

[6] Section 220.11(a)(2) of Regulation T only requires that a JBO clearing firm be ''a clearing and servicing broker or dealer owned jointly or individually by other [broker-dealers].'' 12 CFR 220.11(a)(2).

[7] The proposed rule change allows member organizations and foreign currency option participant organizations to establish JBO arrangements with JBO clearing members.

[8] 17 CFR 240.15c3–1.

[9] 17 CFR 240.15c3–1(b)(1).

[10] The term ''tentative net capital'' refers to a clearing member's net capital before the application of haircuts and undue concentration deductions.

gross haircuts calculated for all options market maker and JBO participant accounts, in aggregate, is attributable to options market maker transactions. A JBO clearing firm conducting a primary options market maker business must include the gross deductions calculated for all JBO participant accounts in its ration of gross options market maker deductions to adjusted net capital.

Further, each JBO clearing member shall adjust its net worth daily by deducting any deficiency between a JBO participant's account equity and the proprietary haircut calculated pursuant to Rule 15c3–1 for the positions maintained in the JBO account. As previously referenced, each clearing member which maintains JBO accounts must require and maintain equity of $1,000,000 for each JBO participant, over all related funds. The clearing member is required to issue a margin call if the JBO participant's account equity falls below the $1,000,000 threshold. Finally, each JBO clearing member will be required to establish and maintain written ownership standards for JBO accounts.[11] The clearing member also must develop risk analysis standards which are acceptable to the Exchange.

Margin Requirements. The Exchange proposes to revise Exchange Rule 722, Margin Accounts, to permit a member organization to carry the accounts of JBO participants on a good faith margin basis. The JBO accounts must comply with the requirements established in Regulation T, Section 220.11,[12] and Exchange Rule 703, as modified above. JBO participants must maintain equity of at least $1,000,000 in their accounts. If the equity falls below $1,000,000, the JBO clearing firm must issue a margin call for additional funds or securities which must be satisfied within 5 business days.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act,[13] in general, and with Section 6(b)(5),[14] in particular, in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and to protect investors and the public interest. The Exchange further believes that the proposed rule change is designed to ensure the reasonableness of JBO arrangements in accordance with the FRB's directive in its recent amendments to Regulation T.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange did not solicit or receive written comments with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–97–56 and should be submitted by January 7, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 97–32824 Filed 12–16–97; 8:45 am]

BILLING CODE 8010–01–M

[11] The Exchange will not require JBO clearing members to establish ownership standards that meet any minimum guidelines in addition to the rules of the Exchange. As a result, clearing members will possess the discretion to develop the ownership criteria governing their JBO accounts. However, should the Exchange learn of any inappropriate ownership standards through its audit and surveillance activities, the Exchange will move to correct the impropriety. Telephone conversation between Michele R. Weisbaum, Vice President and Associate General Counsel, Exchange, and Michael L. Loftus, Attorney, Division of Market Regulation, Commission (November 26, 1997).

[12] 12 CFR 220.11.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Greater Washington Investments, Inc.; Notice of Surrender of License

Notice is hereby given that Unco Ventures, Ltd. (Unco), 520 Post Oak Blvd., Suite 130, Houston, TX 77027–9405, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Unco was licensed by the Small Business Administration on September 30, 1988.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was acted on this date, and accordingly, all rights, privileges and franchises derived therefrom have been terminated

(Catalog of Federal Domestic Assistance Program No. 59.11, SmallBusiness Investment Companies)

Dated: December 8, 1997.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 97–32816 Filed 12–16–97; 8:45 am]

BILLING CODE 8025–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Modification of the Tariff-Rate Import Quota for Certain Cheeses From Hungary

AGENCY: Office of the United States Trade Representative.

ACTION: Modification of the Harmonized Tariff Schedule of the United States.

SUMMARY: This document modifies Additional U.S. Notes 21 and 25 to

Chapter 4 of the Harmonized Tariff Schedule of the United States (HTS) to delete the tariff-rate quota (TRQ) allocation of 400,000 kilograms to Hungary for Italian-type cheese and to increase TRQ allocation to Hungary for Swiss or Emmenthaler cheese to 800,000 kilograms.

EFFECTIVE DATE: This modification is effective on January 1, 1998.

FOR FURTHER INFORMATION CONTACT: Suzanne Early, Senior Policy Advisor, Office of the United States Trade Representatives, 600 17th Street NW, Washington, D.C. 20508; telephone (202) 395–6127.

SUPPLEMENTARY INFORMATION: On May 4, 1993, the United States and Hungary signed a Memorandum of Understanding on the Results of Uruguay Round Negotiations on Agriculture. In this Memorandum, the United States agrees on a one-time basis to reallocate Hungary's TRQ allocations among cheese categories, provided Hungary's request was received by the United States prior to the fourth year of the TRQ implementation period (1998).

Beginning on January 1, 1995, and each year thereafter, Hungary is allocated: (1) 400,000 kilograms of the TRQ for Italian-Type cheeses under Additional U.S. Note 21 of Chapter 4 of the HTS; and (2) 400,000 kilograms of the TRQ for Swiss or Emmenthaler cheese under Additional U.S. Note 25 of Chapter 4 of the HTS. On December 12, 1996 the Government of Hungary requested that its entire 800,000 kilograms of cheese allocation be shifted to the TRQ Swiss or Emmenthaler cheese. The Government of Hungary was advised at that time that reallocation requires several administrative procedures which could not be implemented before 1998.

Section 404(d)(3) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3601(d)(3)) authorizes the President to allocate in-quota quantities of a TRQ for any agricultural product among countries or customs areas and to modify an allocation as the President determines appropriate. Section 604 of the Trade Act of 1974, as amended (''Trade Act'') (19 U.S.C. 2483) authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that Act, and other acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

In paragraph (3) of Proclamation 6763 of December 23, 1994, the President delegated his authority under section 404(d)(3) of the URAA to the United States Trade Representative (USTR). In paragraph 5 of Proclamation 6914 of August 26, 1996, the President determined that it is appropriate to authorize the USTR to exercise his authority under section 604 of the Trade Act to embody in the HTS the substance of any action taken by USTR under section 404(d)(3) of the URAA.

Modification of the HTS

Pursuant to the above authority, the USTR has determined that it is appropriate to modify the TRQ allocations of Hungary and to embody such modifications in the HTS. Effective with respect to articles entered, or withdrawn from warehouse for consumption, on or after January 1, 1998: (1) Additional U.S. note 21 to chapter 4 of the HTS is modified by deleting ''Hungary 400,000'' from the list of countries and quantities in such note; and (2) addditional U.S. note 25 to Chapter 4 of the HTS is modified by deleting the quantity ''400,000'' set out opposite Hungary and by inserting the quantity ''800,000'' in lieu thereof.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 97–32960 Filed 12–16–97; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee; Training and Qualifications Issues—Revised Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of revised task assignments for the Aviation Rulemaking Advisory Committee (ARAC).

SUMMARY: Notice is given of revised tasks assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Tom Toula, Federal Aviation Administration, Flight Standards Service, AFS–210, 800 Independence Avenue, SW., Washington, DC 20591; phone (202) 267–3729; fax (202) 267–5229.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize its Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

One area ARAC deals with is training and qualifications issues. These issues involve training and qualification of air carrier crewmembers and other air transport employees.

The Tasks

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendation on the following revised harmonization tasks. The original tasks were published in the **Federal Register** on November 3, 1997 (62 FR 59382).

Task 1. Determine the benefits of licensing harmonization.

Task 2. Define criteria for Federal Aviation Administration (FAA) conversion of Joint Aviation Authorities (JAA) issued licenses, and for JAA conversion of FAA issued licenses. Consider only the Airline Transport Pilot (ATP) license, except where that license might convert to only a Commercial pilot license.

Task 3. Develop a recommendation, with justification, on whether the product (i.e., a specific level of license or certificate) should be harmonized, or the process (i.e., the curriculum, prerequisite experience, length of training, etc.) should be harmonized.

(a) If recommending that the product should be harmonized, develop a matrix of essential requirements for the FAA and JAA to impose on license holders of the other in order to convert licenses.

(b) If recommending that the process should be harmonized, develop a matrix of specific differences and how those differences should be equalized.

(c) Make specific recommendations about which FAA regulations or Joint Aviation Requirements should be changed to achieve the recommended actions. Any recommendations requiring changes to Title 14 of Code of Federal Regulations must be forwarded to the FAA for consideration of rulemaking priority, resource allocation, and additional tasking to ARAC to develop rulemaking, as appropriate.

Task 4. Review the current standards of 14 CFR sections 61.75 and 61.77 as part of the overall task. In light of this review, recommend appropriate guidance material that could later be incorporated into advisory material or an appendix to 14 CFR part 61 that

contains the criteria developed in task 3 (a) or (b) above.

The FAA expects ARAC to complete these tasks within 12 months and submit a report through ARAC to the FAA and to the JAA.

ARAC Acceptance of Tasks

ARAC has accepted the tasks and has chosen to establish a new Licensing Harmonization Working Group. The working group will serve as staff to ARAC to assist ARAC in the analysis of the assigned task. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepts the working group's recommendations, it forwards them to the FAA as ARAC recommendations.

Working Group Activity

As is the case with all harmonization working groups, meetings of the Licensing Harmonization Working Group will be held alternately between the United States and Europe. Tentatively, the next two meetings will be held in Washington, DC, in January 1998 and in Hoofddorp, The Netherlands, in February 1998.

The Licensing Harmonization Working Group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working group is expected to:

1. Recommend to ARAC a work plan for completion of the tasks, including the rationale supporting such a plan, for consideration at the meeting of ARAC to consider Training and Qualifications Issues held following publication of this notice.

2. Give a detailed conceptual presentation to ARAC of the proposed recommendations, prior to proceeding with the work stated in item 3 below.

3. Provide a status report at each meeting of ARAC held to consider Training and Qualifications Issues.

Participation in the Working Group

The Licensing Harmonization Working Group is composed of experts having an interest in the assigned task. A working group member need not be a representative of a member of the full committee.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the Licensing Harmonization Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on December 12, 1997.

Thomas K. Toula,

Assistant Executive Director for Training and Qualifications Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 97–32883 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. 97–3199]

Notice of Request for Extension of Currently Approved Information Collection; Nationwide Survey of Public Roads Readers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the requirement in section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, this notice announces the intention of the FHWA to request the Office of Management and Budget (OMB) to renew the information collection that measures the manner and extent to which the FHWA's magazine, Public Roads, is achieving its objectives and meeting the needs of its readers/customers.

DATES: Comments must be submitted on or before February 17, 1998.

ADDRESSES: All signed, written comments should refer to the docket number that appears in the heading of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 10:00 a.m. and 5:00 p.m., E.T., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

Interested parties are invited to send comments regarding any aspect of this information collection, including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information. Comments submitted in response to this notice will be summarized and/or included in the request for OMB renewal of this information collection.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Barsanti, Office of Research and Development, Federal Highway Administration, U.S. Department of Transportation, 6300 Georgetown Pike, McLean, VA 22101–2296, (703) 285–2102 or (703) 285–2443. Office hours are from 7:30 a.m. to 4:00 p.m., E.T., Monday thru Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Nationwide Survey of *Public Roads* Readers.

OMB Number: 2125–0562.

Background: This study is pursuant to President Clinton's Executive Order 12862, which requires all agencies to identify their customers, survey their satisfaction with current services, set standards for service and measure results against them. In addition, a nationwide census of readers was conducted in 1995 to gauge the overall satisfaction of readers and to measure, in particular, reader satisfaction with significant changes that had been made in the magazine's design and content, subject scope, and audience. Now, it is time to survey a sample of the readership and compare the results to the benchmark established in 1995. Also, the results of this survey will form the basis of a major, direct-mail campaign to increase the number of paid subscribers.

Respondents: Paid and complementary subscribers to *Public Roads* magazine.

Average Burden Per Response: The average burden per response is 0.25 hours.

Estimated Total Annual Burden: The estimated total annual burden is 375 hours.

Frequency: FHWA intends to use biennial followup surveys, starting in 1998, to track any changes in the baseline data collected in 1995, as well as to measure satisfaction with resulting improvements in the product and services.

Authority: Presidential Executive Order 12862.

Issued on: December 10, 1997.

George Moore,

Associate Administrator for Administration.

[FR Doc. 97–32959 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Buchanan, Dickenson, and Wise Counties, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that a draft environmental impact statement will be prepared for a proposed transportation corridor between Route 23 in Pound, Virginia and the West Virginia State Line, including the Virginia Counties of Buchanan, Dickenson, and Wise.

FOR FURTHER INFORMATION CONTACT: Bruce Turner, Planning and Environment Program Manager, Federal Highway Administration, The Dale Building, Suite 205, 1504 Santa Rosa Road, Richmond, Virginia 23229, Telephone 804–281–5111.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an Environment Impact Statement (EIS) on a proposed highway from Route 23 in Pound, Virginia to the West Virginia State Line. The National Highway System Designation Act of 1995 extended the Coalfields Expressway from West Virginia into Virginia and defined the roadway as going to Pound, Virginia generally following State route 83 through Buchanan, Dickenson and Wise Counties. The proposed project involves a location study for the Coalfields Expressway in Virginia. The corridor will be developed as a two lane facility on an ultimate four lane design. Improvements could involve existing Route 83, a new highway on new location, or a combination of both. Access control will also be developed as part of this study.

Alternatives under consideration include: (1) taking no action (no build); (2) transportation system management (improvement to the existing roadway network); (3) mass transit; and (4) various build alternatives on both new location and combinations of existing and new location. The build alternatives will incorporate variations of vertical and horizontal grade alignments.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, private organizations, and citizens who have previously expressed or are known to have an interest in this proposal. The scoping process is anticipated to begin in Fall of 1997. A series of public informational meetings and a public hearing will be held in the near future. Public notice will be given indicating the time and place of the meetings and hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the Draft EIS should be directed to the FHWA at the address provided above.

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

Issued on: December 5, 1997.

Bruce Turner,

Planning and Environment Program Manager, Richmond, Virginia.

[FR Doc. 97–32860 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Roanoke, Franklin and Henry Counties, Virginia

AGENCY: Federal Highway Administration (FHWA).

ACTION: Notice of Intent.

SUMMARY: The Federal Highway Administration (FHWA) is issuing this notice to advise the public that a draft environmental impact statement will be prepared for a proposed highway project in the counties of Roanoke, Franklin and Henry in Virginia.

FOR FURTHER INFORMATION CONTACT: Bruce Turner, Planning and Environment Program Manager, Federal Highway Administration, The Dale Building, Suite 205, 1504 Santa Rosa Road, Richmond, Virginia 23229, Telephone 804–281–5111.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), will prepare an Environment Impact Statement (EIS) to identify a location for a future Interstate (I–73) in Roanoke, Franklin and Henry counties, Virginia. The project would involve the location an construction of a new four-lane interstate facility, interchanges, and redesign and construction of local access roads and roadway systems between Roanoke, Virginia to a point south of Martinsville, Virginia in the vicinity of the Virginia/North Carolina border for a total distance of approximately 70 miles.

Improvements to the corridor are considered necessary to provide for existing and future traffic demand, to reduce accidents and improve safety in the existing U.S. Route 220 corridor, and to provide a portion of new interstate in accordance with the Intermodal Surface Transportation Efficiency Act (ISTEA) passed by the United States Congress in 1991. ISTEA identified I–73 as a highway corridor of national significance and directed the corridor be included on the National Highway System. Congress defined I–73 as a north-south corridor from Charleston, South Carolina to Detroit, Michigan that would pass through Winston-Salem, North Carolina, Portsmouth, Ohio, and Cincinnati, Ohio. Also included in the this proposal is the redesign and reconstruction of affected service roads and local access, including the identification of potential interchange locations along the corridor. Alternatives under consideration include: (1) taking no action (no build); (2) transportation system management (improvement to the existing roadway network) and/or intelligent transportation system methods and techniques; (3) widening the existing U.S. 220 highway to a four-lane, limited access highway; and (4) construction of a new four-lane, limited access highway on new location.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, private organizations, and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings will be held between now and December 1999. In addition, public hearings will be held. Public notices will be given of the time and place of the meetings and hearings. The draft EIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning the proposed action and the draft EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning

and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed action.)

Issued On: December 8, 1997.

Edward S. Sundra,

Environmental/Air Quality Engineer, Richmond, Virginia.

[FR Doc. 97–32861 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS–AP)—No. 3438

Applicant: CSX Transportation, Incorporated, Mr. R. M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the traffic control system, on the two main tracks, near East Garrett, Indiana, milepost BI–126.1, Garrett Subdivision, Chicago Service Lane, consisting of the discontinuance and removal of controlled signals A34E, B34E, C34E, A34W, and B34W, the discontinuance and removal of the power-operated right turnout on Main Track No. 1, and conversion of the power-operated crossover between Main Tracks No. 1 and 2 to electrically locked hand operation.

The reason given for the proposed changes is the installation of a third main track.

BS—AP–No. 3439

Applicants: SOO Line Railroad Company, Mr. Roscoe VanPelt, District Coordinator Signals & Communications, Canadian Pacific Railway, 105 South 5th Street, Box 530, Minneapolis, Minnesota 55440.

Burlington Northern Santa Fe, Mr. D. G. Boll, Assistant Vice President Signal Engineering, 1900 Continental Plaza, 777 Main Street, Fort Worth, Texas 76102–5384.

Wisconsin Central Limited, Mr. John R. Lamz, Chief Engineer Communications & Signals, P.O. Box 96, Stevens Point, Wisconsin 54481.

The SOO Line Railroad Company (SOO), Burlington Northern Santa Fe (BNSF), and Wisconsin Central Limited, jointly seek approval of the proposed discontinuance and removal of the smash boards from the home signals, at Bald Eagle Interlocking, milepost 18.11, Bald Eagle, Minnesota, where the SOO single main track crosses at grade the BNSF single main track, on the SOO's Paynesville Subdivision, including installation of a FPC monitor.

The reason given for the proposed changes is to reduce maintenance associated with smash boards.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 45 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on December 10, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 97–32910 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Block Signal Application (BS–AP)–No. 3440

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Wellton, milepost 770.8 and Arlington, milepost 861.6, Arizona, on the Gila Subdivision, Phoenix Line, former Southern Pacific Lines, a distance of approximately 91 miles. The proposed changes include removal of signals; switch point, and fouling protection; conversion of Signals 7719 and 8608 to inoperative D signals; conversion of Signals 40RA and 38RB at Wellington to red-lunar aspects; and conversion of Signal 8617 at Arlington to a lunar aspect.

The reason given for the proposed changes is that this portion of the Phoenix Line has been shut down for a period of time and does not have any more rail traffic; the trackage will no longer be a main track, but will be used as a storage track.

BS–AP–No. 3441

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Port Chicago, milepost 40.9 and Tracy, milepost 78.7, California, on the Martinez Subdivision, Mococo Line, former Southern Pacific Lines, a distance of approximately 38 miles. The proposed changes include removal of signals, switch point, and fouling protection; conversion of Signal 433 to an operative D signal; conversion of Signal FA at Port Chicago to red-green aspect; and designation of the trackage to DTC operations.

The reason given for the proposed changes is that this portion of the Mococo Line does not have rail traffic to warrant the signal system.

BS–AP–No. 3442

Applicant: Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge

Street, Room 1000, Omaha, Nebraska 68179–1000.

The Union Pacific Railroad Company seeks approval of the proposed discontinuance and removal of the rail locks and associated power-operated switch machines, on the Barge Canal Bridge, milepost 216.1, near Bloomington, Texas, on the Brownsville Subdivision.

The reason given for the proposed changes is to modernize the operation of the Barge Canal Bridge.

BS–AP–No. 3443

Applicants:

Arkansas and Missouri Railroad, Mr. G. B. McCready, Vice President and General Manager, 306 East Emma, Springdale, Arkansas 72764

Union Pacific Railroad Company, Mr. P.M. Abaray, Chief Engineer-Signals/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000

The Arkansas and Missouri Railroad and Union Pacific Railroad Company jointly seek approval of the proposed discontinuance and removal of the traffic control system on the single main track, from the Arkansas River Bridge, milepost 410.6 to North Fort Smith, Arkansas, milepost 412.1, First Subdivision. The proposed changes include the discontinuance and removal of the North Fort Smith Control Point and the three controlled signals, conversion of the power-operated switch to hand operation, installation of an approach signal near milepost 411.3, and conversion of the remotely controlled lift span bridge to local control utilizing radio signals to activate the automatic bridge lowering sequence.

The reason given for the proposed changes is that the current traffic levels do not warrant the complexity, expense, and occasional delays of the existing CTC system controlled by the BNSF dispatcher in Ft. Worth, Texas.

BS–AP–No. 3444

Applicant: CSX Transportation, Incorporated, Mr. R.M. Kadlick, Chief Engineer Train Control, 500 Water Street (S/C J–350), Jacksonville, Florida 32202.

CSX Transportation, Incorporated seeks approval of the proposed modification of the signal system, on the single main track, near Harpers Ferry, West Virginia, Shenandoah Subdivision, Baltimore Service Lane, consisting of the replacement of Automatic Block Signal System Rules 243–247, between milepost BAD–1.0 and milepost BAD–0.0, with Yard Limit Rule 93, and conversion of the 5R automatic block signal to an inoperative approach signal.

The reason given for the proposed changes is to enhance switching operations and increase efficiency.

BS–AP–No. 3445

Applicant: Buffalo and Pittsburgh Railroad, Incorporated, Mr. David C. Baer, Chief Engineer, 201 North Penn Street, Punxsutawney, Pennsylvania 15767.

The Buffalo and Pittsburgh Railroad, Incorporated seeks approval of the proposed discontinuance and removal of the traffic control and automatic block signal system, on the main tracks, between Ashford Junction, New York, milepost 43.3 and Riker, Pennsylvania, milepost 223.5, on the Main Line Subdivision, a distance of approximately 180.2 miles, consisting of the removal of all governing signals, 16 power-operated switches, and 3 electric switch locks within the above milepost limits.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, S.W., Mail Stop 25, Washington, D.C. 20590 within 45 calendar days of the date of publication of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, D.C. on December 10, 1997.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 97–32909 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–97–3221]

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 17, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas M.P. Christensen of the Office of National Security Plans, Maritime Administration, MAR–720, Room P1–1303, 400 Seventh Street, S.W., Washington, D.C. 20590. Telephone 202–366–5900 or FAX 202–488–0941. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Voluntary Tanker Agreement.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0505.

Form Number: NONE.

Expiration Date of Approval: September 30, 1998.

Summary of Collection of Information: The collection consists of a request from MARAD that each participant in the Voluntary Tanker Agreement submit a list of the names of ships owned, chartered, or contracted for by the participant, and their size and flags of registry. There is no prescribed format for this information.

Need and Use of the Information: The collected information is necessary to evaluate tanker capability and make plans for the use of this capability to meet national emergency requirements. This information will be used by both MARAD and Department of Defense to establish overall contingency plans.

Description of Respondents: The respondents are tanker companies that operate in international trade and who have agreed to participate in the Voluntary Tanker Agreement.

Annual Responses: 20.

Annual Burden: One hour for each respondent.

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.

Dated: December 12, 1997.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary.

[FR Doc. 97–32940 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting Agenda

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice provides the agenda for a public meeting at which the National Highway Traffic Safety Administration (NHTSA) will describe and discuss specific research and development projects.

DATES AND TIMES: As previously announced, NHTSA will hold a public meeting devoted primarily to presentations of specific research and development projects on December 17, 1997, beginning at 1:30 p.m. and ending at approximately 5:00 p.m.

ADDRESSES: The meeting will be held at the Clarion Inn, Detroit Metro Airport, 9191 Wickham Road, Romulus, Michigan.

SUPPLEMENTARY INFORMATION: This notice provides the agenda for the nineteenth in a series of public meetings to provide detailed information about NHTSA's research and development programs. This meeting will be held on December 17, 1997. The meeting was announced on December 3, 1997 (62 FR 64041). For additional information about the meeting, consult that announcement.

Starting at 1:30 p.m. and concluding by 5:00 p.m., NHTSA's Office of Research and Development will discuss the following topics:

Research and Development Update;
Crash Injury Research and Engineering Network;
General Motors Settlement Briefing, Fire Safety Research;
Update on Crashworthiness Research Activities Including Upgraded Side Crash Protection, Improved Frontal Crash Protection, and Restraint Systems for Rollover Protection;
Benefits Analysis of the Inflatable Tubular Structure; and
Update of Research on Family of Dummies.

NHTSA has based its decisions about the agenda, in part, on the suggestions it received in response to the announcement published December 3, 1997.

As announced on December 3, 1997, in the time remaining at the conclusion of the presentations, NHTSA will provide answers to questions on its research and development programs, where those questions have been submitted in writing to Raymond P. Owings, Ph.D., Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590. Fax number: 202–366–5930.

FOR FURTHER INFORMATION CONTACT: Rita I. Gibbons, Staff Assistant, Office of Research and Development, 400 Seventh Street, S.W., Washington, DC 20590. Telephone: 202–366–4862. Fax number: 202–366–5930.

Issued: December 11, 1997.

Raymond P. Owings,

Associate Administrator for Research and Development.

[FR Doc. 97–32958 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–97–3154]

Cooper Tire & Rubber Company; Receipt of Application for Decision of Inconsequential Noncompliance

Cooper Tire & Rubber Company (Cooper) of Findlay, Ohio has determined that some of its tires fail to comply with the labeling requirements of 49 CFR Part 574 ''Tire Identification and Recordkeeping,'' and has filed an appropriate report pursuant to 49 CFR Part 573, ''Defect and Noncompliance Reports.'' Cooper has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—''Motor Vehicle Safety'' on the basis that the noncompliance is inconsequential to motor vehicle safety.

Although the applicant expresses noncompliance with Part 574, NHTSA considers this to be a noncompliance with Federal Motor Vehicle Safety Standard (FMVSS) No. 119, New pneumatic tires for vehicles other than passenger cars. Paragraph S6.5(b) of FMVSS No. 119 requires each tire to be marked with a ''tire identification number'' required by Part 574 of this chapter. If a tire lacks this number, it fails to comply with FMVSS No. 119 and is subject to notification and remedy.

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the application.

In § 574.5(d) Fourth Grouping—The manufacturer is required to identify the week and year of manufacture using three symbols. The first two symbols identify the week of the year using ''01'' for the first full calendar week in each year. The third symbol identifies the year. The purpose of this information is to facilitate the notification of purchasers regarding defective or non-conforming tires, pursuant to Sections 30118 and 30119 of Title 49, United States Codes, so that the appropriate action can be taken in the interest of public safety—such as, a safety recall notice.

During the thirty-second production week of 1997, Cooper produced and inadvertently shipped twenty-eight (28) tires without the date code. This occurred after the tires originally were labeled with the correct date code upside-down; Cooper removed the improperly oriented date code by buffing. The tires were then inadvertently shipped with only the identification of ''DOT UPOP''—where ''UP'' is the identification code for Cooper's Findlay plant and ''OP'' is the identification of the tire size. The subject tires are Cooper SRM Radial LT 215/85R16, Load Range D.

Cooper supports its application for inconsequential noncompliance with the following:

''The incomplete DOT identification code on each tire does not present a safety-related defect.''

''The involved tires are capable of being registered with UPOP. They have a unique DOT identification with would permit Cooper to notify the purchasers of these tires, if properly registered, should they be recalled for other reasons.''

''The involved tires produced from this mold during the aforementioned production period comply with all other requirements of 49 CFR 571.119 and 574.5.''

Interested persons are invited to submit written data, views, and arguments on the application of Cooper described above. Comments should refer to the docket number and be submitted to: U.S. Department of Transportation, Docket Management, Room Pub. L. 401, 400 Seventh Street, S.W., Washington, D.C., 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the application is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: January 16, 1998.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 11, 1997.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 97–32882 Filed 12–16–97; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB ex Parte No. 558 (Sub–No. 1)]

Railroad Cost of Capital—1997

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of decision instituting a proceeding to determine the railroads' 1997 cost of capital.

SUMMARY: The Board is instituting a proceeding to determine the railroad industry's cost of capital for 1997. The decision solicits comments on: (1) the railroads' 1997 cost of debt capital; (2) the railroads' 1997 current cost of preferred stock equity capital; (3) the railroads' 1997 cost of common stock equity capital; and (4) the 1997 capital structure mix of the railroad industry on a market value basis.

DATES: Notices of intent to participate are due no later than December 30, 1997. A service list will then be prepared and issued by January 14, 1998. Statements of the railroads are due by March 20, 1998. Statements of other interested persons are due by April 10, 1998. Rebuttal statements by the railroads are due by April 24, 1998.

ADDRESSES: Send an original and 10 copies of statements and a copy of the statement on a 3.5 inch disk in WordPerfect 6.1, and an original and 1 copy of the notice of intent to participate to: Surface Transportation Board, Office of the Secretary, Case Control Branch, 1925 K Street, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Leonard J. Blistein, (202) 565–1529. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Surface Transportation Board, 1925 K Street, N.W., Room 700, Washington, DC 20423. Telephone: (202) 565–1650. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.] A copy of the decision can also be obtained from the Board's internet site (www.stb.dot.gov).

We preliminarily conclude that the proposed action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Authority: 49 U.S.C. 10704(a).

Decided: December 5, 1997.

By the Board, Chairman Morgan and Vice Chairman Owen.

Vernon A. Williams,

Secretary.

[FR Doc. 97–32778 Filed 12–16–97; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 97–99]

Customs Approval of V.I.P Cargo Surveys Incorporated as a Commercial Gauger and Accredited Laboratory

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of approval and accreditation of V.I.P Cargo Survey, Inc. as a commercial gauger and accredited laboratory.

SUMMARY: V.I.P Cargo Surveys, Inc. of Aransas Pass, Texas, has applied to U.S. Customs to extend its approval to gauge petroleum and petroleum products and accreditation to perform petroleum analysis methods under Part 151.13 of the Customs Regulations (19 CAR 151.13) to their Texas City, Texas facility. Customs has determined that this office meets all of the requirements for approval as a commercial gauger. Additionally, Customs has determined that this facility meets all requirements for accreditation as a Commercial Laboratory to perform (1) API Gravity, (2) Water by Distillation, (3) Sediment by Extraction, (4) Saybolt Universal Viscosity, (5) Sediment and Water and (6) Distillation. Therefore, in accordance with Part 151.13(f) of the Customs Regulations, V.I.P Cargo Surveys, Inc., Texas City, Texas, is approved to gauge the products named above and to perform the analysis methods listed above in all Customs ports.

LOCATION: V.I.P Cargo Surveys Inc. approved and accredited site is located at: 1442 Texas Avenue, Texas City, Texas 77590.

EFFECTIVE DATE: November 20, 1997.

FOR FURTHER INFORMATION CONTACT: Ira S. Reese, Senior Science Officer, Laboratories and Scientific Services, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Room 5.5–B, Washington, D.C. 20229 at (202) 927–1060.

Dated: November 25, 1997.

George D. Heavey,

Director, Laboratories and Scientific Service.

[FR Doc. 97–32858 Filed 12–16–97; 8:45 am]

BILLING CODE 4820–02–P

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: The U.S. Advisory Commission on Public Diplomacy will meet on December 17 in Room 600, 301 4th Street, S.W., Washington, D.C., from 11:00 a.m. to 12:00 noon.

The Commission will meet with the Honorable Joseph Duffey, Director, U.S. Information Agency, and the Honorable Penn Kemble, Deputy Director, U.S. Information Agency, to discuss legislation, budget, and reorganization matters.

FOR FURTHER INFORMATION: Please call Betty Hayes, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: December 11, 1997.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 97–32814 Filed 12–16–97; 8:45 am]

BILLING CODE 8230–01–M

Corrections

Federal Register

Vol. 62, No. 242

Wednesday, December 17, 1997

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R-0960]

Truth in Lending

Correction

In rule document 97–31087 beginning on page 63441, in the issue of Monday, December 1, 1997, make the following correction:

Appendix H to Part 226 [Corrected]

On page 63445, in the table, in the Interest Rate column, in the eighth line, ''**12.41'' should read ''***12.41''.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 808

[Docket No. 97N–0222]

Medical Devices; Preemption of State Product Liability Claims

Correction

In proposed rule document 97–32551, beginning on page 65384, in the issue of Friday, December 12, 1997, make the following correction:

On page 65388, in the first column, under **VI. Reguest for Comments**, in the second line, ''*(insert date 60 days after date of publication in the* **Federal Register**)'' should read ''February 10, 1998''.

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4263–N–54]

Notice of Proposed Information Collection for Public Comment

Correction

In notice document 97–29961, appearing on page 61134, in the issue of Friday, November 14, 1997, in the first column, in the **DATES** section, ''January 13, 1997'' should read ''January 13, 1998''.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-AGL-36]

Modification of Class E Airspace; Coshocton, OH

Correction

In rule document 97–32348 appearing on page 65014, in the issue of Wednesday, December 10, 1997, make the following correction:

§ 71.1 [Corrected]

On page 65014, in the third column, under the heading, **AGL OH E5 Coshocton, OH [Revised]**, in the sixth line, ''4.9'' should read ''4.0''

BILLING CODE 1505-01-D

Federal Register

Wednesday
December 17, 1997

Part II

Environmental Protection Agency

40 CFR Part 441

Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Laundries Point Source Category; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 441

[FRL–5922–2]

RIN 2040–AB97

Effluent Limitations Guidelines and Pretreatment Standards for the Industrial Laundries Point Source Category

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would limit the discharge of pollutants into waters of the United States and publicly owned treatment works (POTWs) from existing and new industrial laundries by establishing pretreatment standards for existing and new sources (PSES and PSNS, respectively). These standards are based on a determination of the degree to which pollutants pass through or interfere with POTWs; the best available technology economically achievable for PSES; and best available demonstrated control technology for PSNS. EPA estimates the proposed rule would cost approximately $139.4 million ($1997 pretax total social cost) annually (posttax compliance costs to affected facilities would be $93.9 million annually) while it reduces the discharge of toxic and nonconventional pollutants to POTWs by approximately 13 million pounds resulting in reduced discharges of 5 million pounds per year of such pollutants as well as significant amounts of other conventional pollutants per year to waters of the U.S. This proposed rule would also reduce the impacts of these discharges to aquatic life and human health and reduce potential interference with POTW operations. EPA is reserving effluent limitations guidelines for direct dischargers since EPA has identified no direct dischargers and has no means to evaluate performance to determine the appropriate level of control. If any such discharges were to occur, they would be subject to limitations set on a best professional judgement basis.

DATES: EPA must receive comments on the proposal by February 17, 1998.

EPA will conduct a public hearing on pretreatment standards on January 15, 1998 from 9am EST to 12 noon.

ADDRESSES: Submit comments in writing to W–97–14, Ms. Marta Jordan, Engineering and Analysis Division (4303), U.S. EPA, 401 M. St. SW, Washington, DC 20460. Please submit any references cited in your comments. EPA requests an original and three copies of your comments and enclosures (including references). Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. For additional information on how to submit electronic comments see **SUPPLEMENTARY INFORMATION** ''How to Submit Comments''.

The public record for this proposed rulemaking has been established under docket number W–97–14 and is located in the Water Docket, Room M2616, 401 M. St. SW, Washington, DC 20460. The record is available for inspection from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. For access to the docket materials call (202) 260–3027 to schedule an appointment. You may have to pay a reasonable fee for copying.

EPA will conduct a public hearing on pretreatment standards in EPA's Auditorium, Waterside Mall, 401 M. St. SW, Washington, DC. Persons wishing to present formal comments at the public hearing should have a written copy for submittal.

FOR FURTHER INFORMATION CONTACT: For technical information contact Ms. Marta E. Jordan at (202) 260–0817. For economic information contact Mr. George Denning at (202) 260–7374.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This proposed rule would apply to industrial laundries. An industrial laundry is any facility that launders industrial textile items from off-site as a business activity (*i.e.*, launders industrial textile items for other business entities for a fee or through a cooperative arrangement). Either the industrial laundry facility or the off-site customer may own the industrial laundered textile items. This definition includes textile rental companies that perform laundering operations. For this proposed rule, laundering means washing with water, including water washing following dry cleaning. This proposed rule would not apply to laundering exclusively through dry cleaning. Industrial textile items include, but are not limited to, industrial: shop towels, printer towels/rags, furniture towels, rags, mops, mats, rugs, tool covers, fender covers, dust-control items, gloves, buffing pads, absorbents, uniforms, filters and clean room items. If any of these items otherwise considered to be industrial textile items are used only by hotels, hospitals, or restaurants, they are not industrial items and would not be covered by this rule.

Category	Examples of regulated entities
Industry	Facilities that launder industrial textile items from off-site as a business activity.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated by this proposed action. To determine whether your facility is regulated by this proposed action, you should carefully examine the Industrial Laundries Definition section of the proposed rule. If you have any questions regarding the applicability of this proposed action to a particular entity, consult the person(s) listed in the ''For Further Information Contact'' section of this proposed rule.

The proposed rule would not apply to discharges from: on-site laundering at industrial facilities, laundering of industrial textile items originating from the same business entity, and facilities that exclusively launder linen items, denim prewash items, new items (*i.e.*, items directly from textile manufacturers, not yet used for intended purpose), any other laundering of hospital, hotel, or restaurant items or any combination of these items. This proposed rule would apply to hotel, hospital, or restaurant laundering of industrial textile items from off-site industrial users, (*e.g.*, shop towels). In addition, this proposed rule would not apply to the discharges from oil-only treatment of mops.

By linen items, EPA means: sheets, pillow cases, blankets, bath towels and washcloths, hospital gowns and robes, tablecloths, napkins, tableskirts, kitchen textile items, continuous roll towels, laboratory coats, household laundry (such as clothes, but not industrial uniforms), executive wear, mattress pads, incontinence pads, and diapers. This list is meant to be all inclusive. By linen items, EPA does not mean to specify a particular type of fabric, but instead the types of items listed above.

For facilities covered under the Industrial Laundry definition, wastewater from all water washing operations would be covered, including the washing of linen items as long as these items do not constitute 100 percent of the items washed.

Exclusions

Under Pretreatment Standards for Existing Sources (PSES), EPA is proposing to exclude existing facilities that launder less than one million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels/rags per calendar year. EPA proposes this exclusion in order to eliminate unacceptable disproportionate adverse economic impacts on these smaller facilities. The excluded facilities would be disproportionately adversely affected relative to all facilities covered by this proposed rule, as discussed further below. If any excluded facility launders one million pounds or more of incoming laundry per calendar year or 255,000 pounds or more of shop and/or printer towels/rags per calendar year, it will no longer be excluded from the standards. All of the excluded facilities are small entities under the Small Business Administration (SBA) definition of small entity. The excluded facilities account for less than three percent of the pollutant removals from the waters of the U.S. than would occur if the proposed rule were implemented without the exclusion.

Under Pretreatment Standards for New Sources (PSNS), EPA is proposing no exclusion since the economic projections indicate that there would be no barrier to entry as a result of the proposed new source standards.

Supporting Documentation

The basis for this proposed rule is detailed in five documents, each of which is supported in turn by additional information and analyses in the rulemaking record. EPA's technical foundation for the regulation is presented in the Technical Development Document for Proposed Pretreatment Standards for Existing and New Sources for the Industrial Laundries Point Source Category. (Hereafter, ''Development Document''; EPA Report No. EPA–821–R–97–007). EPA's economic analysis is presented in the Economic Assessment for Proposed Pretreatment Standards for Existing and New Sources for the Industrial Laundries Point Source Category. (Hereafter, ''Economic Assessment''; EPA Report No. EPA–821–R–97–008) and the Cost-Effectiveness Analysis for Proposed Pretreatment Standards for Existing and New Sources for the Industrial Laundries Point Source Category (Hereafter, ''Cost-Effectiveness Analysis''; EPA Report No. EPA–821–R–97–005). EPA's statistical analysis is presented in the Statistical Support Document for Proposed Pretreatment Standards for Existing and New Sources for the Industrial Laundries Point Source Category. (Hereinafter, ''Statistical Support Document''; EPA Report No. EPA–821–R–97–006). EPA's environmental benefits analysis is presented in the Water Quality Benefits Analysis for Proposed Pretreatment Standards for Existing and New Sources for the Industrial Laundries Point Source Category. (Hereinafter, ''WQBA''; EPA Report No. EPA–821–R–97–009). These background documents are available from the Office of Water Resource Center, RC–4100, at the U.S. EPA, Washington, DC address shown above; telephone (202) 260–7786 for the voice mail publication request line.

How to Submit Comments

Comments may be filed electronically to Jordan.Marta@epamail.epa.gov. Electronic comments must be submitted as an ASCII or WordPerfect 6.1 file avoiding the use of special characters and any form of encryption. Electronic comments must be identified by the docket number W–97–14 and must be received by midnight of February 17, 1998. Electronic comments on this notice may be filed online at many Federal Depository Libraries. No confidential business information (CBI) should be sent via e-mail.

Protection of Confidential Business Information

EPA notes that many documents in the record supporting the proposed rule have been claimed as confidential business information (CBI) and therefore, are not included in the record that is available to the public in the Water Docket. To support the rulemaking, EPA is presenting certain information in aggregated form or is masking facility identities to preserve confidentiality claims. Further, the Agency has withheld from disclosure some data not claimed as CBI because release of this information could indirectly reveal information claimed to be confidential.

Some facility-specific data, claimed as CBI, are available to the company that submitted the information. To ensure that all CBI is protected in accordance with EPA regulations, any requests for company-specific data should be submitted to EPA on company letterhead and signed by a responsible official authorized to receive such data. The request must list the specific data requested and include the following statement, ''I certify that EPA is authorized to transfer confidential business information submitted by my company, and that I am authorized to receive it.''

Organization of this Document

I. Legal Authority
II. Summary of Proposed Pretreatment Standards
III. Background
  A. Clean Water Act Statutory Requirements
  B. Pollution Prevention Act
  C. Industrial Laundries Definition
  D. Summary of Public Participation
IV. Description of the Industry
V. Summary of Data Gathering Efforts
VI. Development of the Pretreatment Standards
  A. Wastewater Characteristics
  B. Selection of Pollutant Parameters to be Regulated
  C. Available Treatment Technologies
  D. Technology and Regulatory Options Considered
  E. Costs
  F. Rationale for Selection of PSES and PSNS
  G. Determination of Long-Term Averages (LTAs), Variability Factors, and Limitations for PSES and PSNS
VII. Economic Analysis
  A. Introduction
  B. Economic Impact Methodology
  C. Summary of Costs and Economic Impacts
  D. Cost-Benefit Analysis
  E. Cost-Effectiveness Analysis
VIII. Non-Water Quality Environmental Impacts
IX. Environmental Benefits Analysis
  A. Introduction
  B. Overview of the Industrial Laundry Industry's Effluent Discharges
  C. Benefits of the Proposed Rule
  D. Human Health Benefits
  E. Ecological Benefits Valued on the Basis of Enhanced Recreational Fishing Opportunities
  F. Benefits From Reduced Cost of Sewage Sludge Disposal and Reduced Incidence of Inhibition
  G. Discussions With POTW Operators and Pre-Treatment Coordinators
X. Related Acts of Congress, Executive Orders, and Agency Initiatives
  A. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)
  B. Executive Order 12866
  C. Unfunded Mandates Reform Act (UMRA)
  D. Paperwork Reduction Act
  E. National Technology Transfer and Advancement Act
XI. Related Rulemakings
  A. Office of Solid Waste (OSW) Activities Related to This Effort
XII. Regulatory Implementation
  A. Upset and Bypass Provisions
  B. Variances and Modifications
Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

I. Legal Authority

This regulation is being proposed under the authority of sections 301, 304, 306, 307, 308, and 501 of the Clean

Water Act (CWA), 33 U.S.C. sections 1311, 1314, 1316, 1317, 1318, and 1361.

II. Summary of Proposed Pretreatment Standards

EPA proposes to establish ''Pretreatment Standards for Existing Sources'' (PSES), and ''Pretreatment Standards for New Sources'' (PSNS). Under PSES, EPA is proposing pretreatment standards for the entire facility wastestream based on Chemical Precipitation treatment of the portion of facility wastewater generated by laundering the industrial items only (CP–IL). EPA's data shows that these standards can be met by treating only this portion of wastewater. EPA finds this option to be the best available technology economically achievable based on the data collected during development of the proposed rule. CP–IL also provides effective treatment to minimize/prevent pass through and interference at POTWs. Under PSNS, EPA is also proposing standards based on Chemical Precipitation treatment of the portion of facility wastewater generated only by laundering of the industrial items since it is the best available demonstrated technology for pretreatment and the costs are not projected to be a barrier to entry.

EPA is not developing effluent limitations guidelines and New Source Performance Standards for direct dischargers because EPA has identified no direct dischargers and there is no available information with which to accurately determine ''Best Available Technology Economically Achievable'' (BAT) or ''Best Available Demonstrated Control Technology'' (BADCT) performance for direct dischargers. Proposed limitations based on pretreatment control technologies would not likely represent best available technology or best available demonstrated technology for direct dischargers because the treatment technologies at existing industrial laundries that EPA evaluated were not designed for treatment prior to discharging directly to surface waters. The type or design (*i.e.*, size) of treatment would not represent BAT because in all cases facilities rely on additional treatment at POTWs. For the pollutants evaluated in this proposed rule, the POTW's biological treatment removes from 4%–99% depending on the pollutant. Because EPA has not identified any POTWs receiving a very large proportion of their load (70–100%) from an industrial laundry, a determination of direct discharge effluent limitations cannot be performed. Thus, EPA is reserving effluent limitations guidelines and standards for direct dischargers in this rulemaking.

This proposed rule would not apply to discharges from: on-site laundering at industrial facilities, laundering of industrial textile items originating from the same business entity, and facilities that exclusively launder linen items, denim prewash items, new items (*i.e.*, items directly from textile manufacturers, not yet used for intended purpose), any other laundering of hotel, hospital, or restaurant items or any combination of these items. This proposed rule would apply to hotel, hospital, or restaurant laundering of industrial textile items. In addition, this proposed rule would not apply to laundering exclusively through dry cleaning and the oil-only treatment of mops.

The rule also would not apply to certain small industrial laundries; see ''Regulated Entities'' discussion above, industrial laundries definition, and rule text below.

Pursuant to CWA section 307(b)(1), indirect dischargers are required to comply with pretreatment standards for existing sources by three years of the effective date of the final rule. For purposes of this rule, indirect dischargers must comply with this rule by three years after the date of publication of the final rule.

III. Background

A. Clean Water Act Statutory Requirements

The objective of the Clean Water Act (CWA) is to ''restore and maintain the chemical, physical, and biological integrity of the Nation's waters.'' CWA section 101(a). To assist in achieving this objective, EPA issues effluent limitation guidelines, pretreatment standards, and new source performance standards for industrial dischargers. These standards relevant to this rulemaking are summarized here:

1. Best Available Technology Economically Achievable (BAT)—Section 304(b)(2) of the CWA

BAT effluent limitations guidelines apply to direct dischargers of toxic and nonconventional pollutants. In general, they represent the best existing economically achievable performance of plants in the industrial subcategory or category. The factors considered in assessing BAT include the age of equipment and facilities involved, the process employed, potential process changes, non-water quality environmental impacts, including energy requirements, and such factors as the Administrator deems appropriate. EPA retains considerable discretion in assigning the weight to be accorded these factors. An additional statutory factor considered in setting BAT is economic achievability. Generally, the achievability is determined on the basis of total costs to the industrial subcategory and the rule's effect on the overall industry financial health. Where existing performance is uniformly inadequate, BAT may be transferred from a different subcategory or category. BAT may be based upon process changes or internal controls, even when these technologies are not common industry practice.

2. New Source Performance Standards (NSPS)—Section 306 of the CWA

NSPS are based on the best available demonstrated control technology (BADCT) and apply to all pollutants (conventional, nonconventional, and toxic). New facilities have the opportunity to install the best and most efficient production processes and wastewater treatment technologies. Under NSPS, EPA is to consider the best demonstrated process changes, in-plant controls, and end-of-process control and treatment technologies that reduce pollution to the maximum extent feasible. In establishing NSPS, EPA is directed to take into consideration the cost of achieving the effluent reduction and any non-water quality environmental impacts and energy requirements.

3. Pretreatment Standards for Existing Sources (PSES)—Section 307(b) of the CWA

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of publicly owned treatment works (POTWs). The CWA authorizes EPA to establish pretreatment standards for pollutants that pass through POTWs or interfere with treatment processes or sludge disposal methods at POTWs. Pretreatment standards are technology-based and analogous to BAT effluent limitations guidelines.

The General Pretreatment Regulations, which set forth the framework for the implementation of categorical pretreatment standards, are found at 40 CFR part 403. Those regulations contain a definition of pass through that addresses localized rather than national instances of pass through and establish pretreatment standards that apply to all non-domestic dischargers. See 52 FR 1586 January 14, 1987.

4. Pretreatment Standards for New Sources (PSNS)—Section 307(b) of the CWA

Like PSES, PSNS are designed to prevent the discharges of pollutants that pass through, interfere with, or are incompatible with the operations of POTWs. New indirect dischargers have the opportunity to incorporate into their plants the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating NSPS.

5. Best Management Practices (BMPs)

Section 304(e) of the CWA gives the Administrator the authority to publish regulations, in addition to the effluent limitations guidelines and standards listed above, to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage that the Administrator determines may contribute significant amounts of pollutants. Some industrial laundry facilities have BMPs in place and these BMPs are further discussed in Sections III.B. and VI.C.1. below and in more detail in the Development Document.

6. CWA Section 304(m) Requirements

Section 304(m) of the CWA requires EPA to establish schedules for (I) reviewing and revising existing effluent limitations guidelines and standards and (ii) promulgating new effluent limitations. On January 2, 1990, EPA published an Effluent Guidelines Plan (55 FR 80), in which schedules were established for developing new and revised guidelines for several industry categories, including the industrial laundries point source category. Natural Resources Defense Council, Inc., challenged the Effluent Guidelines Plan in a suit filed in the U.S. District Court for the District of Columbia, (*NRDC et al* v. *Reilly,* Civ. No. 89–2980). On January 31, 1992 the Court entered a consent decree (the ''304(m) Decree''), which establishes schedules for, among other things, EPA's proposal and promulgation of effluent guidelines for a number of point source categories, including the industrial laundries point source category. The most recent Effluent Guidelines Plan Update was published in the **Federal Register** on February 26, 1997 (62 FR 8726). This plan requires, among other things, that EPA propose the Industrial Laundries Effluent Limitations Guidelines and Pretreatment Standards by September 1997 and take final action on the Guidelines and Standards by June 1999.

B. Pollution Prevention Act

The Pollution Prevention Act of 1990 (PPA) (42 U.S.C. 13101 *et seq.*, Pub. L. 101–508, November 5, 1990) ''declares it to be the national policy of the United States that pollution should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or release into the environment should be employed only as a last resort * * *'' (Sec. 6602; 42 U.S.C. 13101(b)). In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created. The PPA directs the Agency to, among other things, ''review regulations of the Agency prior and subsequent to their proposal to determine their effect on source reduction'' (Sec. 6604; 42 U.S.C. 13103(b)(2)). This effluent guideline was reviewed for its incorporation of pollution prevention.

According to the PPA, source reduction reduces the generation and release of hazardous substances, pollutants, wastes, contaminants or residuals at the source, usually within a process. The term source reduction ''include[s] equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. The term ''source reduction'' does not include any practice which alters the physical, chemical, or biological characteristics or the volume of a hazardous substance, pollutant, or contaminant through a process or activity which itself is not integral to or necessary for the production of a product or the providing of a service.'' 42 U.S.C. 13102(5). In effect, source reduction means reducing the amount of a pollutant that enters a waste stream or that is otherwise released into the environment prior to out-of-process recycling, treatment, or disposal.

EPA has undertaken several pollution prevention related activities involving the industrial laundries industry. Part of the efforts were Agency wide, including the Office of Research and Development (ORD) and EPA's Region 9, while other efforts were included as part of the engineering studies in the development of the proposed rule.

The Agency-wide efforts, called the Industrial Pollution Prevention Project (IP3), were multi-media and examined how industrial pollution prevention can be incorporated into EPA's regulatory framework and how the pollution prevention ethic can be promoted throughout industry, the public and government. A report summarizing the results of these efforts, entitled ''Summary Report of the Industrial Pollution Prevention Project (IP3),'' EPA–820-R–95–007, July 1995, included the results of two case studies involving industrial laundries. More detailed discussions of the two studies are contained in the individual reports, ''Pollution Prevention at Industrial Laundries: Assessment Observations and Waste Reduction Options,'' EPA–820-R–95–010, July 1995, and ''Pollution Prevention at Industrial Laundries: A Collaborative Approach in Southern California,'' EPA–820-R–95–012. These studies identified a number of ''best management practices'' (BMP's) and water and energy savings technologies as potential pollution prevention practices at industrial laundries.

Similarly, during the engineering study phase of the development of the proposed rule, a number of potential pollution prevention practices and technology applications were identified. Discussion of the pollution prevention technologies and practices and their uses with respect to this proposed rule are contained later in Section VI of this preamble and in the Development Document.

C. Industrial Laundries Definition

An industrial laundry is any facility that launders industrial textile items from off-site as a business activity (*i.e.*, launders industrial textile items for other business entities for a fee or through a cooperative arrangement). Either the industrial laundry facility or the off-site customer may own the industrial laundered textile items. This definition includes textile rental companies that perform laundering operations. For this proposed rule, laundering means washing with water, including water washing following dry cleaning. This proposed rule would not apply to laundering exclusively through dry cleaning. Industrial textile items include, but are not limited to industrial: shop towels, printer towels/rags, furniture towels, rags, mops, mats, rugs, tool covers, fender covers, dust-control items, gloves, buffing pads, absorbents, uniforms, filters and clean room garments. If any of these items are used by hotels, hospitals, or restaurants, they are not industrial items.

The proposed rule would not apply to discharges from: on-site laundering at industrial facilities, laundering of

industrial textile items originating from the same business entity, and facilities that exclusively launder linen items, denim prewash, new items (*i.e.* items directly from textile manufacturers, not yet used for intended purpose), any other laundering of hotel, hospital, or restaurant items or any combination of these items. This proposed rule would apply to hotel, hospital, or restaurant laundering of industrial textile items. In addition, this rule would not apply to discharges from the oil-only treatment of mops.

The focus of this rule is on industrial laundries that function independently of other industrial activities that generate wastewater. The reason EPA is excluding from applicability on-site laundries is that EPA believes it is more appropriate to address on-site laundry discharges at industrial facilities as part of the effluent from the facility as a whole, for several reasons. First, many such facilities commingle laundry wastewater with wastewater from other processes. Second, EPA anticipates that contaminants removed from laundered items can best be treated with process wastewater containing similar contaminants. EPA has already established effluent limitations guidelines and standards for 51 industries (see Development Document). These regulations generally apply to wastewater generated from these industries, including on-site laundering. For example, the OCPSF effluent guidelines control discharges from garment laundering at OCPSF facilities. For industries not yet covered by effluent limitations guidelines and standards, it makes sense to examine these industries and the wastewater treatment processes at these industrial facilities in the context of the entire industrial facility, not just the laundering portion of the facility. Addressing on-site laundering discharges along with other industrial discharges in an industry allows EPA to examine all of the production and processing equipment used by the industry, all of the discharges in an industry, all the potential wastewater treatment applicable to the industry, and all of the economic impacts of any such national regulation for the industrial subcategory as a whole. This is consistent with EPA's efforts to make common-sense regulatory decisions.

EPA has also considered concerns expressed by industrial launderers that by excluding on-site laundering of industrial items, EPA has created an incentive for businesses to switch from using industrial launderers covered by the rule to on-site laundering. EPA does not believe this will happen because the average increased price per pound of laundering as a result of the proposed rule ($0.003 per pound) is so small that the cost of buying the equipment and operating the equipment on-site (capital, operation and maintenance including labor, chemicals, water) to do on-site laundering rather than using industrial launderers would not be justified. Furthermore, an increase in pollutant loads at the facility may necessitate additional changes in the facility's NPDES permit if it is a direct discharger or its pretreatment permit issued by the local POTW if it is an indirect discharger. See Section 8 of the EA and Chapter 6 of the Development Document.

EPA also looked at the types of items that were water washed to determine if any specific items should be excluded from regulation. EPA reviewed the available data to determine differences in types of items laundered, and determined that wastewater characteristics of denim prewash items and linen items are significantly different from the wastewater characteristics of industrial items, based on a statistical comparison of untreated wastewater pollutant concentrations. The pollutant concentrations in wastewater from laundering denim prewash items and linen items are lower on average than industrial item wastewater concentrations. The available data indicate that the pollutant concentrations are lower for denim prewash items and linen items, and POTWs can adequately treat wastewater streams generated from these types of items. Therefore, EPA is excluding facilities discharging 100 percent denim prewash items and linen item wastewater from the scope of this proposed rule.

EPA is excluding new items from regulation since these items are laundered prior to being used for their intended purpose and therefore may not contain pollutants at concentrations that are incompatible with or interfere with POTWs.

The rule also would not apply to certain small facilities; see ''Regulated Entities'' discussion above and rule text below.

D. Summary of Public Participation

EPA encouraged full public participation in developing the proposed rule. During the data gathering activities that preceded development of the proposed rule, EPA met with industry trade associations, state and local governments, and industrial laundry and linen facilities. EPA has also participated in numerous industry talks and meetings. To further public participation on this rule, on March 4, 1997, EPA held a public meeting about the content and status of the proposed regulation. The meeting was announced in the **Federal Register** (62 FR 3849; January 27, 1997) and information packages were distributed at the meeting. The public meeting also gave interested parties an opportunity to provide information, data, and ideas or comments on key issues.

During the development of the proposed rule, EPA sent a screener questionnaire to assess the number of facilities that could potentially be considered industrial laundries, and followed this with a detailed questionnaire to a stratified random sample of the industry under authority of section 308 of the CWA. During the design of the detailed questionnaire, EPA met with industry trade associations to discuss EPA's plans to issue a questionnaire; and distributed several drafts of the questionnaire to both the industry trade associations and the Natural Resources Defense Council, Inc., for review and comment. The detailed questionnaire was subsequently completed, reviewed and approved by the Office of Management and Budget (OMB) and sent to industrial laundry facilities. Two trade associations, the Textile Rental Services Association of America (TRSA) and Uniform and Textile Service Association (UTSA) sent letters to OMB supporting EPA's data collection efforts, particularly the detailed questionnaire. EPA held workshops for the public on how to complete the detailed questionnaire.

EPA also sent a screener questionnaire to hotels, hospitals, and prisons to assess whether these facilities should be included in the scope of the industrial laundries regulation. Also, following receipt of the detailed questionnaire responses and as part of the technology performance data gathering effort, EPA requested detailed monitoring data from 37 facilities that had already received the detailed questionnaire so that data specific to these facilities could be evaluated as part of EPA's analyses.

IV. Description of the Industry

Industrial laundry facilities are located in all 50 states and all 10 EPA regions. By State, the largest number of industrial laundries are in California. By EPA Region, the largest concentration of industrial laundries is in Region V. Most of the industrial laundering facilities are in large urban areas. EPA estimates that there are 1,747 facilities nationwide.

Industrial laundries vary in size from one- or two-person facilities to large corporations that operate many facilities

with hundreds of employees nationwide. Annual laundry production per facility ranges from 44,100 to 32,620,000 pounds.

Facilities launder most items using water washing. Water washing involves washing items in water. Some facilities launder items using dry cleaning, which involves washing items in an organic solvent. Facilities that only dry clean (with solvent washing) are not covered by this proposed rule. Dry cleaning is not a water washing process and generates little, if any, wastewater, therefore EPA excluded this process from this proposed rule. The pollutants generated in the dry cleaning operation are recovered from the solvent through distillation and then disposed of off-site as a hazardous waste. Air emissions from dry cleaning may be controlled by EPA in Maximum Achievable Control Technology (MACT) standards issued under the Clean Air Act. In some cases, facilities combine the two processes to wash items that have large amounts of both water soluble and organic-solvent soluble soils. When water washing and dry cleaning are performed in series without drying the items between the solvent and water phases, the process is called dual-phase washing. The order in which these processes are performed depends on the solvent used, type of soil, and drying energy requirements. Typically, in dual-phase washing, the solvent wash occurs prior to the water wash; none of the facilities responding to the detailed questionnaire reported performing water washing followed by solvent wash. Facilities performing dual-phase washing of industrial items are covered by this proposed rule if they process industrial textile items.

At some facilities, dust mops are not water washed, but are cleaned and treated with heated oil instead of water. After cleaning, the oil is extracted from the mops, leaving them coated with the desired quantity of oil. Since the oil treatment of mops is not a water washing process and generates no wastewater, EPA excluded this process from this proposed regulation.

A more detailed description of the industry is included in the Industrial Laundries Development Document contained in the record for this proposed rule.

V. Summary of Data Gathering Efforts

EPA has collected data from various sources. EPA has collected industry-supplied data from industrial laundries through the screener questionnaires, detailed questionnaires and the detailed monitoring data requests. EPA has also collected data through site visits and sampling activities. EPA distributed a screener questionnaire in 1993 and a supplemental screener questionnaire in 1994 to develop the scope of the rule, identify the population of the industry, and select facilities to receive the more-detailed questionnaire. Also, in response to comments from industrial laundry and linen trade associations, EPA mailed 100 screener questionnaires in January 1995 to hospitals, hotels, and prisons, which potentially operate on-site laundries.

The industrial laundries industry detailed questionnaires were sent to a stratified random sample of facilities that were identified from two sources: Trade association mailing lists and information obtained from Dun & Bradstreet. These sources produced a list of 3,726 possible facilities generating industrial laundry wastewater. Based on responses to the screener questionnaires, EPA estimated there were 1,960 facilities generating industrial laundry wastewater.

To minimize the burden on the respondents to the trade association screener questionnaire, EPA chose to send detailed questionnaires to only a selected sample group of facilities. EPA grouped facilities by the type of items they laundered, their 1992 revenues, and the type of wastewater treatment they had in place. The Dun & Bradstreet detailed questionnaire (which was identical to the trade association detailed questionnaire in content) was based on groupings of Standard Industrial Classification codes of 7218 (industrial laundering) and 7213 (linen supply servicing). This technique is known as stratification of the population. Depending on the number of facilities within the strata, EPA either censused or chose a random sample of facilities within each strata. The chosen facilities were given survey weights based on a facility's probability of selection. If the stratum was censused, those facilities represent themselves only. Otherwise, the facility is given a survey weight that allows them to represent themselves and other facilities, within that stratum, that were not selected to receive a detailed questionnaire.

Of the 1,960 facilities generating industrial laundry wastewater, 255 received detailed questionnaires and were used to develop survey weights. After analyzing responses to the questionnaires, EPA chose to exclude facilities that launder 100% linen items. EPA was left with 193 complete responses representing 1,747 industrial laundry facilities nationwide. After examining economic impacts, EPA then decided to exclude existing facilities that launder less than one million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels/rags per calendar year. Therefore, EPA estimates the total number of facilities that currently would be subject to the standards in this proposed rule to be 1,606 facilities. All analyses of impacts of the rule are based on 193 questionnaire respondent facilities and then the survey weight is applied to develop national estimates for all facilities. See the Statistical Support Document for the Industrial Laundries Pretreatment Standards for additional information on the development of survey weights.

The responses to the detailed questionnaires provided EPA with detailed technical, economic, and financial information from industrial laundry and linen supply facilities. EPA used the information reported to develop an industry profile, characterize industry production and water use, develop pollutant loadings and reductions estimates, and develop compliance cost estimates.

In 1995, EPA mailed out 37 requests for detailed monitoring data to a selected group of industrial laundries. EPA identified this selected group of facilities because they indicated in their initial responses in the detailed questionnaires that they had available monitoring data that EPA determined might be useful in characterizing performance of certain treatment technologies. EPA has also collected data through site visits and sampling activities. EPA conducted more than 30 site visits between 1992 and 1997 to collect information about industrial laundry processes, water use practices, pollution prevention practices, wastewater treatment technologies, and waste disposal methods. EPA conducted eight sampling episodes to characterize industrial laundry wastewaters and to assess treatment technology effectiveness. A more detailed description of these data collection efforts can be found in Chapter 3 of the Industrial Laundries Development Document.

VI. Development of the Pretreatment Standards

A. Wastewater Characteristics

Industrial laundry facilities generate wastewater discharges from water washing industrial textile items. All of the facilities identified in the data gathering phase of this rulemaking were found to be indirect dischargers and discharge all laundry process wastewater to publicly owned treatment works.

The detailed questionnaires requested information on the types of analytes tested during wastewater sampling activities performed at the facilities in 1993. The facilities reported analytes in the following categories: oil and grease/total petroleum hydrocarbons (O&G/TPH), conventional pollutants, metals, organics, and pesticides.

Based on data collected through the detailed questionnaires and sampling and analysis of industry wastewater, EPA has determined that 67% of the total industry raw wastewater toxic pollutant loading is generated from laundering of shop and printer towels. Shop and printer towels represent 80% of the raw wastewater toxic pollutant loading from industrial laundry items.

B. Selection of Pollutant Parameters To Be Regulated

1. Pollutants Regulated

EPA collected data to determine the conventional, toxic/priority, and nonconventional pollutants present in industrial laundries wastewaters. EPA analyzed industrial laundries wastewater for 315 pollutants consisting of four conventional, 98 toxic or priority, and 213 nonconventional organic and metal pollutants, during the 1993–1996 industrial laundries sampling program. This section of the preamble discusses how EPA determined the pollutants to be regulated under the selected option. Other options have the same list of regulated pollutants, although EPA's rationale for regulating these pollutants varies depending on the option. This is discussed in Chapter 7 of the Development Document.

EPA reduced the list of 315 pollutants to 72 pollutants for further consideration for control using the following criteria: eliminating pollutants never detected in laundry wastewater, pollutants detected only a small percentage of the time in laundry wastewater (less than 10% of the time), pollutants detected in source water at concentrations similar to concentrations in laundry wastewater, pollutants analyzed for screening purposes, but not analyzed in a quantitative manner due to a lack of acceptable analytical methods, and pollutants likely to be adequately regulated on a case-by-case basis by POTWs using the current regulations on controlling pass through and interference. (See Development Document, Chapter 7).

For the selected option (CP-IL), the 72 pollutants were subsequently reduced to 59 pollutants by eliminating n-alkanes (11 separate pollutants), which make up part of TPH as measured by SGT-HEM, as well as two pollutants used as treatment chemicals (Aluminum and Iron). EPA also eliminated 31 pollutants from regulation because these pollutants are not removed by the treatment technology for the selected option or because these pollutants were present below treatable concentrations in wastewaters influent to the treatment system and therefore would not be substantially removed by the treatment technology. For purposes of this rule, EPA considers treatable concentrations to be greater than 10 times the method detection level. Based on these analyses, this left EPA with 28 pollutants under consideration for regulation.

Before proposing pretreatment standards, EPA examines whether the pollutants discharged by the industry pass through a POTW to waters of the U.S. or interfere with the POTW operation or sludge disposal practices. Generally, in determining whether pollutants pass through a POTW, EPA compares the percentage of the pollutant removed by well-operated POTWs achieving secondary treatment with the percentage of the pollutant removed by facilities meeting BAT effluent limitations. In this case, where only pretreatment standards are being considered, EPA compared the POTW removals with removals achieved by indirect dischargers using the candidate technology that satisfies the BAT factors. For specific pollutants, such as volatile organic compounds or highly biodegradable compounds, EPA may use other means to determine pass through. For volatile compounds, a volatile override test based on the Henry's Law Constant is used to determine pass through. If a pollutant has a Henry's Law Constant greater than 2.4 x 10–5 atm-m^3/mole, it is generally determined to pass through because it is assumed to be sufficiently volatile such that a significant portion of the compound would not be treated by the POTW. For highly biodegradable compounds, the pass through determination may be conducted using engineering modeling.

The primary source of POTW data was the Fate of Priority Pollutants in Publicly Owned Treatment Works (also known as the 50 POTW Study). Since the 50 POTW Study did not cover all the pollutants detected in industrial laundry wastewater, EPA used additional data from the Risk Reduction Engineering Laboratory (RREL) database. The RREL database EPA used included data relating to activated sludge and aerated lagoons reflecting POTW secondary treatment from domestic and industrial wastewater sources.

EPA eliminated three conventional pollutants (O&G, BOD, and TSS) from regulation without conducting the percent removal comparison because EPA believes POTWs adequately treat these parameters in the concentrations found in IL wastewaters. Thus, these parameters are deemed to not pass through. EPA conducted the pass through analysis on the remaining 25 pollutants.

For this proposed rule, the percent removal comparison between indirect dischargers using the candidate PSES-BAT technology and POTWs and the volatile override test were used to determine pass through. Since EPA has not identified any direct dischargers, EPA used PSES percent removals for evaluating pass through. EPA finds that a pollutant passes through when the average percentage removed nationwide by well-operated POTWs (those meeting secondary treatment requirements) is less than the percentage removed by facilities meeting candidate PSES standards for that pollutant.

EPA eliminated POTW and PSES data from the analysis where the influent levels for the pollutant were less than 10 times the method detection level because EPA reasoned that low removals may simply reflect low influent rather than ineffective treatment. For pollutants for which none of the POTW influent concentrations exceeded 10 times the method detection level, in order to conduct the analysis using the 50 POTW Study, EPA modified its editing criteria to eliminate data where the influent values were less than 20 µg/L or the method detection level. EPA selected 20 µg/L or the method detection level because for pollutants with low influent concentrations, *i.e.*, less than 20 µg/L or the method detection level, the effluent concentrations were consistently below the detection level and could not be precisely quantified.

EPA then averaged the remaining influent data and the remaining effluent data. The percent removals achieved for each pollutant were determined from these averaged influent and effluent levels. This percent removal was then compared to each of the PSES treatment technology options.

Of the 25 pollutants that were evaluated, 23 were found to pass through. A more detailed description of the results of the pass through analysis is provided in Chapter 7 of the Development Document.

The remaining 23 pollutants were reviewed in an attempt to streamline the control and compliance process. To do this, EPA determined whether certain pollutants could serve as ''indicator''

pollutants for others. Because many of the pollutants originate from similar sources and have similar treatability properties, setting standards for some ''indicator'' pollutants would effectively control a broader set of pollutants. Based on this analysis, EPA determined that setting limits for 11 pollutants would control the remaining 23 pollutants. The list of 11 pollutants is as follows: SGT-HEM, Copper, Lead, Zinc, Bis(2-Ethylhexyl) Phthalate, Ethylbenzene, Naphthalene, Tetrachloroethene, Toluene, m-Xylene and o&p-Xylene. The limitations for the Xylenes parameters contained in the proposed rule are based on data obtained from EPA sampling episodes using EPA Method 1624 and detailed monitoring questionnaires which reported EPA Method 624 which are contained in Part 136 but not identified for use in measuring Xylenes. A more detailed description of the selection of the regulated pollutants and the pollutants controlled by regulation of these pollutants is in Chapter 7 of the Development Document.

EPA is proposing to establish PSES and PSNS that would regulate SGT-HEM as an indicator pollutant controlling the discharge of toxic and nonconventional pollutants. Chemical precipitation technology has shown that the SGT-HEM limitation is a good indicator reflecting the correct operation of the control technology that results in removals of both organic and metal compounds. EPA is regulating SGT-HEM rather than total recoverable oil and grease since SGT-HEM more closely corresponds to the toxic portion of oil and grease in industrial laundry wastewaters, while POTWs can generally treat the other portions of oil and grease consisting of vegetable oils, animal fats, soaps, etc. Also, since petroleum-based oils degrade slowly at the POTWs, if sufficient quantities exist in the influent, it can pass through the treatment plant as discussed in Pretreatment of Industrial Wastes prepared by the Water Environment Federation, 1994. The SGT-HEM measurement used to develop the limitations is based on the proposed analytical method 1664 (Silica Gel Treated N-Hexane Extractable Material; ''SGT-HEM'') (61 FR 1730; January 23, 1996) and not on the current method contained in 40 CFR Part 136, which uses freon extraction. The data collected from the detailed monitoring questionnaires are based on the current Part 136 method of measuring TPH, while the EPA sampling data are based on the proposed Method 1664, which measures SGT-HEM. EPA proposes to regulate SGT-HEM based on calculating limitations with EPA sampling data only. EPA is soliciting comment or information on any additional data regarding the use of this analytical method.

EPA is also regulating SGT-HEM based on interference. Petroleum-based oils have a low rate of biodegradation at the POTWs. These oils tend to coat the biological organisms, preventing or reducing oxygen transfer and degradation of other organics as discussed in Pretreatment of Industrial Wastes prepared by the Water Environment Federation, 1994. Pretreatment coordinators have indicated that interference can be a problem at POTWs as discussed further in Section IX.G.

2. Pollutants Not Regulated

Tables 7–3,7–4, and 7–5 in Chapter 7 of the Development Document list the pollutants EPA proposes not to regulate and the bases for these decisions.

C. Available Treatment Technologies

1. Current Practice

Facilities in the detailed questionnaire reported having a range of wastewater treatment equipment from no treatment to well-operated Chemical Precipitation (CP) or Dissolved Air Flotation (DAF) systems. Many industrial laundry facilities currently have no treatment (approx. 87%). Although many facilities have no treatment, some facilities have reported that they have best management practices in place to limit pollution. Many laundries have adopted the practice of requiring incoming laundry to have no free liquids. Liquids may be removed through various mechanisms at the laundry or by the customer (e.g., hand wringing, mechanical wringing, or centrifuging).

EPA, based on responses to the detailed questionnaire, considered several technologies to develop standards for this industry. The major wastewater treatment technologies reported included: Chemical Emulsion Breaking (CEB), DAF, and CP. Other technologies reported included: screening, equalization, gravity settling, sludge dewatering, pH adjustment, ultrafiltration, centrifugation, filtration, oil/water separation, carbon adsorption, air stripping and vacuum degassing. In addition, facilities reported dry cleaning and steam tumbling as in-process treatment technologies to remove pollutants from items prior to water washing.

During the site visit and field sampling phase of the proposed rule development and as follow up to responses in the detailed questionnaires, EPA identified three major technologies for further evaluation. These major technologies, CEB, DAF and CP are described below.

CEB is used primarily to remove oil and grease, as well as other related pollutants, from process wastewater streams. CEB is effective in treating wastewater streams having stable oil-in-water emulsions. The treatment consists of lowering the pH of the wastewater to break the emulsions, and skimming the surface of the water to remove the floating substances.

DAF is used to remove suspended solids, oil, and some dissolved pollutants from process wastewater. DAF treatment involves coagulating and flocculating the solids and oil and grease and then floating the resulting floc to the surface using pressurized air injected into the unit and removing the floating material. Some DAF systems also have the means to remove material that settles to the bottom of the tank on a continuous basis.

CP is used to remove dissolved pollutants from process wastewater. Precipitation aids, such as lime, work by reacting with the cations (e.g., metals) and some anions to convert them into an insoluble form (e.g., metal hydroxides). The pH of the wastewater also affects how much pollutant mass is precipitated, as pollutants precipitate more efficiently at different pH ranges. Coagulation and flocculation aids are usually added to facilitate the formation of large agglomerated particles that settle more readily and can be removed from the bottom of the clarifiers.

In addition to these major technologies identified and described above, a number of controls that are common to or make up part of the treatment systems at many facilities include: screening, equalization, gravity settling and pH adjustment or neutralization.

Screening is often performed prior to subsequent treatment to remove grit and suspended solids that may potentially damage or clog process equipment located downstream.

Equalization controls fluctuations in flow and pollutant loadings in process wastewater prior to treatment to overcome operational problems that may result from the fluctuations, reduce the size and cost of the downstream treatment units, and improve the overall performance of these units.

Gravity settling is primarily used to remove suspended solids, including pollutants that are in insoluble particulate form such as metals from industrial laundry process wastewater.

Most facilities currently have gravity settling alone without chemical addition. The wastewater is typically collected in a catch basin where the water is detained for a period of time, allowing solids with a higher specific gravity to settle to the bottom of the tank and solids with a lower specific gravity to float to the surface. The effectiveness of the solids settling depends on the characteristics of the laundry wastewater, the length of time the wastewater is held in the catch basin and the regular maintenance of the basin, especially regular removal of the solids.

pH adjustment is used to increase treatment effectiveness—since many treatment technologies used in this industry are sensitive to pH fluctuations—and to meet discharge requirements.

Other wastewater treatment technologies identified as being used in this industry are carbon adsorption, air stripping with and without carbon adsorption, ultrafiltration, centrifugation, sludge dewatering, filtration, oil/water separation without chemical addition, and vacuum degassing.

- Carbon adsorption uses activated carbon to remove dissolved VOCs from process wastewater.
- Air stripping is normally performed in a countercurrent, packed tower, or tray tower column. The wastewater is introduced at the top of the column and allowed to flow downward through the packing material or trays. Air is simultaneously introduced at the bottom of the column and blows upward through the water stream. Volatile organics are stripped from the water stream, transferred to the air stream, and carried out of the top of the column with the air, preferably through activated carbon. The treated water is discharged out of the bottom of the column.
- Ultrafiltration uses semipermeable polymeric membranes to separate emulsified or colloidal materials suspended in the process wastewater stream by pressurizing the liquid so that it permeates the membrane.
- Centrifugation applies centrifugal forces to settle and separate higher density solids from process wastewater. Some facilities use centrifugation as a method to separate solids from wastewater; and centrifugation can be chemically enhanced to remove additional pollutants.
- Sludge dewatering processes remove water from sludge generated from the wastewater treatment process. Many industrial laundry facilities (31%), including some of those with only screening or gravity settling but no additional treatment, reported dewatering their sludge prior to disposal. The types of dewatering devices used in the industrial laundries industry include: plate and frame filters, rotary vacuum filters, and sludge dryers.
- Industrial laundries use bag and sand filters to remove solids from wastewater. Among the facilities visited or responding to the detailed questionnaire, filtration most common to this industry included bag filters and sand filters.
- Oil/water separation without chemical addition technology removes a separated oil layer. The oil layer can be removed by a skimming device or decanted from the wastewater.
- EPA sampled one facility using vacuum degassing. At this facility the vacuum degasser was intended to remove organic compounds.

EPA identified the following in-process treatment technologies that remove pollutants from industrial laundry items prior to water washing:

- Dry cleaning involves cleaning soiled items with an organic-based solvent that removes VOCs as well as organic pollutants (e.g., oil and grease). The pollutants generated in the dry cleaning operation are recovered from the solvent through distillation and then disposed of off-site as a hazardous waste.
- Steam tumbling involves agitating soiled items within a modified washer/extractor while steam is injected into the chamber. The tumbling items contact the steam, which removes the VOCs. The steam is condensed, and the pollutants are recovered through a phase separation and are then disposed of as a hazardous waste.

2. Technologies Rejected From Further Consideration

The technologies described above were those reported in the detailed questionnaire. EPA then determined that certain major technologies should be considered as best available in the industry and chose to sample these candidate technologies.

Based on the data EPA gathered and evaluated, EPA rejected the following technologies from further consideration: bag filtration, sand filtration, ultrafiltration, oil/water separation and vacuum degassing.

EPA removed sand and bag filtration from the list of technology options because data for both sand filtration and bag filtration showed poor removals of most pollutants.

EPA sampled one facility using ultrafiltration. Based on conversations with industrial laundries and corporate contacts, many laundry facilities that have tried ultrafiltration as wastewater treatment have reported problems with fouling, and solids building up in the unit requiring constant maintenance and/or inhibiting the performance of the unit. Some facilities have replaced ultrafiltration units with dissolved air flotation or chemical precipitation units. Therefore, EPA did not further consider ultrafiltration as a regulatory option.

EPA investigated oil/water separation as part of the data analysis. After some assessment, EPA determined that oil/water separation without chemical addition to lower the pH is not nearly as effective as CEB. EPA sampled one facility using CEB.

Vacuum degassing, which was sampled for the removal of organics, did not remove organic pollutants effectively. Therefore, EPA did not continue evaluating this technology as an option. See Chapter 9 of the Development Document.

D. Technology and Regulatory Options Considered

1. Initial Regulatory Options for PSES and PSNS

For the proposed rule, EPA initially developed the following regulatory options based on evaluating screener and detailed questionnaire data submitted by industry. In addition to using the major technologies described above (CEB, DAF, and CP), EPA considered regulatory options using stream splitting, a common practice at some facilities. Stream splitting provides a means of treating a portion of the total wastewater generated at industrial laundries. Stream splitting may be used to isolate and treat a stream with a higher pollutant load, while a stream with a lower load is either recycled and reused or discharged to the POTW without treatment. A divided trench and sump system is used to split process wastewater streams. Washer modification (dual valves) is also part of stream splitting.

The initial regulatory options included standards based on: Chemical Emulsion Breaking of wastewater from the washing of heavy industrial items only (CEB-heavy), Dissolved Air Flotation of wastewater from the washing of heavy industrial items only (DAF-heavy), Chemical Precipitation of wastewater from the washing of heavy industrial items only (CP-heavy), Dissolved Air Flotation of all wastewater (DAF-all), Chemical Precipitation of all wastewater (CP-all) and a Combined Option establishing limits based on using either DAF or CP of all wastewater (Combo-all). For the

''heavy'' options in this proposed rule, heavy is defined as wastewater from the laundering of shop towels, printer towels, fender covers, filters and mops. As part of the options listed above EPA also included gravity settling, screening, equalization, pH adjustment, sludge dewatering (for CP and DAF only), and the use of common pollution prevention practices (or best management practices).

Based on evaluation of the effluent concentration data from these site visits and sampling, some of the initial options were no longer pursued, or were further modified. The DAF-heavy and CP-heavy options were determined not to be appropriate because at some facilities the untreated waste streams for those items not considered to be heavy by the facility had higher concentrations of pollutants than the average treated effluent concentrations for the same pollutants. This problem, in part, was caused by the different mix of ''heavy'' items being laundered at the different facilities from which wastewater data were obtained. If sufficient treated effluent data could be obtained related to the laundering of the same set of ''heavy'' items, the heavy option may be a feasible alternative for the final rule. However, any option that would regulate only the wastewater from washing heavy industrial items would require an in-plant compliance monitoring location or a separate discharge point to the sewer after the treatment system which could increase the compliance burden on the control authority. In some cases where the end-of-pipe monitoring for some parameters was still required based on local limits, the costs of this option would increase due to the in-plant plus end-of-pipe monitoring. At the same time, EPA recognizes that targeting the rule to heavy items only could reduce costs to the regulated community by removing some facilities from the scope of the rule. Some facilities could also save money by segregating heavy items from other items and treating only the heavy items. The CEB-heavy option was determined not to be feasible due to less pollutant removals at higher costs than the DAF-heavy and CP-heavy options. See Chapters 9 and 10 of the Development Document. EPA solicits comments and data on the feasibility of either the DAF or CP heavy only options where the definition of heavy includes only the laundering of printer rags, shop towels, mops, fender covers and filters.

2. Modified Regulatory Options

EPA evaluated proposing pretreatment standards for the entire facility wastestream based on only a portion being treated, specifically only the portion of facility wastewater generated by laundering industrial items was costed for treatment by DAF and CP. The basis for costing partial treatment is that EPA's data shows these standards can be met by treating only the portion of wastewater from laundering industrial items. EPA called these options DAF–IL, CP–IL, Combo-IL and Combo-IL2Lim.

EPA evaluated the combo option in two scenarios. Under the first scenario (Combo-IL) either DAF or CP would form the basis of the standards by establishing one set of standards based on the less stringent of the two standards for each regulated pollutant for the two technologies. Having one set of such standards would allow some flexibility for facilities with either technology to meet the limitations. This option would base the standard for each parameter on the lesser performance between DAF and CP, and based on current data, remove less total pollutants.

Under the second combo scenario (Combo-IL2Lim), facilities with DAF in place as of the publication date of the proposal would have to comply with the standards based on DAF and all other facilities would have to comply with standards based on CP.

EPA additionally considered an organics control option, which involves the use of steam tumbling for treatment of shop and printer towels and mops for removal of organic pollutants.

EPA also considered proposing a no regulation option, but rejected it because the available discharge loadings data identified a number of pollutants that were estimated to pass through or have the potential to interfere with POTW operations.

Under Section 307(b) of the CWA, EPA is directed to establish pretreatment standards that prevent the discharge of pollutants to POTWs that interfere with, pass-through, or are otherwise incompatible with the operation of POTWs. EPA has interpreted the pass-through provision to mean that a pollutant ''passes through'' the POTW if the removal efficiency of an available pretreatment option is greater than the removal efficiency of the POTW. Based on available data, EPA believes that pretreatment technology is available to the industrial laundries industry that removes some pollutants with greater efficiency than is achieved by most POTWs.

Nonetheless, both the Small Business Regulatory Enforcement Fairness Act (SBREFA) panel, which is comprised of representatives from three federal agencies (EPA, the Small Business Administration, and the Office of Management and Budget), and small entity representatives recommended that EPA solicit comments on a no regulation option. EPA has the discretion under the CWA to decline to regulate an industrial subcategory based on lack of pollutant loadings, the small number of affected facilities, or other relevant factors, one of which could be a determination that there is no pass through or interference due to the pollutant discharges of the industry. The SBREFA Panel noted, among other things, that ''the total pollutant loadings (pre-regulation) are not as high for this industry as they were for most industries with effluent guidelines in place and that the regulatory options are not as cost-effective as those selected for most other effluent guidelines.'' In addition, EPA notes that if we did not use a toxic weighting factor for TPH (see Section VII.E below), the cost per pound equivalent removed of this rule relative to previous rules would be still higher.

As indirect dischargers, industrial laundries are subject to the general prohibitions in the pretreatment requirements and any additional pretreatment requirements set by local POTWs. Any pass-through or interference problems potentially caused by a laundry can be directly addressed by the POTW through the establishment of appropriate local limits. Some POTWs support the no regulation option because it provides them with the flexibility to design less stringent local pretreatment requirements that are appropriate to local conditions. Other POTWs prefer to have EPA establish uniform pretreatment standards because of the resources required to determine and enforce local limits on a case-by-case basis.

EPA solicits comments on the no regulation option and encourages commenters to support such arguments with information and data, particularly data on the loadings and the degree of pass through at POTWs. Further, EPA encourages commenters to explain how the no regulation option would be consistent with those requirements of sections 301, 304 and 307 of the CWA that require the control of pollutants discharged to POTWs that pass through or interfere with POTW operations.

Based on the above evaluations, EPA decided to evaluate the following options: organics control(OC), combo-IL, combo-IL2Lim, DAF–IL, and CP–IL.

E. Costs

EPA estimated the cost for industrial laundries to implement each of the

model technologies considered for the proposed standards. These estimated costs are summarized in this section and discussed in more detail in the Development Document. All cost estimates in this preamble are expressed in 1997 dollars. The cost components reported in this section represent estimates of the investment cost of purchasing and installing equipment, and the annual operating and maintenance costs associated with that equipment. In section VII, costs are expressed in terms of a different cost component, total annualized costs, which are used to estimate economic impacts. Annualized costs better describe the actual compliance costs that a facility/company would incur, allowing for interest, depreciation, and taxes. A summary of the economic impact analysis for the proposed regulation is contained in section VII of today's notice. See also the Economic Assessment.

EPA estimated the cost for implementing the candidate PSES by calculating the engineering costs of meeting the required effluent reductions for each industrial laundry facility. EPA used information from the 193 in-scope facilities responding to the questionnaire as the basis for the cost estimates calculated by the cost model for these facilities. Using statistically calculated facility weighting factors, EPA then extrapolated the results to the entire industrial laundries industry. The facility-specific engineering cost assessment for PSES began with a review of present wastewater treatment technologies at each facility. For facilities without treatment-in-place equivalent to the candidate PSES technology options, EPA estimated the cost to upgrade the facility's existing treatment technology or if none was in place install treatment to achieve the proposed discharge standards. EPA based these estimates on vendor quotes and engineering judgment. Facilities that had treatment in place equivalent to that option were costed for monitoring only. EPA believes that this approach overestimates the costs to achieve the candidate PSES standards because many facilities can achieve the standards without using all of the components of the technology basis or by treating wastewater from certain items only. For the current options, EPA assumed treating all wastewater except for wastewater from linen items, denim prewash items, and new items. EPA solicits comments on these costing assumptions. See Development Document for more details. The following table summarizes by option, the capital expenditures, the annual operating and maintenance costs, and the annual pretax cost for implementing PSES. Note that pretax costs are presented here, but are not used in determining economic achievability of the proposed rule on the industrial laundries industry. Rather, the posttax costs, the costs industry actually bears, are used to determine economic achievability (see Table VII.C.3.1). The annual costs in this table below also account for the ability of some facilities to haul wastewater at a lower cost than the cost of installing and operating the pollution control technology.

TABLE VI.E.1. COSTS OF IMPLEMENTING PSES REGULATIONS

[In millions of 1997 dollars]

Options	Capital costs	Annual operating and maintenance costs	Annual pretax cost
OC	290	35.0	65.7
CP–IL	470	86.6	136.4
DAF–IL	364	138.2	176.8
Combo-IL	440	98.5	145.1
Combo-IL2Lim	364–470	86.6–138.2	136.4–176.8

In addition to costs, EPA estimated the removals for industrial laundry facilities for the following technology options.

TABLE VI.E.2. REMOVALS FOR PSES OPTIONS

Option	Removals (lb-eq)
OC	5,278
CP–IL	407,358
DAF–IL	402,921
Combo-IL	402,253
Combo-IL2Lim	402,921–407,358

The estimated removals summarized in the table are discussed in more detail in the Development Document. The removals are based on the difference between each facility's current discharge load and each facility's discharge load after implementation of the proposed rule.

F. Rationale for Selection of PSES and PSNS

1. Existing Sources

After considering all of the technology options described above, and in light of the factors specified in section 304(b)(2)(B) of the CWA, EPA has tentatively selected Chemical Precipitation-IL (CP–IL) as the technology basis for the pretreatment standards for existing sources in the proposed rule. As discussed in more detail below, the proposed rule would exclude existing facilities laundering less than one million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels/rags per calendar year. However, these excluded facilities would still be subject to local pretreatment standards where appropriate. If any excluded facility launders one million pounds or more of incoming laundry or 255,000 pounds of shop and/or printer towels/rags per year, it will no longer be excluded from the standards. Further, once a facility is subject to the standards, even if the facility becomes ''small'' as defined by the rule's exclusion, it would still be subject to the rule. This is because once a facility has installed wastewater treatment to meet the requirements of the rule, it is technologically available and economically achievable for the facility to continue to comply with the standards.

The record establishes that this option is technically available. As discussed in more detail below, EPA also tentatively concludes that this option is economically achievable and represents the best performance that is economically achievable. Further, this option has acceptable non-water quality environmental impacts.

The specific standards proposed in this rule were derived based on a statistical analysis of the performance of

chemical precipitation in industrial laundries that are sufficiently similar to all facilities that are subject to the standards, as discussed below and in the Development Document. Although chemical precipitation is currently only used at 3 percent of industrial laundry facilities, chemical precipitation is a widely used technology in other industries such as the metal products and machinery industry, chemicals and allied products industry and centralized waste treatment industry.

Thus, although CP is only used at three percent of industrial laundry facilities, EPA is well within its authority to select it as BAT. BAT means not that the technology be in routine use, but rather that the technology must be available at a cost and at a time that the Administrator determines to be reasonable, and that the technology has been adequately demonstrated if not routinely applied. See *American Frozen Food Institute* v. *Train*, 539 F.2d 107, 132 (D.C. Cir. 1976), citing ''A Legislative History of the Water Pollution Control Act Amendments of 1972'' (Comm. Print 1973), at 1469–1470. See also *Kennecott* v. *United States EPA*, 780 F.2d 445, 448 (4th Cir. 1985). (The BAT standard reflects the intention of Congress to use the latest scientific research and technology in setting effluent limits, pushing industries toward the goal of zero discharge as quickly as possible. In setting BAT, EPA uses not the average plant, but the optimally operating plant—the pilot plant that acts as a beacon to show what is possible.); *Association of Pacific Fisheries* v. *EPA*, 615 F.2d 794, 816 (9th Cir. 1980) (BAT can be based on statistics from a single plant).

EPA has determined that the selected option for the industrial laundries category is economically achievable for the following reasons. EPA estimates that the proposed standards would cause 33 industrial laundry facility closures and a direct loss of 2,872 jobs from facility closure (although longer term, net direct losses are estimated to total only 470 as the market equilibrates). The number of incremental closures (33) is about 1.9 percent of in-scope industrial laundry facilities (1,747) and 2.1 percent of the (1600) facilities in the facility level analysis. The loss of jobs associated with these closures is about two percent (short-term) or 0.4 percent (longer term) of the category employment. EPA's bankruptcy analysis shows that 65 firms (of 681 total firms in the firm level analysis, or 9.5 percent) move into the bankruptcy likely category under the proposed standards (*i.e.*, they would have trouble obtaining the financing necessary to install the required pollution control equipment). In all cases, these are single-facility firms where EPA's closure analysis shows that the facility would still be financially viable (making money) after complying with the rule if financing could be obtained. In this industry in particular, where demand is relatively inelastic and facilities are geographically tied to their service areas, production is not easily shifted to another geographic area. Therefore, EPA predicts that these bankruptcies do not mean that the facilities will close down, but rather that they may be a target for acquisition by another entity that has better access to financing for pollution control equipment and continue to operate with all or nearly all employees. Based on this analysis, EPA finds the standards to be economically achievable as that term is used in the CWA.

EPA has concluded that application of the selected option is not economically achievable for the smallest industrial laundries that launder less than one million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels/rags per calendar year. If EPA were to require standards based on chemical precipitation, the closure rate among facilities with annual revenues less than $1 million, would be 28.9 percent, as compared to 4.4 percent for the category as a whole without the size exclusion. This economic impact is clearly disproportionate and EPA is exercising its discretion under sections 301 and 304 of the CWA to determine what is economically achievable to establish this exclusion.

Further, EPA believes that it is appropriate to establish this exclusion because it alleviates the harshest economic impact, facility closure, without excluding from the national standards a significant pollutant load. A chart illustrating what EPA found follows:

TABLE VI.F.1.1—CLOSURES AND REMOVALS WITH AND WITHOUT EXCLUSION

Option	Closures		Pollutant Removals (lb-eq) taking POTW removals into account	
	Without exclusion	With exclusion	Without exclusion	With exclusion
CP–IL	70	33	416,920	407,358

As the chart demonstrates, the exclusion would alleviate closures for the smallest facilities. EPA also notes that the excluded facilities account for less than three percent of the pollutant removals from the waters of the U.S. that would occur if the rule were implemented without the exclusion. Thus, the exclusion represents a reasonable approach to addressing the disproportionate adverse economic impacts of the rule consistent with the objectives and requirements of the CWA.

The Agency also evaluated higher thresholds reflecting up to 3 to 5 million pounds of total production and from 255,000 to 500,000 pounds of shop and/or printer towels. See Section X.A. for more discussion of the SBREFA panel findings. The Agency solicits comments on these alternative exclusions as well as the exclusion proposed today.

Finally, EPA has determined that the selected option has acceptable non-water quality environmental impacts discussed further in section IX, below and in chapter 14 of the Development Document.

EPA evaluated the organics control option as a low cost alternative, however, this technology was not effective in terms of pollutant removals and was rejected.

EPA, based on the data gathered to date, did not select DAF–IL because EPA's current data show that CP technology achieves slightly higher toxic pollutant removals. While, DAF is currently more prevalent in the industry than CP (EPA estimates that approximately eight percent of the industry are currently using DAF compared to approximately four percent using CP) EPA estimates that DAF is more costly to operate than CP on an annualized basis. DAF requires a smaller initial capital investment and

may be attractive to many facilities for this reason, however, EPA estimates that its lower capital costs are more than offset by higher operating and maintenance costs associated with the need to chemically condition the flotation residual sludges, making it more expensive than CP overall.

The Combo-IL option would base the standard for each parameter on the lesser performance between DAF and CP, and current data indicate that it would remove slightly fewer pounds of pollutants than if all facilities were required to meet standards based on CP only.

EPA also rejected the Combo-IL2Lim option because current data indicate that overall this option did not remove as many pollutants as the CP option and would cost more than the selected CP–IL option. See Chapters 9 and 12 of the Development Document. EPA solicits additional information and data on the costs and performance of both CP and DAF technologies used to treat wastewaters from laundering industrial textile items. Although EPA rejected the options based on DAF, the pollutant removals were similar enough for further consideration of the DAF and Combo options. If additional data and information provides support that DAF is generally comparable to CP in removing pollutants, EPA would consider for the final rule basing standards on either the less stringent of CP or DAF standards or on DAF for those facilities that already have it in place and on CP for all other facilities.

If the standards for the final rule are based on the Combo-IL2Lim option, the standards based on DAF technology would apply to those facilities with DAF in place as of the publication date of this proposal. Although EPA estimates that CP is cheaper to operate on an annualized basis than DAF (even for facilities that already have DAF installed), EPA's costing analysis for the Combo-IL and Combo-IL2Lim options assumed that some facilities that already have DAF installed would continue to operate it if given the choice because of constraints on financing. This is the explanation for the results in Table VI.E.1 that a less stringent regulatory option would apparently have higher compliance costs. EPA recognizes that while its cost estimates are based on simplifying assumptions that it believes to be correct on average, actual costs will vary from facility to facility, so that DAF may in fact be the cheaper technology for some facilities. This is particularly likely for facilities that already have DAF installed. In this case, the Combo-IL and Combo-IL2Lim options would be expected to entail lower national compliance costs than either the DAF–IL or the CP–IL options. EPA is soliciting information that may help it refine its estimates of the relative costs on a facility-by-facility basis of DAF and CP. Given that EPA's estimates that CP's removals are only slightly better than DAF, this could also be a factor in determining whether CP only, or both CP and DAF represent BAT and/or BADCT in addition to the other factors specified in Section III of this preamble.

2. New Sources

After considering all of the technology options described above, and in light of the factors specified in sections 306 and 307 of the CWA, EPA has selected CP–IL as the technology basis for the pretreatment standards for new sources in the proposed rule. As stated in Section III.A. of the preamble, PSNS are analogous to NSPS, which in turn are based on best available demonstrated control technology. New facilities have the opportunity to install the most efficient treatment technologies and under NSPS, EPA is to consider standards that will eliminate pollution to the maximum extent feasible. These PSNS are based on the performance of CP at one or more facilities using CP depending on the pollutant. Although CP is currently only used at three percent of industrial laundry facilities, CP is a widely used technology in other industries such as the metals products and machinery, chemicals and allied products, and centralized waste treatment industries. *See, e.g., American Iron and Steel Institute* v. *EPA*, 526 F.2d 1027, 1058 (3rd Cir. 1975) (By demonstration, it will be sufficient that there be one operating facility which demonstrates that the level can be achieved or that there is sufficient information and data from a relevant pilot plant or semi-work plant to provide the needed economic and technical justification for such new source).

EPA has determined that the proposed PSNS are economically achievable and present no barrier to entry. EPA has found that overall impacts from the proposed IL standards on new sources would not be any more severe than those on existing sources, since the costs faced by new sources generally will be the same as or less than those faced by existing sources. It is typically easier to incorporate pollution prevention technologies such as those identified in the Development Document in Chapter 8 & 10, and it is less expensive to incorporate pollution control equipment into the design at a new plant than it is to retrofit the same pollution control equipment in an existing plant because no demolition is required, and space constraints, which can add to costs if specifically designed equipment must be ordered, are not an issue in new construction. Because most new sources face either less or similar costs than existing sources, EPA has determined that PSNS requirements should not pose a barrier to entry on the basis of competitiveness for new facilities based on available data. EPA also has shown CP to be an economically achievable option for existing sources. Therefore, the same requirements for PSNS also should have an acceptable level of impact on new facilities.

EPA also examined whether there would be a barrier to entry for small new sources. EPA's analysis showed no closures of new sources at single-facility firms. See section VII.C.2.b of this preamble or the EA for more details. Thus, EPA proposes not to exclude these new sources based on a finding that it is economically achievable for these new sources to comply with the CP standards contained in the proposed rule. EPA solicits comments on its proposed finding that the proposed CP option is economically achievable and does not constitute a barrier to entry for new small sources and on its proposal not to include a small facility exclusion for PSNS. See also section VII.B. below.

G. Determination of Long-Term Averages (LTAs), Variability Factors, and Limitations for PSES and PSNS

Although chemical precipitation (CP) is widely used in other industries, CP only exists at an estimated three percent of industrial laundry facilities. EPA based the proposed standards on sampling data EPA gathered at one industrial laundry facility using CP and from data submitted by as many as four CP facilities (depending on the pollutant) in response to EPA's detailed monitoring questionnaire. Because effluent from even the best performers in an industry can reasonably be expected to vary both above and below the long-term average (LTA) concentration for a given pollutant, even when treatment systems are operating optimally, EPA calculates limitations and standards by multiplying LTAs by variability factors to insure that reasonable excursions from the LTAs do not result in violation of the CWA.

The proposed limitations, as presented in today's notice, are provided as daily maximums and monthly averages for SGT–HEM and daily maximums for all other regulated pollutants. Monitoring was assumed to occur four times per month for SGT–

HEM and one day per month for all other pollutants. Monitoring requirements are determined by the pretreatment control authority, but EPA has assumed a schedule that might be appropriate. However, EPA notes the high costs to facilities ($20,000–$23,000 annually) of monitoring at this frequency and requests comment on whether it should recommend a less frequent schedule to pretreatment control authorities.

The limitations for a pollutant are the product of the pollutant long-term average and the pollutant variability factor. The procedures used to estimate the pollutant LTAs and variability factors are briefly described below. A more detailed explanation is provided in the Statistical Support Document.

The LTA of a pollutant for each facility was calculated based on either an arithmetic average or the expected value of the distribution of the samples, depending on the number of total samples and the number of detected samples for that pollutant at that facility. The pollutant long-term average for a treatment technology was the median of the long-term averages from the facilities using CP.

EPA calculated variability factors by fitting a statistical distribution to the data. The distribution was based on an assumption that the furthest excursion from the LTA that a well operated plant using chemical precipitation could be expected to make on a daily basis was a point below which 99% of the data for that facility falls, under the assumed distribution. The daily variability factor for each pollutant at each facility is the ratio of the estimated 99th percentile of the distribution of the daily pollutant concentration values divided by the expected value of the distribution of the daily values. The pollutant variability factor for a treatment technology was the median of the pollutant variability factors from the facilities with that technology. The daily maximum limitation is a product of the pollutant long-term average and the pollutant variability factor.

The monthly maximum limitation is also calculated as the product of the pollutant long-term average and the pollutant variability factor, but the pollutant variability factor is based on the 95th percentile of the distribution of daily pollutant concentrations.

By accounting for these reasonable excursions above the LTA, EPA's use of variability factors results in standards that are generally well above the actual LTAs. Thus, if a facility operates its treatment system to meet the relevant LTA, EPA expects the plant to be able to meet the standards. Variability factors ensure that normal fluctuations in a facility's treatment are accounted for in the limitations.

As stated above, EPA rejected an option that would be based on one set of standards for facilities with DAF currently in place and another set of standards based on CP for all other facilities. Although EPA has rejected this option for the reasons stated in section VI.D above, EPA has also provided standards based on sampling data EPA gathered at two facilities using DAF and from data submitted in response to EPA's detailed monitoring questionnaire by as many as four facilities (depending on the pollutant) that were using DAF. These DAF standards are shown for comparative purposes below. EPA solicits comments on both the proposed CP and DAF standards and encourages commenters to substantiate their comments by submitting data.

TABLE VI.G.1—PRETREATMENT STANDARDS

Pollutant parameter	DAF		CP	
	Daily Maximum(mg/L)	Monthly Average (mg/L)	Daily Maximum (mg/L)	Monthly Average (mg/L)
Bis (2-Ethylhexyl) Phthalate	0.44	.....	0.13	.....
Ethylbenzene	0.73	.....	1.64	.....
Naphthalene	0.24	.....	0.23	.....
Tetrachloroethene	1.35	.....	1.71	.....
Toluene	5.63	.....	2.76	.....
m-Xylene	2.11	.....	1.33	.....
o&p-Xylene	0.98	.....	0.95	.....
Copper	1.83	.....	0.24	.....
Lead	0.52	.....	0.27	.....
Zinc	3.47	.....	0.61	.....
TPH (as measured by SGT–HEM)	42.9	21.3	27.5	15.4

EPA is proposing concentration-based limits. An alternative is mass-based limits calculated by multiplying the concentrations in the table above by the 75th percentile production normalized flow of 3.13 gallons per pound laundered. However, EPA found no relationship between gallons per pound laundered and items washed, total production or the amount of recycle/reuse. Because of this, even if operators were employing the appropriate level of control, it would be difficult to develop achievable mass limits.

Some stakeholders have advocated mass-based standards while others prefer concentration-based standards. POTWs generally prefer concentration-based standards because it is much easier for them to implement. Mass-based standards require information about flow and/or production both to set the standards and to enforce them, but have the added advantage of encouraging flow reduction. EPA solicits comments on this issue.

VII. Economic Analysis

A. Introduction

This section describes the capital investment and annualized costs of compliance with the proposed industrial laundries pretreatment standards and the potential impacts of these compliance costs on current and future facilities and firms in the industrial laundries industry. EPA's economic assessment is presented in detail in the Economic Assessment (EA) included in the rulemaking record. The EA estimates the economic effect of compliance costs on facilities, firms, employment, domestic and international markets, inflation, distribution, environmental justice and industrial laundries customers. EPA also has conducted an Initial Regulatory Flexibility Analysis (IRFA) under the Regulatory Flexibility Act (RFA) as amended by the Small Business Regulatory Enforcement Fairness Act (),

which estimates effects on small entities, and a cost-effectiveness analysis of all evaluated options. Except where otherwise noted, only the results for the option used as the basis for the proposed rule are presented here. Impacts for other options are presented in Section C.3 below and in the EA.

B. Economic Impact Methodology

1. Introduction

This section (and, in more detail, the EA and record for the proposed rule) evaluates several measures of economic impacts that result from compliance costs. The analysis in the EA consists of eight major components: (1) an assessment of the number of facilities that could be affected by this rule; (2) an estimate of the annual aggregate cost for these facilities to comply with the rule using facility-level capital and operating and maintenance (O&M) costs; (3) an evaluation, using a financial model, of compliance cost impacts on facilities' cash flow (closure analysis); (4) an evaluation, using a financial model, of compliance cost impacts on the financial health of firms in the industry (firm failure analysis); (5) an evaluation of secondary impacts such as those on employment, markets, inflation, distribution, environmental justice and industrial laundry customers; (6) an assessment of the potential for impact on new sources (barrier to entry); (7) an analysis of the effects of compliance costs on small entities pursuant to the RFA as amended by; and (8) a cost-benefit analysis pursuant to E.O. 12866.

All costs are reported in this preamble in 1997 dollars, with the exception of cost-effectiveness results, which, by convention, are reported in 1981 dollars. The EA report presents all costs in 1993 dollars. In the EA, any costs not originally in the base year (1993) dollars have been inflated or deflated to 1993 dollars using the Engineering News Record Construction Cost Index, unless otherwise noted in that report (see the EA for details). This same cost index is used to further inflate costs to 1997 dollars for this preamble. Generally, other indices are used to inflate benefits to 1997 dollars, as cited in the EA. The primary source of data for the economic analysis is the *1994 Industrial Laundries Industry Detailed Questionnaire* (Section 308 Survey). Other sources include government data from the Bureau of the Census, industry trade journals, and several preliminary surveys of the industry, including the *1989 Preliminary Data Summary for Industrial Laundries*, the *1993 Industrial Laundries Industry Screener Questionnaire*, the *1994 Industrial Laundries Supplemental Screener Questionnaire*, and EPA's Development Document for this rulemaking.

2. Methodology Overview

Central to the EA is the cost annualization model, which uses facility-specific cost data and other inputs (discussed in Chapter 12 of the Development Document) to determine the annualized capital and operating and maintenance (O&M) costs of improved wastewater treatment. This model uses these costs along with an annual compliance monitoring cost with the industry-specific real cost of capital (discount rate) over a 16-year analytic time frame to generate the annual cost of compliance for the selected option, as well as the other options considered during the course of the proposal effort. EPA chose the 16-year time frame for analysis based on the depreciable life for equipment of this type, 15 years according to Internal Revenue Service (IRS) rules, plus approximately one year for purchasing and installing the equipment. As an alternative to installing wastewater treatment, facilities may choose, within many of the technology options considered, to have wastewater hauled offsite (a decision handled within the model, as discussed below). The model generates the annualized cost for each option (including the annual cost of hauling wastewater) for each facility in the survey, which is then used in the facility and firm analyses, discussed below.

In the facility analysis, EPA models the economic impacts of regulatory costs on individual industrial laundry facilities, irrespective of ownership. In this part of the analysis, the model uses the annualized costs of each option, compares them to the alternative annual wastewater hauling costs (where this alternative is available), and selects the lowest of the two.

EPA then reduces this resulting cost to take into account that portion of compliance costs that can be passed through to customers. Compliance costs are adjusted downward by a factor (the cost pass-through factor) that is calculated using EPA's model of the industrial laundries market. This model, which quantifies the price and quantity changes in the industrial laundries market due to the proposed rule, shows that the industry will be able to pass some portion of the compliance costs of the proposed rule through to their customers and calculates the percentage that can be passed through. The market model is a simultaneous equation for determining price and quantity using supply and demand curves for the industry that EPA developed based on data in the Section 308 Survey and U.S. Census Bureau economic data. EPA estimates, for this industry, that 32 percent of compliance costs can be passed through to customers. Although EPA believes that its cost pass-through projection is reasonable, an analysis in the EA shows that a zero-cost pass through assumption produces nearly identical closure analysis results.

EPA then converts the adjusted annual cost for each facility into a present value change in cash flow, which is subtracted from the estimated baseline present value of facility cash flow. Estimated baseline present value of facility cash flow is based on the average of three years of financial data from each facility in the Section 308 survey under an assumed no-growth scenario (*i.e.*, the annual cash flow, calculated as the 3-year average, is expected to remain the same over the 16-year period of analysis). If the change in present value of cash flow (which is derived from the adjusted annualized costs of compliance) causes a facility's estimated cash flow to change from positive in the baseline to zero or negative after implementing the requirements of the proposed rule over the 16-year period of analysis, EPA considers the facility likely to close (*i.e.*, liquidate) as a result of the regulation. This approach is somewhat different from methodologies used in other EAs and economic impact analysis for manufacturing industries, since salvage value is not considered in the closure analysis here. For a number of reasons, outlined in the EA (see Section 5 and Appendix C), EPA found that using salvage value in a closure analysis for this industry is not the best way for determining whether a facility would be liquidated. EPA found that baseline closures calculated using salvage value accounted for a large percentage (nearly 30 percent) of existing facilities. Furthermore, EPA found that many of these closures using salvage value were driven by current assets. EPA believes that firms would not be likely to liquidate on the basis of high current assets (cash on hand) relative to cash flow. EPA also believes that costs of liquidation could easily equal or exceed salvage value in low-asset service industries such as this one, unlike in the more highly capital-intensive manufacturing industries.

Note that facilities that reported negative cash flow over the 3-year period of the survey are considered baseline closures and are not considered affected by the rule for several reasons:

(1) Many of these facilities (50 non-excluded facilities) are nonindependent

facilities owned by multifacility firms. These facilities may be transferring production (laundering services at or near cost) from other facilities owned by the same parent company, or otherwise not expected to be self-supporting by the parent. EPA analyzes the parent firms of these facilities in the firm-level analysis and as long as the parent firm can afford to install and operate compliance equipment in these facilities, EPA assumes these facilities will close neither in the baseline nor postcompliance. (2) OMB guidance suggests that agencies develop a baseline that is ''the best assessment of the way the world would look absent from the proposed regulation. That assessment may consider a wide range of factors, including the likely evolution of the market * * *'' EPA's best assessment is that some facilities currently operating may not remain in business to install and operate the pollution control equipment. EPA cannot say for certain which facilities these may be, but can assert that those facilities that are currently considered not financially viable because their cash flow is zero or negative (among those not owned by multifacility firms—57 non-excluded facilities) are the likeliest facilities to close without ever installing and operating pollution control equipment. It is possible that a facility estimated to be a baseline closure may remain open, but the converse is also true—a facility projected to remain open until it is subject to the rule may actually close independently of the effects of the rule (both results might be equally possible). Thus, consistent with OMB guidance, EPA estimated postcompliance closures by counting closures that are projected to close solely due to the effect of the proposed rule.

In the firm failure analysis, EPA uses the adjusted annualized costs to compute a change in earnings, assets, liabilities, and working capital at the firm level (accounting for costs for multiple facilities, where applicable). These postcompliance financial figures are used in a computerized model of financial health on a firm-by-firm basis. The model uses an equation known as ''Altman's Z'', which was developed based on empirical data to characterize the financial health of firms. This equation calculates one number, based on the financial data, that can be compared to index numbers that define ''good'' financial health, ''indeterminate'' financial health, and ''poor'' financial health. All firms whose ''Altman's Z'' number changes such that the firm goes from a ''good'' or ''indeterminate'' baseline category to a ''poor'' postcompliance category are classified as likely to have significant difficulties raising the capital needed to comply with the proposed rule, which can indicate the likelihood of firm bankruptcy, or loss of financial independence.

As the panel noted, there is uncertainty associated with both the methodology for predicting facility and firm closures, and the figures used to make those projections, such as interest rate, assumption of the life of the pollution control equipment and compliance costs. One of the small entity representatives consulted during the outreach process specifically questioned several of EPA's costing assumptions, relating to interest rate, use life of equipment, and labor requirements to operate a treatment system. EPA recognizes the uncertainties associated with its analyses, and has performed sensitivity analyses in the EA that addresses some of these issues. EPA believes that its choice of methodology and input data is appropriate and results in a conservative calculation of costs and facility and firm closures, but solicits comments and data that would support more refined analyses for the final rule.

EPA also notes that a methodological concern has been raised regarding its facility closure analysis that relates to its use of cash flow as the appropriate measure of funds available to cover the compliance costs of the proposed rule. Cash flow is defined as income plus depreciation. It has been suggested that calculating a facility's costs without including depreciation fails to account for the future cost of replacing existing capital as it wears out, and thus underestimates long-term costs and overstates funds available for compliance. EPA, however, believes it is appropriate to include depreciation in the funds available for compliance because, while under standard accounting practices depreciation is deducted from gross revenue during the calculation of income, it does not represent an expenditure actually incurred in the current period but rather an amortization of costs incurred in a previous period. EPA requests comments on its use of cash flow as an appropriate measure of funds available for compliance.

In the employment analysis, EPA undertakes several types of analyses, all based in part on a type of analysis known as input-output analysis. These employment analyses include: (1) a national-level analysis for estimating employment gains and losses throughout the U.S. economy in all industry sectors using both compliance costs and employment losses driven by facility closures to determine a range of possible gross and net (losses minus gains) impacts at the national level; (2) a regional impact analysis using employment losses driven by facility closures (closure losses) to determine whether impacts on individual communities might be experienced; and (3) an analysis using EPA's estimate of market-determined production losses to derive an estimate of direct, net employment losses in the industrial laundries industry alone. This last analysis is undertaken to determine losses within the industrial laundries industry alone because while closure losses can be considered the immediate impact of the proposed rule on the industry, production-driven losses might be greater or less than closure losses over time, as equilibrium in the market is attained. Furthermore, closure losses do not account for the fact that some portion of production workers might transfer wholly or in part to operating pollution control equipment, thus some accounting for employment gains within the industry is necessary.

National-level analysis. EPA uses input-output analyses to determine the effects of the regulation using national-level employment and output multipliers. Input-output multipliers allow EPA to estimate the effect of a loss in output in the industrial laundries industry on the U.S. economy as a whole. Every loss in output in the industrial laundries industry results in employment losses in that industry. Additionally, these losses have repercussions throughout the rest of the economy, and the output and employment multipliers allow EPA to calculate the total losses in output and employment nationally using the output loss estimated for the industrial laundries industry alone. See Section Seven of the EA for more details.

Regional-level analysis. EPA also determines the impacts on regional-level employment, which is estimated using facility closures and employment at those closing facilities. These analyses are based on the use of Bureau of Economic Analysis RIMS II input-output regional (not national-level) multipliers, which allow EPA to determine employment impacts on other sectors of the regionally economy that depend on the industrial laundries industry. EPA uses the regional-loss estimates using the facility closure-driven estimates of employment losses to perform a community impact analysis, which investigates the potential for impacts on community unemployment rates based on the

immediate dislocation effects of facility closures. Firm failures are not considered in the job loss or community impact analyses because in all cases, these firms are single-facility firms whose facility is shown to be financially viable after complying with the rule. The impact of the proposed rule on these facilities thus might be the loss of their financial independence, as they would likely be purchased by a larger firm and continue to operate with all or nearly all employees. This is not always the case in all industries, but in this industry, facilities are geographically tied to their service areas and thus their production is not easily shifted to another geographic area. Furthermore, they are generally not asset-rich and are thus not suitable for acquisition for the purpose of selling off assets rather than for operation.

EPA conducts a regional analysis because even if net employment effects (losses minus gains) are relatively small on a national level, an employment loss might still have a substantial negative effect on an individual community (see the EA for more details).

Industry level analysis. Facility closure losses could overstate or understate employment losses strictly within the industrial laundries industry on a longer-term basis, since total longer-term employment losses are driven by production losses and employment losses from closures are driven by costs of compliance, and these two losses may not be equal. Therefore, EPA uses its market model to predict any reductions in production and the subsequent employment effects (production-driven effects) within the industrial laundries industry alone. This analysis also accounts for some gains within the industrial laundries industry due to a need for operators of pollution control equipment. This analysis also uses the national-level input-output multipliers to compute a direct loss of employment on the basis of output effects. EPA considers this employment loss the longer-term impact of the rule on the industrial laundries industry.

EPA investigates additional secondary impacts qualitatively and quantitatively. These impacts include impacts on domestic and international markets, impacts on substitutes for industrial laundry services, impacts on inflation, distributional impacts, and impacts on environmental justice. EPA also investigates the impact of the rule on domestic markets. The rule will affect domestic markets to the extent that excluded facilities can affect market share. EPA makes an assessment of the potential for effect on domestic market on the basis of pounds of laundry processed by excluded facilities to the total pounds processed by the industry.

EPA also looks at impacts on customers. The agency obtained IRS data on the major customer groups and summed total operating costs for their major customers. Under the worst-case assumption that all compliance costs would be borne by only 10 percent of these major customers, EPA conservatively determined a percentage by which total operating costs might increase due to the proposed rule. Additionally, EPA investigates the potential for any impacts on hotels, hospitals, prisons and other such establishments should they be accepting industrial items from off-site sources.

Another key analysis EPA performs is an analysis to determine impacts on new sources, which is primarily a ''barriers-to-entry analysis'' to determine whether the costs of the PSES would prevent a new source from entering the market. This analysis looks at whether new industrial laundries would be at a competitive disadvantage compared with existing sources. Market effects and barriers to entry associated with the small source exclusion also are qualitatively investigated.

Also, pursuant to E.O. 12866, EPA performs a cost-benefit analysis. This analysis looks at the social cost of the regulation measured as the pretax costs of compliance plus government administrative costs plus the costs of administering unemployment benefits. See Section IX of this preamble for more details of the benefits analysis.

C. Summary of Costs and Economic Impacts

1. Overview of the Economic Assessment Analyses

The EA focuses first on the costs and economic impacts of the proposed rule, using the best data and information available—that reported by industry in the Section 308 Survey data—as representative of the regulatory baseline. The analysis addresses costs and economic impacts of the pretreatment (PSES and PSNS) requirements for industrial laundries wastewater. As noted earlier, EPA has elected to reserve Best Practicable Control Technology Currently Available (BPT), Best Conventional Pollutant Control Technology (BCT), BAT, and NSPS requirements. Direct discharger requirements will be determined on a case-by-case basis under CWA section 402(a)(1).

2. Total Costs and Impacts of the Proposed Rule

This section presents the total costs and impacts of the standards in this proposed rule. EPA estimates that there are 1,747 industrial laundries facilities (given the items processed, the definition of an industrial laundry item in the proposed rule, and Section 308 Survey statistical weights). Of these, 141 facilities meet the definition of ''small'' under EPA's proposed designation of the small industrial laundries exclusion. This exclusion is defined as all facilities laundering less than one million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels/rags per calendar year. Of these excluded facilities, all meet the definition of ''small'' under Small Business Administration (SBA) Guidelines. There are 903 firms owning the 1,747 facilities. A total of 837 out of the 903 firms or 93 percent are ''small businesses'' according to SBA Guidelines (revenues less than $10.5 million per year). The analysis looks separately at single-facility firms (those firms where the firm and the facility are a single entity) and multifacility firms (firms that own more than one facility; generally, these firms are larger than single facility firms). There are a total of 830 single-facility firms out of 903 total firms in the industry (92 percent), the vast majority of which meet the SBA definition of small.

The total cost of the proposed rule is based on engineering cost estimates. To develop these estimates, EPA identified candidate end-of-pipe treatment technologies and grouped appropriate technologies into regulatory options. EPA then developed cost equations for capital and O&M costs for each of the technologies.

For each wastewater treatment technology, EPA developed a cost module. The following cost modules make up the selected CP option: screen, stream splitting, equalization, chemical precipitation, pH adjustment, sludge dewatering, building and monitoring. For further detail, see Chapter 12 of the Development Document.

Total costs of the proposed regulation are estimated to be $93.9 million (see Table VII.C.2.1).

TABLE VII.C.2.1.—COSTS OF PROPOSED PSES OPTION ($1997)

Option	Posttax Annual Costs ($ million)
PSES: CP–IL	$93.9

a. Impacts From Pretreatment Standards for Existing Sources (PSES)

EPA estimates that the proposed rule would result in 33 facilities (2.1 percent of all facilities in the facility-level analysis and 1.9 percent of all in-scope facilities) closing as a result of compliance costs. All are single-facility firms. EPA estimates total direct job loss of 2,872 full-time equivalents (1 FTE = 2,080 hours of labor) as a result of the facility closures projected under the proposed rule. The employment losses associated with closures overstate actual net losses to the industry, because some employment gains in the industry will occur (although the gains may not occur in the same geographic location or at the same time as the losses). These gains include operators of pollution control systems that might be hired by facilities and additional workers hired to expand some production at facilities located in market areas with facility closures (lost production from closures is estimated to exceed the amount of reductions required to meet market equilibrium conditions). EPA estimates the actual *net direct* losses in the industrial laundries industry would be 470 FTEs (0.36 percent of total industry employment), considerably less than the number of direct losses predicted solely on the basis of closures.

Additional to these closures, EPA predicts that the proposed regulatory option would affect the ability of 65 firms (all of which are single-facility firms) to raise the capital needed to purchase and install the pollution control equipment. This impact may result in the loss of financial freedom for these firms, up to and including the sale of the firms to larger multifacility firms. This impact does not mean that these firms will close; all these firms are viable at the facility level and are thus considered likely to be of interest to other firms for acquisition and operation.

EPA predicts employment impacts to the national-level economy on the basis of input-output analysis described above. Based on this analysis, which estimates both national employment losses stemming from increased output in the industrial laundries industry and offsetting gains stemming from increased output of pollution control equipment, the proposed option would result in a net loss of employment at the national level in all industry sectors of 582 to 5,534 FTEs, which is about 0.0005 to 0.005 percent of the U.S. labor force in 1997. Net output loss would be thus $100.7 million at most, which is about 0.001 percent of Gross Domestic Product in 1997. Thus EPA expects, at the national level, that the IL Standards would have negligible impact on U.S. employment and output.

EPA also investigated employment impacts in the industrial laundries industry alone. EPA determined that within the industrial laundries industry, many *nonclosing* facilities might actually experience gains in production (and thus gains in output and employment). This is because when facilities close, other nonclosing facilities in the local market area might expand production to take over a portion of the closing facility's production. Thus, while the proposed rule is estimated to produce a long-term net employment loss to the industrial laundries industry of 470 FTEs, this is less than the short-term direct employment and output losses that would be calculated on the basis of closures alone.

For the community-level analysis, under the conservative approach for estimating community employment impacts described above, EPA determined that most closures will result in a maximum change in a community's unemployment rate of 0.32 percent or less and EPA estimates no single community will sustain impact on its unemployment rate of greater than one percent.

EPA expects the proposed rule to have a minimal impact on international markets. Domestic markets might initially be slightly affected by the exclusion for very small facilities, since these facilities may not be subject to the same requirements; however, the number of these facilities, the small volume of their production relative to total industry production (0.7 percent), and the likelihood that they are not concentrated in any one market area, are expected to limit the effects of any competitive advantages they may have. EPA's economic analysis shows that there is a very slight increase in price ($0.003 per pound) and that customers are not very sensitive to price changes; therefore, dischargers subject to the proposed rule would be able to compete with those dischargers excluded from the proposed rule. Further, if any excluded facility annually launders more than one million pounds of laundry or more than 255,000 pounds of shop and/or printer towels/rags per calendar year, it will no longer be excluded from the standards. The small excluded facilities are also the most likely of any size group to exit the market regardless of the rule. Given these observations, it is likely that this group of existing sources would shrink in size over time, and any small market effects would be reduced. As discussed below in the Regulatory Flexibility Analysis section, EPA believes that the small impacts of the exclusion on markets are far outweighed by the benefits of reducing adverse economic impacts on the most vulnerable firms in the industry.

EPA also expects the proposed rule to have minimal impacts on inflation, insignificant distributional effects, and no major impacts on environmental justice. The rule also would have minimal impacts on industrial laundries customers. The price increase expected as a result of the proposed option is an average of $0.003 per pound, or 0.4 percent of current average price. Because this percentage increase is so small compared to even the modest rates of inflation currently experienced, it is unlikely that most customers would be able to distinguish this effect from the effect of inflation. If EPA assumes that only 10 percent of the customers in the major groups of customers absorb 100 percent of the cost of the rule, total compliance costs would increase customers' operating costs by an average of less than 0.02 percent. Therefore, EPA does not expect price increases to have a major impact on customers.

EPA also investigated the likelihood that customers might substitute disposable items for laundered items or begin operating on-site laundries. Both the substitution of disposable items for laundered items and the installation and operation of on-site laundries are associated with potential negative impacts on customers that might deter them from choosing these potential substitutes. Disposable items can be more expensive to use than laundered items, may not meet quality requirements (e.g., disposable printer towels tend to be linty) and are, in certain circumstances, regulated under other environmental statutes. Meanwhile because of the high initial costs to install equipment on-site and the small increase in price of industrial laundry services discussed earlier, on-site laundries could require years before any cost savings might be realized. Also, EPA's market model provides a means for estimating price increase and reduction in quantity demanded for industrial laundering services at the higher price. This analysis shows a very small decrease in production as a result the proposed rule, 0.3 percent of baseline production. Given the disincentives towards those substitutes indicated above, EPA does not expect the proposed rule to cause customers to substitute disposable items for laundered items or commence industrial laundering on-site for industrial laundries services in any major way.

The small reduction in production of 0.3 percent is more likely to occur from customers delaying cleaning (rather than weekly pickups of mats, for example, some might substitute biweekly pickups) or dropping certain rental items, such as uniforms used only for image purposes. This decline in production is negligible compared to the approximate 4 percent per year growth in revenues seen for the industry between 1990 and 1993, according to Section 308 data.

EPA also determined that impacts on hotels, hospitals, and prisons, which could be processing industrial laundry from offsite sources are likely to be negligible. First, EPA's survey of a subset of hotels, hospitals, and prisons turned up no facilities that were currently accepting industrial items from offsite sources. Second, EPA's survey shows that some of these sources could meet the definition of the small industrial laundry exclusion. Several process considerably less than 1 million pounds of laundry per year, thus it is possible that if any of these types of establishments do accept industrial items from offsite sources, some might be excluded from coverage on the basis of pounds laundered. Finally, if there were facilities large enough not to qualify for an exclusion, their major source of revenues are from their primary business, not from operating a laundry. Therefore, EPA expects that these facilities can afford to comply with the proposed limitations by offsite shipping of industrial laundry wastewater. Because EPA's data on these types of establishments is not exhaustive, however, the Agency solicits comment and additional data on this issue.

b. Impacts From Pretreatment Standards for New Sources (PSNS)

EPA investigated all options considered under PSES as potential PSNS options. EPA has tentatively selected the CP–IL option for both sets of proposed standards. This section presents EPA's assessment of impacts on new sources. EPA assesses impacts on new sources by determining whether the proposed rule would result in a barrier to entry into the market.

EPA has found that overall impacts from the proposed IL Standards on new sources would not be any more severe than those on existing sources, since the costs faced by new sources generally will be the same as or less than those faced by existing sources. It is typically less expensive to incorporate pollution control equipment into the design at a new plant than it is to retrofit the same pollution control equipment in an existing plant because no demolition is required, and space constraints, which can add to costs if specifically designed equipment must be ordered, are not an issue in new construction. Because most new sources and existing sources face similar costs, EPA has determined that PSNS requirements should not pose a barrier to entry on the basis of competitiveness for most new facilities. EPA also has shown CP–IL to be an economically achievable option, having an acceptable level of impact on existing sources. Therefore, the same requirements for PSNS also should have an acceptable level of impact on most new facilities.

EPA also examined whether there would be a barrier to entry for small new sources. EPA proposes not to exclude these new sources because it has found it to be economically achievable for these new sources to comply with the CP–IL standards contained in the proposed rule. Based on the Section 308 Survey data, EPA expects that new sources generally exceed the threshold size cutoff that EPA proposed for existing sources. EPA investigated facilities in the Section 308 Survey that indicated they were new or relatively new at the time of the survey. The number of new source facilities coming on line each year is extremely small. Over a three year period (1991, 1992, and 1993), according to Section 308 Survey data, laundry operations began only at about 80 facilities (and it is not absolutely clear from the data whether these facilities were actually new dischargers or were existing dischargers acquired in that year by a different firm). Over the 3-year period, this amounts to 27 new sources a year at most, or only 1.5 percent of existing facilities. Given the small level of growth in the industrial laundries industry, EPA believes that new sources are primarily replacing production from closing facilities that exit the market.

Of these facilities identified as new or relatively new facilities, EPA determined that the average revenues of this group exceeded $4 million per year, and the amount of laundry processed averaged over 5 million pounds per year. Only 24 facilities out of 80 total newer facilities (weighted), or 30 percent, would meet the size threshold for the exclusion applicable to existing sources. On a yearly basis (given that 24 facilities started up over the 3 years of the survey) EPA estimates that up to 8 facilities of the size that would meet an exclusion similar to that for existing sources might be started up each year. Overall, in the group of 80 facilities, only 6 facilities (weighted) were identified as postcompliance closures (based on a closure by one surveyed nonindependent facility). No single-facility firm would close postcompliance. EPA is less concerned about a closure of a nonindependent facility, since nonindependent facilities often can fall back on their parent firm during the financially shaky first few start up years. Furthermore, these 6 facilities are represented by a survey facility that might, on the basis of the types of laundry processed, be able to meet the requirements of the rule possibly without having to install any pollution control whatsoever (that is, their current effluent might not exceed the CP–IL based standards). EPA has conservatively assigned this facility compliance costs because the Agency has no sampling data from this facility to support this assertion. Given the above results, EPA finds that not excluding new sources laundering less than one million pounds of incoming laundry per calendar year and less than 255,000 pounds of shop and/or printer towels/rags per calendar year from PSNS will be economically achievable and will present no barriers to entry.

EPA also investigated whether there might be a barrier to entry due to competitive disadvantages for all new sources in markets where excluded facilities are located. According to the Section 308 Survey, excluded facilities process only 0.7 percent of the laundry processed by all facilities represented in the survey. EPA thus concludes that the market share of excluded facilities is so small that excluded facilities are unlikely to have a measurable impact in the market for industrial laundry services. Furthermore, EPA has shown that even if no compliance costs are passed through to customers, the impacts are similar to the results assuming cost pass-through does occur, and thus new sources should be able to compete with excluded facilities on price (by not raising prices) even if they perceive the need. EPA thus concludes that competition with excluded facilities will not pose a barrier to entry.

3. Economic Impacts of Rejected Options

The economic impacts from rejected options are as follows.

The OC option is associated with the lowest level of economic impacts of all options considered. This option is associated with 3 facility closures, and only 22 firms are projected to be likely to fail (but not close) and are thus likely to lose their financial independence. A net direct total of 275 FTEs would be lost in the industrial laundries industry (direct, production-driven losses) had EPA chosen this option, and other

secondary impacts (effects on trade, inflation, and customers) would be negligible. The option basing limits on the lesser performance between DAF–IL and CP–IL is associated with nearly identical impacts as EPA's preferred CP–IL option. Facility closures are estimated to be 33, and 65 firms are estimated to be likely to fail (but not close) and thus are likely to lose their financial independence. A net total of 456 FTEs would be lost in the industrial laundries industry (direct, production-driven losses), and, as for the CP–IL option, this option would most likely have minimal additional secondary impacts.

EPA investigated a variant to the Combo option based on both CP–IL and DAF–IL. In this option, rather than setting limits based on the lesser performance, EPA would set limits based on DAF limits for all those currently operating DAF systems, with CP limits for all others. Costs would be very slightly less than the other CP/DAF option, with impacts being approximately the same (in no case would costs or impacts be less than CP–IL).

Under the DAF–IL option facility closures are estimated to total 34. A total of 66 firms are expected to be likely to fail (but not close) and are thus likely to lose their financial independence. A net 421 FTEs would be lost in the industrial laundries industry (direct, production-driven losses), if EPA had chosen this option. Other secondary impacts would be greater than those for the proposed option, but still minimal. Table VII.C.3.1 compares the economic impacts of the rejected option with those of the preferred option.

TABLE VII.C.3.1.—IMPACTS OF THE PREFERRED OPTION VS. REJECTED OPTIONS

Option	Annualized posttax costs ($ MM 1997)	Facility closures	Firm failures	Net direct employment losses (FTEs) as a result of production losses
OC	$46.0	3	22	275
CP–IL	93.9	33	65	470
Combo-IL2Lim*	≈99	33	65	≈450
Combo-IL	99.5	33	65	456
DAF–IL	118.6	34	66	421

*DAF–IL limits for existing DAF systems; CP–IL limits for all others.

D. Cost-Benefit Analysis

The proposed option is expected to have a total annual social cost of $139.4 million ($1997), which includes $136.4 million in pretax compliance costs, $2.9 million in administrative costs, and $0.1 million in unemployment benefits administration costs. Annual monetized benefits are expected to range from $2.9 million to $10.6 million, which includes $0.09 million to $0.5 million for human health benefits, $1.9 million to $6.7 million for recreational benefits, $0.9 million to $3.4 million from nonuse benefits, and $0.006 million to $0.01 million for POTW sewage sludge benefits. Table VII.D.1 summarizes the results of the cost-benefit analysis.

TABLE VII.D.1.—RESULTS OF THE COST-BENEFIT ANALYSIS

Category	Dollar value (millions $1997)
Costs:	
Pretax Costs of Compliance	$136.4
Administrative Costs of Permitting	2.9
Administrative Costs of Unemployment Benefits	0.1
Total Social Costs	139.4
Monetized Benefits:	
Human Health Benefits	$0.09–0.5
Recreational Benefits	1.9–6.7
Nonuse Benefits	0.9–3.4
Benefits to POTWs	0.006–0.01
Total Monetized Benefits	2.9–10.6

There are a number of additional benefits associated with the proposed IL Standards that could not be monetized. Examples include: reduced noncancer health effects, reduced POTW operating and maintenance costs, reduced administrative costs at the local level to develop and defend individually derived local limits for industrial laundries, improved aesthetic quality of near discharge outfalls, enhanced water-dependent recreation other than fishing, benefits to wildlife and to threatened or endangered species, tourism benefits, and biodiversity benefits.

E. Cost-Effectiveness Analysis

In addition to the foregoing analyses, EPA has conducted cost-effectiveness analyses for all options it considered. Results of these analyses are presented in the Cost-Effectiveness Analysis (C–E), which is included in the rulemaking record. C–E analysis evaluates the relative efficiency of options in removing toxic and nonconventional pollutants. Costs evaluated include the pretax direct compliance costs, such as capital expenditures and O&M costs, including compliance monitoring.

Cost-effectiveness results are expressed in terms of the incremental and average costs per ''pound equivalent'' (PE) removed. PE is a measure that addresses differences in the toxicity of pollutants removed. Total PEs are derived by taking the number of pounds of a pollutant removed and multiplying this number by a toxic weighting factor (TWF). EPA calculates TWFs for priority pollutants and some additional nonconventional pollutants using ambient water quality criteria and toxicity values. The TWFs are then standardized by relating them to a particular pollutant, in this case, copper. As of 1985 the water quality criterion for copper was revised, thus the TWF for copper also has been revised. PEs are calculated only for pollutants for which TWFs have been estimated, thus they do not reflect potential toxicity of some nonconventional and, to date, any conventional pollutants though the newly added TWF for TPH does capture a large portion of the more toxic components of the conventional pollutant, oil and grease. EPA's standard procedure is to rank the options considered for each waste stream in order of increasing PE removed. EPA then calculates incremental cost-

effectiveness as the ratio of the incremental annual costs to the incremental PE removed under each option, compared to the previous (less effective) option. Average cost-effectiveness is calculated for each option as a ratio of total costs to total PE removed. In the case of pretreatment standards, EPA does not include pollutant removals if those pollutants could be removed at the POTW, but only includes the removal of pollutants that would pass through the POTW in its cost-effectiveness determination. (Note that EPA assumes for this analysis that POTW removal efficiency is the same for treated influent as for untreated influent. To the extent that the removal efficiency is lower for influent that has already been pretreated this methodology could overestimated removals resulting from the pretreatment standards. EPA reports annual costs for all cost-effectiveness analyses in 1981 dollars, to enable limited comparisons of the cost-effectiveness among regulated industries. Incremental cost-effectiveness is the appropriate measure for comparing one regulatory option to an alternative, less stringent regulatory option for the same rule. Some believe that it may also be used to compare cost-effectiveness across rules when considering how the last increment of stringency in one rule compares to the last increment of stringency in another. For comparing the overall cost-effectiveness of one rule to another, average cost-effectiveness may be a more appropriate measure, but must be considered in context with caution. (Average cost-effectiveness can be thought of as the ''increment'' between no regulation and the selected option, for any given rule).

As part of the cost-effectiveness analysis for this proposed rule, the nonconventional pollutant parameter TPH (SGT–HEM) was included and individual components of TPH, such as the alkanes, were removed from the cost-effectiveness calculations to avoid double counting removals. Although TPH has not been included in cost-effectiveness calculations for past rules, EPA believes that it is appropriate to include it here because, for this industry, a large portion of the toxic constituents of TPH are compounds not specifically included in the database of toxic substances and associated toxic weighting factors that past cost-effectiveness calculation have relied upon. In fact, TPH constitutes over 90 percent of the pounds equivalent removals that EPA has estimated for this proposed rule.

The inclusion of TPH were based on alkanes data to estimate POTW removal and soluble hydrocarbon data to represent toxicity of TPH to calculate the toxic weighting factor (TWF). The POTW removal of 65 percent was estimated using the U.S. EPA Risk Reduction Engineering Laboratory (RREL) Treatability Data Base's average percent removal for the three N-alkanes with available percent removal data. EPA recognizes that this approach may not adequately characterize removals of the soluble hydrocarbons on which its TWF is based and requests comment on how the estimate might be improved. The TWF was calculated using an aquatic life toxicity value of 560 µg/L for soluble hydrocarbons (EPA's Water Quality Criteria, 1976) multiplied by an application factor of 0.01 (EPA's 1986 Quality Criteria for Water) and divided into the criteria for copper (5.6 µg/L) to give a value of 0.1. EPA solicits additional information and data related to these results and the methodology used to calculate both the POTW removal rate and the TWF. EPA also solicits comments on the appropriateness of its inclusion of TPH in the cost-effectiveness calculation for this proposed rule.

Table VII.E.1. presents the cost-effectiveness of the OC and CP–IL options using TPH data in lieu of the alkanes data. The other options considered for industrial laundries wastewater treatment, DAF–IL, and Combo–IL (including Combo-IL2Lim), are not presented in this table because they remove fewer pollutants at a greater cost. EPA's cost-effectiveness methodology requires non cost-effective options to be removed before incremental cost-effectiveness is calculated, since the incremental cost per pound equivalent removed would be negative for the next higher option. See the C–E for more details. As the table shows, the incremental cost-effectiveness of the proposed option is $108 per PE, and the average cost effectiveness of the proposed option is $206 per PE.

TABLE VII.E.1.—COST-EFFECTIVENESS ANALYSIS RESULTS

Option	Total annual		Incremental		Incremental C–E $1981) ($/lb. eq.)	Average C–E ($1981) ($/lb. eq.)
	PE removed	Cost ($Mil. 1981)	PE removed	Cost ($Mil. 1981)		
OC	5,278	$40.3	5,278	$40.3	$7,640	$7,640
CP–IL	407,358	83.7	402,080	43.4	108	206

Table 4–1 in the Cost-Effectiveness Analysis compares the incremental cost-effectiveness of this proposed rule with the incremental cost-effectiveness of 21 other pretreatment standards that EPA has promulgated previously. The table shows that 18 of these were more cost-effective on an incremental basis than this proposed rule. However, as noted earlier, average (rather than incremental) cost-effectiveness is generally a more appropriate measure to use in comparing the overall cost-effectiveness of one rule to another. Unlike incremental cost-effectiveness, average cost-effectiveness is not affected by the particular choice of alternative options that were considered and rejected. In this proposed rule, the incremental or marginal cost-effectiveness is lower than average cost-effectiveness because the proposed option (CP) is being compared to the (OC) option that costs about half as much as CP but removes only slightly more than one percent of the pound equivalents that are removed by the CP option. Due to data limitations and time constraints, EPA has not included in the Cost-Effectiveness Analysis a comparison of the average cost effectiveness of this proposed rule to that of previously promulgated rules. Such a comparison may show this rule to be even less cost-effective relative to other rules than appears from Table 4–1. Care should be used in interpreting this comparison, however. Because the initial focus of regulatory efforts was on highly polluting manufacturing industries, it is not surprising that over time, fewer and fewer toxic removals should come at higher and higher costs, as the initial less treated, higher pollutant concentration wastewaters are addressed and the focus of regulation move increasingly to less polluting

service industries and those which are already regulated.

EPA also analyzed the cost effectiveness of these same options using the alkanes data and not using the TPH toxic weighting factor and POTW removal. Under this assumption, the incremental cost effectiveness of the proposed option is $1,660 per PE, and its average cost effectiveness is $2,664 per PE.

EPA recognizes that the proposed rule is not very cost-effective. However, cost-effectiveness analysis only considers pollutants for which a toxic weighting factor has been estimated. Although this proposed rule would eliminate over 13 million pounds of toxic and nonconventional pollutants to POTWs (See Table IX.C.1), only 1.3 million pounds of these pollutants are considered in the cost-effectiveness analysis.

Furthermore, cost-effectiveness is not a factor to be directly considered under the CWA in setting such standards. Elsewhere in this preamble, EPA has requested comment on the option of not regulating this industry and on whether such a decision would be consistent with the CWA.

VIII. Non-Water Quality Environmental Impacts

As required by sections 304(b) and 306 of the Clean Water Act, EPA has considered the non-water quality environmental impacts associated with the treatment technology options for the industrial laundries industry. Non-water quality impacts are impacts of the proposed rule on the environment that are not directly associated with wastewater. Non-water quality impacts include changes in energy consumption, air emissions, and solid waste generation of oil and sludge. In addition to these non-water quality impacts, EPA examined the impacts of the proposed rule on noise pollution, and water and chemical use. Based on these analyses, EPA finds the relatively small increase in non-water quality impacts resulting from the proposed rule to be acceptable.

1. Air Pollution

Industrial laundry facilities generate wastewater that contains significant concentrations of organic compounds, some of which are on the list of Hazardous Air Pollutants (HAPs) in Title 3 of the Clean Air Act Amendments (CAAA) of 1990. Atmospheric exposure of the organic-containing wastewater may result in volatilization of both volatile organic compounds (VOCs) and HAPs from the wastewater. VOCs and HAPs are emitted from the wastewater beginning at the point where the wastewater first contacts ambient air. Thus, VOCs and HAPs may be of concern immediately as the wastewater is discharged from the process unit. Emissions occur from wastewater collection units such as process drains, manholes, trenches, and sumps, and from wastewater treatment units such as screens, equalization basins, DAF and CP units, and any other units where the wastewater is in contact with the air.

EPA believes that air emissions from industrial laundry wastewater would be similar before and after implementation of the proposed rule because the wastewater from all industrial laundries currently has contact with ambient air as it flows to the POTW. At facilities that do not currently have treatment on site, the wastewater typically flows from the washers to an open or partially open catch basin, then to the sewer and on to the POTW, where the wastewater is typically treated in open aerated basins or lagoons. Air emissions from the wastewater occur as the wastewater flows from the facility to the POTW. At a facility with treatment the wastewater would have more contact with air while still at the facility as it is treated in open units such as equalization basins and CP units prior to flowing through the sewer to the POTW. Air emissions from the treated wastewater occur at the treatment units at the facility, as well as while the wastewater flows to the POTW. Thus, EPA expects that the location of a portion of air emissions from industrial laundry wastewater would shift from the POTW collection and treatment system to the facility treatment system, but EPA believes that the overall amount of air emissions from industrial laundries wastewater would not change.

EPA examined the total air emissions from one industrial laundry's untreated wastewater stream assuming all volatile pollutants volatilize from that stream. EPA considered whether this total amount of air emissions would be acceptable assuming it represented incremental air emissions due to the proposed rule. (EPA does not believe that the total amount of air emissions, as calculated below, represents incremental air emissions because the air emissions would be similar before and after implementation of the rule.) EPA estimated that, in the worst-case scenario, 14 Mg per year of HAPs would be emitted from an industrial laundry's wastewater on an annual basis. Under the CAAA, major sources of HAP(s) emissions are defined as having either a total emission of 25 Mg per year or higher for the total of all HAP emitted by a facility or an emission of 10 Mg per year or higher for a single HAPs emitted by a facility.

Based on the worst-case scenario and this definition industrial laundries would not emit HAP(s) to the degree that they would be classified as a major source as defined by the CAAA. EPA also believes that no adverse air impacts would be expected to occur due to the proposed regulations. Thus, because EPA does not expect an overall increase in the amount of air emissions as a result of the proposed rule and based on EPA's determination of the total emissions from one industrial laundry's untreated wastewater, EPA finds the air emissions impacts of the proposed rule to be acceptable.

2. Solid Waste Generation

The proposed regulations are based on the use of CP followed by dewatering of the sludge generated from CP. Based on information collected in the industrial laundries detailed questionnaires, most industrial laundry sludge from CP or DAF treatment systems is disposed of in nonhazardous landfills. Based on site visits to industrial laundries, EPA has found that some facilities voluntarily dispose of their sludge as hazardous waste even though hazardous waste disposal is not required by law.

EPA estimates that the incremental increase in sludge generation (not including savings in the volume of sludge generated at POTWs that would result from the proposed rule) for the 1,606 facilities in the industry covered by the rule would be 74 thousand tons per year of wet sludge, or 26,000 tons per year of dry solids. For more details, see Chapter 14 of the Development Document. Approximately 430 million tons (dry basis) of industrial nonhazardous waste was sent to landfills in the U.S. in 1986 (Subtitle D Study Phase I: Report EPA No. 530SW86–054). This proposed rule would result in only a 0.006% increase in sludge generation. Data, from the Waste Treatment Industry Phase II: Landfills, suggests that current landfill capacity can accept this increase in solid waste generation. Therefore, EPA believes the solid waste impacts of the proposed rule are acceptable.

3. Energy Requirements

EPA estimates that implementation of the proposed regulation would result in a net increase in energy consumption for the industrial laundries industry. The incremental increase is based on electricity used to operate wastewater treatment equipment at facilities that are not currently operating treatment

systems comparable with the proposed CP option.

EPA estimates that the incremental increase in electricity use for the industrial laundries industry as a result of the proposed rule would be 76 million kilowatt hours per year. Approximately 2,805 billion kilowatt hours of electric power were generated in the U.S. in 1990. The incremental increase in energy use for the industrial laundries industry corresponds to 0.0027% of the national energy requirements. EPA estimates the incremental energy increase to be a small percentage of electricity currently used by the industrial laundries industry to operate all washing, drying, and treatment equipment. For these reasons, energy impacts of the proposed rule are acceptable.

IX. Environmental Benefits Analysis

A. Introduction

This section describes results of EPA's environmental benefits analysis. For more details, see the WQBA.

B. Overview of the Industrial Laundry Industry's Effluent Discharges

EPA's record indicates that industrial laundry facilities nationwide currently discharge to POTWs 4.9 million pounds per year of priority and nonconventional pollutants (excluding COD, TOC, and SGT–HEM), and 35.9 million pounds of HEM. Of the 35.9 million pounds of HEM, 13.2 million pounds are SGT–HEM (see Table IX.C.1 for loadings of all pollutants). SGT–HEM, consisting of polycyclic aromatic hydrocarbons, are components of HEM; SGT–HEM is being used as an indicator for priority and nonconventional pollutants.

For this rulemaking, EPA evaluated the environmental benefits of controlling the pollutant discharges from industrial laundries facilities to POTWs through national analyses of the primary treatment options: OC, DAF–IL, CP–IL, and Combo-IL. Since EPA determined that the OC option removed smaller amounts of organics than the other options, EPA did not perform a separate environmental assessment for this option.

Discharges of priority and nonconventional pollutants into freshwater and estuarine ecosystems may alter aquatic habitats, adversely affect aquatic biota, and adversely impact human health through the consumption of contaminated fish and water. Furthermore, these pollutants may interfere with POTW operations through contamination of sewage sludge, thereby restricting the method of disposal, or through inhibition of the microbes present in activated sewage sludge. Many of the pollutants of concern from industrial laundries have at least one toxic effect (human health carcinogen and/or non-cancer toxicant or aquatic toxicant). In addition, many of these pollutants bioaccumulate in aquatic organisms and persist in the environment.

C. Benefits of the Proposed Rule

EPA estimates that the proposed standards would significantly reduce pollutant discharges to POTWs, as shown by the loadings estimates in Table IX.C.1 for five categories of pollutants. Note that there is significant overlap among some of the pollutants listed. These five categories were segregated in order to minimize the double counting of pollutants within each category, although some overlap remains (*e.g.*, some TOC is also measured as COD). It is not appropriate to sum loadings across categories as there is overlap between categories, for example, BOD and COD. Reductions in industrial laundry pollutant discharges to POTWs would result in a number of benefits, including: reduced cost of disposal or use of municipal sewage sludge that is affected by industrial laundry pollutant discharges; and reduced occurrence of biological inhibition of activated sludge at POTWs. Resulting reductions in discharges from POTWs to surface waters of the US would have additional benefits: improved quality of freshwater, estuarine, and marine ecosystems; increased survivability and diversity of aquatic life and terrestrial wildlife; and reduced risks to human health through consumption of fish or water taken from affected waterways.

TABLE IX.C.1.—SUMMARY OF ESTIMATED POLLUTANT LOADINGS FROM INDUSTRIAL LAUNDRIES TO POTWS

[Natioal Estimates]

Regulatory option	Priority and nonconventional pollutants [1] (million lb/yr)	HEM (million lb/yr) [2]	SGT–HEM (million lb/yr)	Other conventional pollutants (million lb/yr) [3]	Other nonconventional pollutants (million lb/yr) [4]
Baseline	4.9	35.9	13.2	176	346
DAF–IL	2.9	15.9	2.6	137	252
CP–IL	2.9	15.2	2.4	139	258
Combo-IL	3.1	15.9	2.6	139	258

[1] Excludes Total Organic Carbon (TOC), Silica Gel Treated N-Hexane Extractable Material (SGT–HEM), and Chemical Oxygen Demand (COD).
[2] Includes the pounds of SGT–HEM.
[3] Includes Biological Oxygen Demand (BOD) and Total Suspended Solids (TSS).
[4] Includes Chemical Oxygen Demand (COD) and Total Organic Carbon (TOC).

EPA assessed the benefits from the expected pollutant reductions in three broad classes: human health, ecological, and economic productivity benefits. Each class is composed of a number of more narrowly defined benefit categories. EPA expects that benefits will accrue to society in all of these categories. However, because of data limitations and the understanding of how society values some of these benefit categories, EPA was not able to analyze all of these categories with the same level of rigor. At the highest level of analysis, EPA was able to quantify the expected effects for some benefit categories and attach monetary values to them. Benefit categories for which EPA developed dollar estimates include reduction in cancer risk from fish consumption and increased value of recreational fishing opportunities, reduced risk to aquatic life, and other non-use benefits. For other benefit categories, reduced risk of non-cancer toxic effects to human health from consumption of fish and drinking water; and reduced costs of biological inhibition at POTWs, EPA was able to quantify expected effects but not able to estimate monetary values for them. Finally, there is an additional non-quantified, non-monetized benefit

categories of enhanced water-dependent recreation other than fishing. Note that benefits to wildlife and to threatened or endangered species; and biodiversity benefits are often included as non-quantified benefits but in the current analysis an attempt has been made to monetize them.

D. Human Health Benefits

EPA analyzed the following measures of health-related benefits from the proposed rule in the WQBA: reduced cancer risk from fish consumption; reduced risk of non-cancer toxic effects from fish and water consumption; and, reduced occurrence of in-waterway pollutant concentrations in excess of human health-based ambient water quality criteria (AWQC) or in excess of documented toxic effect levels for those chemicals for which EPA has not published water quality criteria. Of these measures, EPA was able to monetize only the reduction in cancer risk.

EPA first predicted steady-state, in-stream pollutant concentrations by assuming complete immediate mixing with no loss from the system. Of the 172 in-scope respondent facilities, EPA was unable to include 33 facilities in the benefits analysis because of incomplete information on the POTWs to which these sample facilities discharge. The remaining 139 facilities are discharging to 118 POTWs that in turn discharge to 113 water bodies (88 rivers/streams, 21 bays/estuaries, and 4 lakes).

EPA then extrapolated the environmental assessment results for the sample facilities to the entire regulated population of industrial laundry facilities nationwide (approximately 1,606 facilities discharging to 1,178 POTWs). For this extrapolation, each sample facility received a sample weight based on the varying number of additional facilities of the same approximate size engaged in similar activities under similar economic conditions. EPA then estimated the change in aggregate cancer risk through consumption of fish in waterbodies where the identified POTWs discharge. EPA predicted pollutant concentrations in fish by using the in-stream pollutant concentration based on modeled POTW effluent concentrations due to pass-through, and pollutant-specific bioconcentration factors that account for the degree to which the pollutant in the water will be concentrated in fish tissue. EPA used data on licensed fishing populations by state and county, presence of fish advisories, fishing activity rates, and average household size to estimate the exposed population of recreational and subsistence anglers and their families that would benefit from reduced pollutant concentrations in fish. EPA used fish consumption rates for recreational and subsistence anglers to estimate the change in cancer risk among these populations.

For the proposed rule, the benefits associated with reduced incidence of cancer from fish consumption are estimated to range from $0.089 million to $0.50 million per year ($1997), depending on the choice of willingness-to-pay value that is used to value the avoided cancer events and depending on the treatment option considered. For combined recreational and subsistence angler household populations, EPA projects that the treatment options would eliminate approximately 0.04 cancer cases per year from a baseline of about 0.1 cases estimated at the current discharge level (see Table IX.D.1). EPA valued the reduced cancer cases using estimated willingness-to-pay values for avoiding premature mortality. The values used in this analysis are based on a range of values recommended by EPA's Office of Policy Analysis from a review of studies quantifying individuals' willingness to pay to avoid increased risks to life. In 1997 dollars, these values range from $2.4 million to $12.5 million per statistical life saved.

TABLE IX.D.1.—ESTIMATED ANNUAL AVOIDED CANCER CASES FROM FRESHWATER FISH CONSUMPTION

Regulatory option	Number of cases avoided (National estimates)
Baseline	—
CP–IL	0.04
DAF–IL	0.04
Combo-IL	0.04

To estimate the reduced risk of non-cancer health effects (e.g., systemic effects, reproductive toxicity, and developmental toxicity) from fish and water consumption for each treatment option, EPA used risk reference doses, in conjunction with in-stream pollutant concentrations, to calculate a hazard score. A value of one or greater for a hazard score indicates the potential for non-cancer hazards to occur. In this analysis, EPA analyzed only pollutant loadings from industrial laundries to particular water bodies, *i.e.*, EPA did not consider background loadings from other sources. The hazard score, which EPA calculated by summing over all pollutants, was less than one for baseline conditions as well as for all treatment options.

EPA also evaluated reduced occurrence of in-waterway pollutant concentrations in excess of human-health based AWQC. At current discharge levels, in-stream concentrations of two pollutants—bis(2-ethylhexyl)phthalate and tetrachloroethene—are projected to exceed human health criteria (developed for consumption of water and organisms) in 9 receiving streams nationwide (see Table IX.D.2) for a total of 17 exceedences. The proposed PSES regulated discharge levels would eliminate the occurrence of pollutant concentrations in excess of the human health-based AWQCs in 7 of 9 affected streams.

TABLE IX.D.2. DISCHARGE REACHES WITH POLLUTANT CONCENTRATIONS EXCEEDING AWQC LIMITS FOR PROTECTION OF HUMAN HEALTH, AND REDUCTIONS ACHIEVED BY REGULATORY OPTIONS

Regulatory option	Number of reaches with concentrations exceeding health-based AWQCs for water and organisms (national basis)
Baseline	9
CP–IL	2
DAF–IL	2
Combo-IL	2

E. Ecological Benefits Valued on the Basis of Enhanced Recreational Fishing Opportunities

EPA analyzed one measure of ecological benefits from the proposed regulation: reduced occurrence of in-waterway pollutant concentrations in excess of acute and chronic AWQCs that protect aquatic life. EPA used the findings from the analysis of reduced occurrence of pollutant concentrations in excess of both EPA's ecological and human health AWQCs to assess improvements in recreational fishing habitats and, in turn, to estimate a monetary value for the enhanced recreational fishing opportunities.

To assess aquatic life benefits, EPA estimated the effect of facility discharges of regulated pollutants on pollutant concentrations in affected waterways. EPA compared the estimated concentrations on a baseline and post-compliance basis, with the Agency's AWQCs for acute and chronic exposure impacts to aquatic life. Pollutant concentrations in excess of these values indicate potential impacts to aquatic life. EPA's analysis found that

78 stream reaches exceed chronic AWQC values at baseline discharge levels for a total of 93 exceedences (see Table IX.E.1). Under three options, EPA estimates that the proposed regulation would eliminate concentrations in excess of the chronic AWQC values for aquatic life in 66 affected reaches. EPA predicts that no pollutants under current or proposed discharge levels would exceed acute AWQC.

EPA expects that society will value improvements in aquatic species habitat, resulting from the reduction of pollutant concentrations in excess of the chronic AWQC values, by a number of mechanisms. For this analysis, EPA estimated a partial monetary value of ecological improvements based on the value of enhanced recreational fishing opportunities. Specifically, the elimination of pollutant concentrations exceeding AWQC limits for protection of aquatic species and human health is expected to generate benefits to recreational anglers. Such benefits are expected to manifest as increases in the value of the fishing experience per day fished or the number of days anglers subsequently choose to fish the cleaner waterways. These benefits, however, do not include all of the benefits that are associated with improvements in aquatic life. For example, recreational benefits do not capture the benefit of increased assimilative capacity of a receiving waterbody, improvements in the taste and odor of the instream flow, or improvements to other recreational activities such as swimming and wildlife observation that may be enhanced by improved water quality.

TABLE IX.E.1.—DISCHARGE REACHES WITH POLLUTANT CONCENTRATIONS EXCEEDING CHRONIC AWQC LIMITS FOR PROTECTION OF AQUATIC SPECIES, AND REDUCTIONS ACHIEVED BY REGULATORY OPTIONS

Regulatory option	Number of pollutants estimated to exceed chronic AWQC limits	Number of reaches with concentrations exceeding chronic AWQC limits	Total exceedences of chronic AWQC limits
Baseline	3	78	93
CP–IL	2	12	19
DAF–IL	2	12	19
Combo-IL	2	12	19

None of the acute AWQC limits were estimated to be exceeded in the baseline.

EPA calculated the value of enhanced recreational fishing opportunities from the proposed rule based on the concept of achievement of a contaminant-free fishery. For this analysis, EPA assumed for an affected waterway that elimination of all instances in which industrial laundry pollutant concentrations exceed AWQCs that protect human health or aquatic species may be interpreted as approximately equivalent to the achievement of a contaminant-free fishery. EPA first estimated a baseline value of those fisheries in which all instances of industrial laundry pollutant concentrations in excess of AWQCs are estimated to be eliminated by regulation. This value is based on the number of annual fishing days at the affected waterway and the value of a fishing day. Second, EPA estimated the value of improving the water quality in these fisheries based on the incremental percentage increase in value to anglers of freeing the fishery of contaminants (Lyke, 1992). Estimates of the increase in value of recreational fishing to anglers range from $1.9 million to $6.7 million annually ($1997) for all three treatment options, depending on the baseline value of the fishery and the estimated incremental benefit values associated with freeing the fishery from contaminants. This analysis does not account for sources of pollutant contamination other than industrial laundries or for pollutants not discharged by industrial laundries.

EPA also estimated non-market non-use benefits. These non-market non-use benefits are not associated with current use of the affected ecosystem or habitat; instead, they arise from (1) the *realization* of the improvement in the affected ecosystem or habitat resulting from reduced effluent discharges and (2) the value that individuals place on the *potential for use* sometime in the future. Because nonuse value is a sizable component of the total economic value of water resources, EPA estimated change in nonuse values in proportion to recreational fishing benefits. For this analysis, as was done in the Great Lakes Water Quality Guidance, EPA conservatively estimated that nonuse benefits compose one-half of recreational fishing benefits. For all three treatment options, this method yields non-use benefits attributable to the proposed regulation ranging from $0.94 million to $3.4 million ($1997) per year.

F. Benefits From Reduced Cost of Sewage Sludge Disposal and Reduced Incidence of Inhibition

EPA expects that reduced effluent discharges from the industrial laundries industry would also yield economic productivity benefits. For this analysis, EPA estimated productivity benefits for two benefit categories: (1) reduced pollutant contamination of effluent discharged by industrial laundry facilities to sewage treatment systems and (2) associated savings in sewage sludge use or disposal costs; and, a reduction in biological inhibition of activated sludge. For the former category, EPA examined the following: (1) whether industrial laundry baseline discharges would prevent POTWs from being able to meet the metals concentration limits required for certain lower cost sewage sludge use or disposal practices—beneficial land application and surface disposal; and (2) whether limitations on the selection of management practices would be removed under regulatory options.

EPA has promulgated regulations establishing standards for sewage sludge when it is applied to the land, disposed of at dedicated sites (surface disposal), and incinerated (40 CFR Part 503). In addition, EPA has also established standards for sewage sludge when it is disposed of in municipal solid waste landfills (40 CFR Part 258). For land application, the regulations include three sets of pollutant limits for ten metals: (1) Pollutant Ceiling Limits, which all land applied sewage sludge must meet with certain limitations, (2) Cumulative Pollutant Loading Limits (which limit the cumulative amount of metal which may be applied to the soil) and (3) more stringent Pollutant Concentration Limits, which provide more favorable terms for land

application of sewage sludge. Sewage sludge that meets only the less stringent Ceiling Limits may be applied to land; however, the use of the sewage sludge is subject to pollutant loading limits, which restrict the quantity of sewage sludge that may be applied to a given site. If the sewage sludge meets the more stringent Concentration Limits, it is considered high quality sewage sludge and is not subject to the cumulative limits on land application and other regulatory requirements in the land application subpart, *i.e.*, general conditions and certain management practices, such as more extensive recordkeeping requirements. Thus, disposing of high quality sewage sludge costs less than disposing of low quality sewage sludge that meets only the ceiling concentrations for metals.

EPA estimated sewage sludge concentrations of ten metals for sample facilities under baseline and post-regulatory options discharge levels. EPA compared these concentrations with the relevant metal concentration limits for the following sewage sludge management options: Land Application-High (Concentration Limits), Land Application-Low (Ceiling Limits), and Surface Disposal. In the baseline case, EPA estimated that concentrations of one pollutant (lead) at 10 POTWs would fail the Land Application-High limits while meeting the Land Application-Low limits. EPA estimated that no POTWs would fail any of the Surface Disposal limits. Under all three options, EPA estimated that all 10 POTWs would meet the Land Application-High limits and that an estimated 6,200 dry metric tons (DMT) of annual disposal of sewage sludge would newly qualify for beneficial use under the Land Application-High limits. EPA estimated the reduced time required for record-keeping for sewage sludge meeting the more stringent Land Application-High criteria, and, on this basis, developed a partial estimate of monetary benefits from reduced metals contamination of sewage sludge. For all three options, the proposed regulation is expected to result in benefits from sewage sludge quality improvements of $0.006 million to $0.01 million ($1997) annually. (EPA notes that the rule would also generate additional metals-contaminated sludge at industrial laundries, but has already included the costs of disposing of this sludge in the compliance costs of the rule.)

EPA estimated inhibition of POTW operations by comparing predicted POTW influent concentrations to available inhibition levels for 45 pollutants. At current discharge levels, EPA estimates POTW concentrations of lead exceed biological inhibition criteria at two POTWs. Under all treatment options, inhibition problems are eliminated.

EPA based the POTW inhibition and sludge values upon engineering and health estimates contained in guidance or guidelines published by EPA and other sources. Because the values used in this analysis are not, in general, regulatory values, EPA did not base the proposed pretreatment discharge standards directly on this approach. However, the values and methodology used in this analysis are helpful in identifying potential benefits for POTW operations and sludge disposal that may result from the compliance with proposed pretreatment discharge requirements.

G. Discussions With POTW Operators and Pre-Treatment Coordinators

To understand the frequency and characteristics of problems to POTWs resulting from industrial laundry discharges, EPA obtained information from discussions with EPA regional staff, and with POTW operators representing 40 POTWs that receive discharges from industrial laundries. Of these 40 POTWs, 11 encounter some difficulty resulting from industrial laundry discharges either currently or in the recent past. A number of the other POTWs that encountered problems with industrial laundry discharges in the past have established local limits applicable to laundries to address those problems. Problems encountered by POTWs, as reported by the operators, included: oil and grease, which may clog pipes and pump stations, inhibit activated sludge and otherwise inhibit POTW operations; metals, which may also inhibit activated sludge; and pH fluctuations, which can injure POTW workers and deteriorate concrete pipes and manholes. The Water Quality Benefits Analysis notes that there are solutions available to POTWs for these problems, although they do entail costs to the POTWs. A further analysis of three case studies do not document substantial problems from industrial laundries discharges that would be reduced by regulation.

X. Related Acts of Congress, Executive Orders, and Agency Initiatives

A. Regulatory Flexibility Act (RFA) as Amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA)

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by SBREFA, EPA generally is required to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the proposed rule on small entities. Under section 605(b) of the RFA, if the Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare the IRFA.

EPA conducted an IRFA pursuant to section 603(b) of the RFA addressing:

- The need for, objectives of, and legal basis for the rule;
- A description of, and where feasible, an estimate of the number of small entities to which the rule would apply;
- The projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that would be subject to the rule and the types of professional skills necessary for preparation of the report or record;
- An identification, where practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule;
- A description of any significant regulatory alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities. Consistent with the stated objectives of the CWA, the analysis discusses significant alternatives such as—

(1) establishing differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities;

(3) the use of performance rather than design standards;

(4) an exclusion from coverage of the rule, or any part thereof, for such small entities. The IFRA is presented in Chapter 9 of the EA. Based on the IRFA and other factors, this proposed rule incorporates an exclusion to eliminate disproportionate impacts on small businesses and also reduces the number of small businesses affected by the proposed rule.

Pursuant to the RFA as amended by SBREFA, EPA convened a Small Business Advocacy Review Panel. The Panel is comprised of representatives from three federal agencies: EPA, the Small Business Administration, and the Office of Management and Budget. The Panel reviewed materials EPA prepared in connection with the RFA, and collected the advice and recommendations of small entity representatives. For this proposed rule, the small entity representatives

included owners of small industrial laundries and trade association representatives. The Panel prepared a report (available in the public docket for this rulemaking) that summarizes the outreach to small entities and the comments submitted by the small entity representatives. The Panel's report also presents their findings on issues related to the elements of an IRFA.

As part of the findings, the Panel recommended that the Agency evaluate other thresholds for excluding small businesses, in addition to the proposed one million pounds of total production and 255,000 pounds of shop and/or printer towels. Examples of alternative thresholds that the Panel recommended EPA solicit comment on are three to five million pounds of total production with shop and/or printer towel thresholds between 255,000 and 500,000 pounds.

EPA evaluated a total of 17 threshold combinations as possible bases for excluding small businesses. The analysis of 13 threshold combinations are presented in a table in the final Panel report. In response to the recommendations in the Panel report, EPA analyzed 4 additional threshold combinations. The results of all 17 threshold combinations are found in Appendix E of the EA.

The thresholds (*i.e.*, exemption cutoffs) ranged from one million to five million pounds of production, both with and without cutoffs related specifically to shop and/or printer towels. The shop and/or printer towel cutoffs ranged from 255,000 to 500,000 pounds. In addition, EPA analyzed threshold cutoffs involving only ''heavy production,'' defined as shop and/or printer towels, mops, fender covers, and filters, and excluding all small businesses (as defined by revenues less than $10.5 million per year).

Results of these higher threshold analyses suggest that, by using the three to five million pounds of production levels, between 15 and 34 percent of the pollutant removals would be excluded from regulation. As noted earlier, with EPA's proposed exclusion, the excluded facilities would account for less than 3 percent of the pollutant removals from the waters of the U.S. than would occur if the proposed rule were implemented without the exclusion. Furthermore, with the higher thresholds, approximately 600 to 1000 facilities (depending on the actual threshold) would be excluded from coverage by the proposed regulation, while closures resulting from the proposed rule would be reduced by only two facilities. Costs for the proposed rule could be reduced by up to 60 percent with higher thresholds and cost per toxic pound equivalent removed could also be reduced by up to 40 percent. See the Cost-Effectiveness Analysis. The total amount of removals excluded under the highest threshold considered (about 150,000 PE), while a significant share of potential removals from the industrial laundries industry, is small compared to removals by other effluent guidelines for primary manufacturing industries. The SBREFA Panel also noted the statement by one of the small entity representatives that the number of small facilities has declined since EPA surveyed the industry in 1993. If this is true, it would mean that both the cost savings and the amount of potential removals excluded for any particular small business exclusion would be less than estimated. A table summarizing the results of the 17 threshold analyses is contained in Appendix E of the EA and a table summarizing the results of the original 13 threshold analyses is contained in the Panel report. The Agency solicits comments on these alternative exclusion levels as well as the exclusion level proposed today.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is ''significant'' and therefore subject to OMB review and the requirements of the Executive Order. The Order defines ''significant regulatory action'' as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.''

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a ''significant regulatory action''. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this proposed rule would contain a Federal mandate that may result in expenditures of $100 million or more for the private sector in any one year. Accordingly, EPA has prepared the written statement required by section 202 of the UMRA. This statement is contained in the EA for the rule and is summarized below. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments and thus this rule is not subject to the requirements of section 203 of UMRA. Nevertheless, EPA has consulted with state and local governments as described in Section III of this preamble.

EPA prepared several supporting analyses for the proposed rule. Throughout this preamble and in the supporting analyses, EPA has responded to the UMRA section 202 requirements. As anticipated by OMB, most considerations with respect to costs, benefits, and regulatory alternatives are addressed in the EA, which is summarized in Sections VII and IX of this preamble and presented in detail in Section Ten of the EA. A very brief summary follows.

The statutory authority for this proposal is found in multiple sections of the CWA (see section I of this preamble). In part, these sections of the CWA authorize EPA to issue standards to address effluent discharges.

EPA prepared a qualitative and quantitative cost-benefit assessment of the federal requirements imposed by today's proposed rule. In large part, the private sector, not other governments, will incur the costs. Specifically, the costs of this federal mandate are compliance costs to be borne by the regulated industrial laundry facilities. In addition, although some States and local governments will incur costs to implement standards, these costs to governments will not exceed the thresholds established by UMRA and in general, these standards will make it easier for POTWs to establish limits on discharges to POTWs.

EPA estimates that the total annualized costs for the private sector to comply with the federal mandate are $93.9 million (post-tax)/$136.4 million (pre-tax). The mandate's benefits are primarily in the areas of reduced health risk and improved water quality. The EA describes, qualitatively, such benefits. The analysis also quantifies a portion of the benefits and monetize a subset of these benefits. EPA estimates that annual monetized benefits would be $2.9 to $10.3 million.

EPA does not believe that there will be any disproportionate budgetary effects of the rule on any particular areas of the country, particular types of communities, or particular industry segments. EPA's basis for this finding is the analysis of economic impacts, which is summarized in section VII of the preamble and in the EA. A key feature of the analysis is the estimation of financial impacts for each facility incurring compliance costs. EPA considered the costs, impacts and other effects and found no disproportionate budgetary effects on any specific regions or individual communities. The EA also describes the rule's effects on the national economy in terms of effects on productivity, economic growth, and international competitiveness; EPA found such effects to be minimal.

For each regulatory decision in today's proposal, EPA believes it has selected the ''least costly, most cost-effective, or least burdensome alternative'' that achieves the objective of the rule. This satisfies the section 205 of the UMRA. Some, including members of the SBREFA panel, have suggested that EPA consider other options including no regulation or higher thresholds for the small business exclusion and EPA is soliciting comments on those alternatives. EPA believes, however, that the proposed option appropriately reflects what is economically achievable for the reasons elsewhere discussed in this preamble.

D. Paperwork Reduction Act

The proposed industrial laundries pretreatment standards contain no new information collection activities beyond that which is already required in 40 CFR Part 403, and therefore, no information collection request will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

E. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act, the Agency is required to use voluntary consensus standards in its regulatory 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.) that are developed or adopted by voluntary consensus standard bodies. 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. This section summarizes EPA's response to the requirements of the NTTAA for the analytical test methods promulgated as part of today's effluent limitations guidelines and standards. EPA performed literature searches to identify any analytical methods from industry, academia, voluntary consensus standard bodies and other parties that could be used to measure the analytes in today's proposed rulemaking. The results of this search formed the basis for EPA's analytical method development and validation in support of this proposed rulemaking.

EPA's analytical test method development is consistent with the requirements of the NTTAA. Although the Agency initiated data collection for these effluent guidelines many years prior to enactment of the NTTAA, traditionally, analytical test method development has been analogous to the Act's requirements for consideration and use of voluntary consensus standards.

The proposed rule would require dischargers to monitor for SGT-HEM, Copper, Lead, Zinc, Bis (2-Ethylhexyl) Phthalate, Ethylbenzene, Naphthalene, Tetrachloroethene, Toluene, m-Xylene, and o-&p-Xylene. Except for SGT-HEM and Xylenes, methods for monitoring these pollutants are specified in tables at 40 CFR Part 136. When available, methods published by voluntary consensus standards bodies are included in the list of approved methods in these tables. Specifically, voluntary consensus standards from the American Society for Testing and Materials (ASTM) and from the 18th edition of Standard Methods (published jointly by the American Public Health Association, the American Water Works Association and the Water Environment Federation) are approved for Copper, Lead and Zinc. In addition, USGS methods are approved for these three inorganic pollutants. Voluntary consensus standards from the 18th edition of Standard Methods are also approved for Bis (2-Ethylhexyl) Phthalate, Ethylbenzene, Naphthalene, Tetrachloroethene, and Toluene.

For SGT-HEM, EPA is proposing to use EPA Method 1664. This method was proposed for promulgation in 40 CFR Part 136 on January 23, 1996 (61 FR 1730). Method 1664 was developed by EPA to replace previously used gravimetric procedures (for determination of oil and grease and total petroleum hydrocarbons) that employed Freon-113, as part of EPA's efforts to reduce the dependency on the use of chlorofluorocarbons pursuant to Title VI of the Clean Air Act. EPA is unaware of the existence of an appropriate non-Freon method from a voluntary consensus standards body.

For the Xylenes, EPA proposes to use EPA Methods 1624 and 624 which are promulgated at 40 CFR Part 136. These analytical methods were used in data collection activities in support of today's proposed limitations although the xylenes are not specified as analytes in the methods. EPA has not identified any methods from a voluntary consensus standards body that could be used to measure these analytes.

EPA requests comments on the discussion of NTTAA, on the

consideration of various voluntary consensus standards, and on the existence of other voluntary consensus standards that EPA may not have found.

XI. Related Rulemakings

A. Office of Solid Waste (OSW) Activities Related to This Effort

Solvent-contaminated industrial shop towels have been a longstanding issue within the Resources Conservation and Recovery Act (RCRA) program. As mentioned earlier, a free liquids inspection policy exists in the industry. The industrial laundry trade association also has established guidance for industrial laundries and their customers to use in the management of solvent-contaminated shop towels—foremost being that the industrial laundry not accept any shop towels bearing free liquids and their customers use a collection system or other process to remove any free liquids. OSW is currently collecting data to better understand the use and management of both disposable and reusable solvent-contaminated industrial shop towels. The objective of this range-finding effort is to assist the Agency in determining whether the Agency's rules and policies should be modified to address current problems with the regulation of these materials. Questions being addressed in this study include:

Site Visits

1. What are the demographics of industry using solvents and shop towels/wipers; *i.e.*, type of industry, size of firm, Material Safety Data Sheets, type of wipers used, number of wipers used monthly or annually, range of solvent amounts put on wiper, amount of solvent used monthly or annually, RCRA regulatory status [Small Quantity Generator (SQG)/Large Quantity Generator(LQG)], other environmental permits, removal technology utilized, material disposition (municipal landfill, laundry, incineration, etc.), etc.

2. What is the variability of solvent amounts placed on shop towels?

3. What is the variability of solvent remaining on shop towels immediately after usage and after 18–24 hours? How were shop towels stored to derive results? What factors explain low evaporation rates?

4. What is the variability of solvents in usage? How often are ''high risk'' solvents used, at what percentage?

5. Does percolation occur during storage? What factors might influence or explain any percolation seen?

6. What removal technologies were used in the site-visits? What are their removal efficiencies?

7. How are shop towels managed after usage? Open containers/closed containers/placed on shelves, etc.

Lab results

8. What are the absorbability rates for different types of shop towels? What factors explain these findings?

9. What were the removal efficiencies for different types of shop towels and solvents? What can we conclude in terms of variability or consistency? What factors might explain these results?

10. What were the evaporation rates we found for different types of solvents and shop towels? What factors help explain these results?

11. What were the percolation rates we found in our experiments? What were the experiments we conducted? What factors might explain results?

Risks

12. What are the relative risks to the air, ground water and surface water for the solvent constituents? What was the methodology used to derive these results?

13. Based upon the above analysis, are there solvent constituents that deserve further analysis to clearly determine whether they pose little or no risk to human health and the environment? Are there solvent constituents that we should clearly discourage?

XII. Regulatory Implementation

A. Upset and Bypass Provisions

A ''bypass'' is an intentional diversion of wastestreams from any portion of a treatment facility in an emergency situation. An ''upset'' is an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. EPA's regulations for indirect dischargers concerning bypasses and upsets are set forth at 40 CFR 403.16 and 403.17.

B. Variances and Modifications

The CWA requires application of the pretreatment standards established pursuant to sections 304 and 307 to all indirect dischargers. However, the statute provides for the modification of these national requirements in a limited number of circumstances. Moreover, the Agency has established administrative mechanisms to provide an opportunity of relief from the application of national pretreatment standards for categories of existing sources.

1. Fundamentally Different Factors (FDFs) Variances

EPA may develop pretreatment standards different from the otherwise applicable requirements for existing sources if an existing facility is fundamentally different with respect to factors considered in establishing the standards applicable to the individual facility. Such a modification is known as a FDF variance. See 40 CFR 403.13. Dischargers subject to PSNS are not eligible for an FDF variance.

In the Water Quality Act of 1987, Congress added new section 301(n) of the Act to authorize modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified in 403 (other than costs) from those considered by EPA in establishing the effluent limitations or pretreatment standards. Section 301(n), also defined the conditions under which EPA may establish alternative requirements. Under section 301(n), an application for approval of FDF variance must be based solely on (1) information submitted during the rulemaking raising the factors that are fundamentally different or (2) information the applicant did not have the opportunity to submit. The alternate limitation or standard must be no less stringent than justified by the difference and not result in markedly more adverse non-water quality environmental impacts than the national limitation or standard.

EPA regulations at 40 CFR Part 403, authorizing the Regional Administrators to establish alternative standards, further detail the substantive criteria used to evaluate FDF variance requests for existing dischargers to POTWs. Thus, 40 CFR 403.13(d) identifies six factors (e.g., volume of process wastewater, age and size of a discharger's facility) that may be considered in determining if a facility is fundamentally different. The Agency must determine whether, on the basis of one or more of these factors, the facility in question is fundamentally different from the facilities and factors considered by the EPA in developing the nationally applicable pretreatment standards. The regulation also lists four other factors (e.g., infeasibility of installation within the time allowed or a discharger's ability to pay) that may not provide a basis for an FDF variance. In addition, under 40 CFR 403.13(c)(2), a request for limitations less stringent than the national limitation may be approved only if compliance with the pretreatment standards would result in either (a) a removal cost wholly out of proportion to the removal cost considered during development of the

standards, or (b) a non-water quality environmental impact (including energy requirements) fundamentally more adverse than the impact considered during development of the standards.

The legislative history of section 301(n) underscores the necessity for the FDF variance applicant to establish eligibility for the variance. EPA's regulations at 40 CFR 403.13 are explicit in imposing this burden upon the applicant. The applicant must show that the factors relating to the discharge controlled by the applicant's permit that are claimed to be fundamentally different are, in fact, fundamentally different from those factors considered by the EPA in establishing the standards. While EPA encourages facilities, or categories of facilities, that believe they qualify for the FDF variance to apply for it, EPA also recognizes that the circumstances under which it can be granted are limited to specific statutory factors that few applicants have satisfied.

2. Removal Credits

The CWA establishes a discretionary program for POTWs to grant ''removal credits'' to their indirect dischargers. This credit in the form of a less stringent pretreatment standard, allows an increased concentration of a pollutant in the flow from the indirect discharger's facility to the POTW. *See* 40 CFR 403.7. EPA has promulgated removal credit regulations as part of its pretreatment regulations. In addition, currently five of the approximately 1500 authorized pretreatment programs have the authority to issue removal credits. Under EPA's pretreatment regulations, the availability of a removal credit for a particular pollutant is linked to the POTW method of using or disposing of its sewage sludge. The regulations provide that removal credits are only available for certain pollutants regulated in EPA's 40 CFR Part 503 sewage sludge regulations (58 FR 9386). The pretreatment regulations at 40 CFR Part 403 provide that removal credits may be made potentially available for the following pollutants:

(1) If a POTW applies its sewage sludge to the land for beneficial uses, disposes of it on surface disposal sites or incinerates it, removal credits may be available, depending on which use or disposal method is selected (so long as the POTW complies with the requirements in Part 503). When sewage sludge is applied to land, removal credits may be available for ten metals. When sewage sludge is disposed of on a surface disposal site, removal credits may be available for three metals. When the sewage sludge is incinerated, removal credits may be available for seven metals and for 57 organic pollutants (40 CFR 403.7(a)(3)(iv)(A)).

For this proposed rule, removal credits would be available for the following pollutant parameters being regulated under each of the criteria discussed: (1) land application—Copper, Lead and Zinc; (2) surface disposal—none; (3) incineration—in addition to Lead, removal credits would also be available for Bis(2-Ethylhexyl) Phthalate, Ethylbenzene, Tetrachloroethene, and Toluene if the requirements in 40 CFR part 403, Appendix G.I.(1) are met.

(2) In addition, when sewage sludge is used on land or disposed of on a surface disposal site or incinerated, removal credits may also be available for additional pollutants so long as the concentration of the pollutant in sludge does not exceed a concentration level established in Part 403. When sewage sludge is applied to land, removal credits may be available for two additional metals and 14 organic pollutants. When the sewage sludge is disposed of on a surface disposal site, removal credits may be available for seven additional metals and 13 organic pollutants. When the sewage sludge is incinerated, removal credits may be available for three other metals (40 CFR 403.7(a)(3)(iv)(B)).

Under this proposed rule, additional pollutant parameters that would be available for removal credits are as follows: (1) land application—none; (2) surface disposal—Bis(2-Ethylhexyl) Phthalate, Copper, Lead and Zinc and (3) incineration—Copper, and Zinc.

(3) When a POTW disposes of its sewage sludge in a municipal solid waste landfill (MSWLF) that meets the criteria of 40 CFR Part 258, removal credits may be available for any pollutant in the POTW's sewage sludge (40 CFR 403.7(a)(3)(iv)(C)). Thus, given compliance with the requirements of EPA's removal credit regulations,[1] following promulgation of the pretreatment standards being proposed today, removal credits may be authorized for any pollutant subject to pretreatment standards if the applying POTW disposes of its sewage sludge in a municipal solid waste landfill that meets the requirements of 40 CFR Part 258. If the POTW uses or disposes of its sewage sludge by land application, surface disposal or incineration, removal credits may be available for the following metal pollutants (depending on the method of use or disposal): Arsenic, Cadmium, Chromium, Copper, Iron, Lead, Mercury, Molybdenum, Nickel, Selenium and Zinc. Given compliance with § 403.7, removal credits may be available for the following organic pollutants (depending on the method of use or disposal) if the POTW uses or disposes of its sewage sludge: Benzene; 1,1-Dichloroethane; 1,2-Dibromoethane; Ethylbenzene; Methylene Chloride; Toluene; Tetrachloroethene; 1,1,1-Trichloroethane; 1,1,2-Trichloroethane and Trans-1,2-Dichloroethene.

Some facilities may be interested in obtaining removal credit authorization for other pollutants being considered for regulation in this rulemaking for which removal credit authorization would not otherwise be available under Part 403. Under Sections 307(b) and 405 of the CWA, EPA may authorize removal credits only when EPA determines that, if removal credits are authorized, that the increased discharges of a pollutant to POTWs resulting from removal credits will not affect POTW sewage sludge use or disposal adversely. As discussed in the preamble to amendments to the Part 403 regulations (58 FR 9382–9383), EPA has interpreted these sections to authorize removal credits for a pollutant only in one of two circumstances. Removal credits may be authorized for any categorical pollutant (1) for which EPA has established a numerical pollutant limit in Part 503; or (2) which EPA has determined will not threaten human health and the environment when used or disposed of in sewage sludge. The pollutants described in paragraphs (1)–(3) above include all those pollutants that EPA either specifically regulated in Part 503 or evaluated for regulation and determined would not adversely affect sewage sludge use and disposal.

Consequently, in the case of a pollutant for which EPA did not perform a risk assessment in developing its Round One sewage sludge regulations, removal credit for pollutants will only be available when the Agency determines either a safe level for the pollutant in sewage sludge or that regulation of the pollutant is unnecessary to protect public health and the environment from the reasonably anticipated adverse effects of such a pollutant.[2]

[1] Under 40 CFR 403.7, a POTW is authorized to give removal credits only under certain conditions. These include applying for, and obtaining, approval from the Regional Administrator (or Director of a State NPDES program with an approved pretreatment program), a showing of consistent pollutant removal and an approved pretreatment program. See 40 CFR 403.7(a)(3)(I), (ii), and (iii).

[2] In the Round One sewage sludge regulation, EPA concluded, on the basis of risk assessments, that certain pollutants (see Appendix G to Part 403)

Continued

EPA has concluded that a POTW discharge of a particular pollutant will not prevent sewage sludge use (or disposal) so long as the POTW is complying with EPA's Part 503 regulations and so long as the POTW demonstrates that use or disposal of sewage sludge containing that pollutant will not adversely affect public health and the environment. Thus, if the POTW meets these two conditions, a POTW may obtain removal credit authority for pollutants other than those specifically regulated in the part 503 regulations. What is necessary for a POTW to demonstrate that a pollutant will not adversely affect public health and the environment will depend on the particular pollutant, the use or disposal means employed by the POTW and the concentration of the pollutant in the sewage sludge. Thus, depending on the circumstances, this effort could vary from a complete 14-pathway risk assessment modeling exercise to a simple demonstration that available scientific data show that, at the levels observed in the sewage sludge, the pollutant at issue is not harmful. As part of its initiative to simplify and improve its regulations, at the present time, EPA is considering whether to propose changes to its pretreatment regulations so as to provide for case-by-case removal credit determinations by the POTWs' permitting authority.

EPA has already begun the process of evaluating several pollutants for adverse potential to human health and the environment when present in sewage sludge. In November 1995, pursuant to the terms of the consent decree in the *Gearhart* case, the Agency notified the United States District Court for the District of Oregon that, based on the information then available at that time, it intended to propose only two pollutants for regulation in the Round Two sewage sludge regulations dioxins/dibenzofurans (all monochloro to octochloro congeners) and polychlorinated biphenyls.

The Round Two sewage sludge regulations are not scheduled for proposal until December, 1999, and promulgation in December 2001. However, given the necessary factual showing, as detailed above, EPA could propose that removal credits should be authorized for identified pollutants before promulgation of the Round Two sewage sludge regulations. However, given the Agency's commitment to promulgation of effluent limitations and guidelines under court-supervised deadlines, it may not be possible to complete review of removal credit authorization requests by the time EPA must promulgate these pretreatment standards.

did not pose an unreasonable risk to human health and the environment and did not require the establishment of sewage sludge pollutant limits. As discussed above, so long as the concentration of these pollutants in sewage sludge are lower than a prescribed level, removal credits are authorized for such pollutants.

Appendix A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Administrator—The Administrator of the U.S. Environmental Protection Agency.

Agency—The U.S. Environmental Protection Agency.

Annually—For purposes of the exclusion, annually would mean per calendar year.

AWQS—Ambient Water Quality Standards are provisions of State or Federal law that consist of a designated use or uses for the waters of the United States and water quality criteria for such waters based upon such uses. Water Quality Standards are designed to protect health or welfare, enhance the quality of the water and serve the purposes of the Act (40 CFR 131.3).

BADCT—best available demonstrated control technology, as described in section 306 of the CWA.

BAT—The best available technology economically achievable, as described in section 304(b)(2) of the CWA.

BMPs—Best Management Practices—As authorized by section 304(e) and 402 of the CWA. Gives the Administrator the authority to publish regulations to control plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage.

BCT—Best Conventional Pollutant Control Technology, as described in section 304(b)(4) of the CWA.

BPT—Best Practicable Control Technology Currently Available, as described in section 304(b)(1) of the CWA.

CAA—Clean Air Act, 33 U.S.C. 7401–7671q.

CBI—Confidential Business Information.

CEB—Chemical Emulsion Breaking.

C–E—Cost-Effectiveness Analysis

Conventional pollutants—The pollutants identified in section 304(a)(4) of the CWA and the regulations thereunder (BOD_5, total suspended solids, oil and grease, fecal coliform, and pH).

Cooperative—An enterprise or organization owned by and operated for the benefit of those using its services. For purposes of this rule, a laundry serving like facilities owned by and/or operated for the benefit of those facilities.

CP—Chemical Precipitation.

CWA—Clean Water Act. The Federal Water Pollution Act, 33 U.S.C. 1251 *et seq.*

DAF—Dissolved Air Flotation.

Daily discharge—The discharge of a pollutant measured during any calendar day or any 24-hour period.

Direct discharger—A facility that discharges treated or untreated pollutants into waters of the United States.

Dry cleaning—The cleaning of fabrics using an organic-based solvent rather than water-based detergent solution.

EA—Economic Assessment.

EIA—Economic Impact Analysis.

Effluent—Wastewater discharges.

Effluent limitation—Any restriction, including schedules of compliance, established by a State or the Administrator on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged from point sources into navigable waters, the waters of the contiguous zone, or the ocean. (CWA Sections 301(b) and 304(b)).

EPA—The U.S. Environmental Protection Agency.

E.O.—Executive Order.

Facility—A facility is all contiguous property owned, operated, leased or under the control of the same person, or corporate or business entity. The contiguous property may be divided by public or private right-of-way.

FDF—Fundamentally Different Factor—Section 301(n) of the CWA. This section authorizes modification of the otherwise applicable BAT effluent limitations or categorical pretreatment standards for existing sources if a facility is fundamentally different with respect to the factors specified at 40 CFR 403.13.

FTE—Full-time Equivalent.

HAPs—Hazardous Air Pollutants.

HEM—N-Hexane Extractable Material.

Indirect discharger—A facility that discharges or may discharge pollutants into a publicly owned treatment works.

IL—Industrial Laundry.

Industrial laundry facility—any facility that launders industrial textile items from off-site as a business activity. Either the industrial laundry facility or the off-site customer may own the industrial laundered textile items. This includes textile rental companies that perform laundering operations.

Industrial textile items—items such as, but are not limited to: shop towels, printer towels/rags, furniture towels, rags, mops, mats, rugs, tool covers, fender covers, dust-control items, gloves, buffing pads, absorbents, uniforms, filters, and clean room garments.

IRFA—Initial Regulatory Flexibility Analysis.

IRIS—Integrated Risk Information System.

IRS—Internal Revenue Service.

Laundering—washing items with water, including water washing following dry cleaning.

Linen—items such as sheets, pillow cases, blankets, bath towels and washcloths, hospital gowns and robes, tablecloths, napkins, tableskirts, kitchen textile items, continuous roll towels, laboratory coats, family laundry, executive wear, mattress pads, incontinence pads, and diapers. This list is intended to be an inclusive list.

LTA—Long Term Average. For purposes of the pretreatment standards, average pollutant levels achieved over a period of time by a facility, subcategory, or technology option. LTAs were used in developing the standards in today's proposed rule.

MACT—Maximum Achievable Control Technology.

NTTAA—National Technology Transfer and Advancement Act

New Source—''New source'' is defined in section 306 of the CWA and at 40 CFR 122.12 and 122.29 (b).

Non-conventional pollutants—Pollutants that are neither conventional pollutants nor priority pollutants listed at 40 CFR part 401.

Non-detect value—A concentration-based measurement reported below the sample specific detection limit that can reliably be measured by the analytical method for the pollutant.

Non-water quality environmental impact—An environmental impact of a control or treatment technology, other than to surface waters (including energy requirements).

NPDES—The National Pollutant Discharge Elimination System authorized under Section 402 of the CWA. NPDES requires permits for discharge of pollutants from any point source into waters of the United States.

NSPS—New Source Performance Standards—Based on BADCT and apply to all pollutants (conventional, nonconventional, and toxic). Section 306 of the CWA.

OC—Organics Control.

O&G—Oil and Grease.

OMB—Office of Management and Budget.

Off-Site—''Off-site'' means outside the boundaries of a facility.

On-site—''On-site'' means within the boundaries of a facility.

OSW—USEPA Office of Solid Waste.

POTW/POTWs—Publicly owned treatment works, as defined at 40 CFR 403.3(o).

Pretreatment standard—A regulation that establishes industrial wastewater effluent quality required for discharge to a POTW.

Priority pollutants—The pollutants designated by EPA as priority in 40 CFR part 423, Appendix A.

PSES—Pretreatment standards for existing sources on indirect discharges, under Section 307 (b) of the CWA.

PSNS—Pretreatment standards for new sources of indirect discharges, under Section 307(b) and (c) of the CWA.

RCRA—Resources Conservation and Recovery Act (Pub. L. 94–580) of 1976, as amended.

RFA—Regulatory Flexibility Act.

RREL—Risk Reduction Engineering Laboratory.

SBA—Small Business Administration.

SBREFA—Small Business Regulatory Enforcement Fairness Act.

SGT-HEM—Silica Gel Treated N-Hexane Extractable Material.

SIC—Standard Industrial Classification.

Small Business—Businesses with annual revenues less than $10.5 million. This is the higher of the two Small Business Administration definition of small business for SIC codes 7218 and 7213.

TPH—Total Petroleum Hydrocarbons.

TRSA—Textile Rental Services Association of America.

TSS—Total suspended solids.

TWF—Toxic Weighting Factor.

UMRA—Unfunded Mandates Reform Act (PL 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.

UTSA—Uniform and Textile Service Association.

Variability factor—The daily variability factor is the ratio of the estimated 99th percentile of the distribution of daily values divided by the expected value, median or mean, of the distribution of the daily data. The monthly variability factor is the estimated 95th percentile of the distribution of the monthly averages of the data divided by the expected value of the monthly averages.

VOC—Volatile Organic Compound.

Water washing—The process of washing laundry items in which water is the solvent used.

List of Subjects in 40 CFR Part 441

Environmental protection, Industrial laundry discharges, Water pollution control, Waste treatment and disposal.

Dated: November 7, 1997.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended by adding part 441 as follows:

PART 441—THE INDUSTRIAL LAUNDRIES INDUSTRY POINT SOURCE CATEGORY

General Provisions

Sec.

441.1 General definitions.
441.2 Applicability.
441.21 Pretreatment Standards for Existing Sources (PSES).
441.22 Pretreatment Standards for New Sources (PSNS).
Table 1 to Part 441—Pretreatment Standards

Authority: 33 U.S.C. 1311, 1314, 1316, 1317, 1318, and 1361.

General Provisions

§ 441.1 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) *Dry cleaning*—The cleaning of fabrics using an organic-based solvent rather than water-based detergent solution.

(b) *Off-site*—''Off-site'' means outside the boundaries of a facility.

(c) *On-site*—''On-site'' means within the boundaries of a facility.

(d) *Water washing*—The process of washing laundry items in which water is the solvent used.

§ 441.2 Applicability.

(a) Except as stated in paragraphs (b) through (e) of this section, the provisions of this part apply to wastewater discharges from industrial laundry facilities. An industrial laundries facility is any facility that launders industrial textile items from off-site as a business activity (*i.e.*, launders industrial textile items for other business entities for a fee or through a cooperative arrangement). Either the industrial laundry facility or the off-site customer may own the industrial laundered textile items. This definition includes textile rental companies that perform laundering operations. Laundering means washing with water, including water washing following dry cleaning. Industrial textile items include, but are not limited to industrial: shop towels, printer towels/rags, furniture towels, rags, mops, mats, rugs, tool covers, fender covers, dust-control items, gloves, buffing pads, absorbents, uniforms, filters and clean room garments. If any of these items are used by hotels, hospitals, or restaurants, they are not industrial items.

(b) The provisions of this part do not apply to discharges from: on-site laundering at industrial facilities, laundering of industrial textile items originating from the same business entity, and facilities that exclusively launder linen items, denim prewash items, new items (i.e. items directly from textile manufacturers, not yet used for intended purpose), any other items that come from laundering of hotel, hospital, or restaurant items or any combination of these items. This part does apply to hotel, hospital, or restaurant laundering of industrial textile items. In addition, the provisions of this part do not apply to discharges from the oil-only treatment of dust mops. Furthermore, the provisions of this part do not apply to laundering exclusively through dry cleaning.

(c) By linen items EPA means: sheets, pillow cases, blankets, bath towels and washcloths, hospital gowns or robes, tablecloths, napkins, tableskirts, kitchen textile items, continuous roll towels, laboratory coats, household laundry, executive wear, mattress pads, incontinence pads, and diapers. This list is an inclusive list.

(d) For facilities covered under the Industrial Laundry definition, wastewater from all water washing operations is covered, including the washing of linen items as long as these items do not constitute 100 percent of the items washed.

(e) The provisions of this part do not apply to industrial laundry facilities that as of [the effective date of the final rule] always launder less than one million pounds of incoming laundry per year and launder less than 255,000 pounds of shop and/or printer towels/rags per year. By per year, EPA means on a calendar year basis for the industrial laundry facility. If any excluded facility launders one million pounds or more of incoming laundry per year or 255,000 pounds or more of shop and/or printer towels/rags per

year, it will no longer be excluded from the standards.

§ 441.21 Pretreatment Standards for Existing Sources (PSES).

Pursuant to the CWA section 307(b)(1), indirect dischargers are required to comply with pretreatment standards for existing sources by three years of [the effective date of the final rule]. For purposes of this part, indirect dischargers must comply with this part by three years after [the date of publication of the final rule].

§ 441.22 Pretreatment Standards for New Sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this part that introduces pollutants into a publicly owned treatment works must comply with 40 CFR part 403 and achieve as pretreatment standards for new sources (PSNS) the same standards as those specified in § 441.21 for existing sources (PSES).

TABLE 1 TO PART 441—PRETREATMENT STANDARDS

Pollutant parameter	CP—Daily maximum (mg/L)
Bis (2-Ethylhexyl) Phthalate	0.13
Ethylbenzene	1.64
Naphthalene	0.23
Tetrachloroethene	1.71
Toluene	2.76
m-Xylene	1.33
o&p-Xylene	0.95
Copper	0.24
Lead	0.27
Zinc	0.61
SGT–HEM [1]	27.5

[1] Monthly average limitation for SGT–HEM under CP option is 15.4 mg/L.

[FR Doc. 97–30240 Filed 12–16–97; 8:45 am]

BILLING CODE 6560–50–P

Federal Register

Wednesday
December 17, 1997

Part III

Department of Agriculture

Forest Service
36 CFR Part 242

Department of the Interior

Fish and Wildlife Service
50 CFR Part 100

Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition To Include Waters Subject to Subsistence Priority; Proposed Common Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AD68

Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, C, and D, Redefinition To Include Waters Subject to Subsistence Priority

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the scope and applicability of the Federal Subsistence Management Program in Alaska to include subsistence activities occurring on inland navigable waters in which the United States has a reserved water right and to identify specific Federal land units where reserved water rights exist. The amendments being proposed also would extend the Federal Subsistence Board's management to all Federal lands selected under the Alaska Native Claims Settlement Act or the Alaska Statehood Act and situated within the boundaries of a Conservation System Unit, National Recreation Area, National Conservation Area, or any new national forest or forest addition, until conveyed to the State of Alaska or an Alaska Native Corporation, as required by the Alaska National Interest Lands Conservation Act (ANILCA). In addition, the amendments being proposed would clearly specify that the Secretaries are retaining the authority to determine when hunting, fishing or trapping activities taking place in Alaska off the public lands interfere with the subsistence priority on the public lands to such an extent as to result in a failure to provide the subsistence priority and to take action to restrict or eliminate the interference. The Departments also are proposing to provide the Federal Subsistence Board with authority to investigate and make recommendations to the Secretaries regarding the possible existence of additional Federal reservations, Federal reserved water rights or other Federal interests, including those which attach to lands in which the United States has less than fee ownership. The regulatory amendments being proposed would conform the Federal subsistence management regulations to the court decree issued in *State of Alaska* v. *Babbitt,* 72 F.3d 698 (9th Cir. 1995). The proposed rule includes updated Customary and Traditional Use Determinations and annual seasons and harvest limits for fisheries. This proposed rulemaking also responds to the Petitions for Rulemaking submitted by the Northwest Arctic Regional Council et al. on April 12, 1994, and the Mentasta Village Council, et al. on July 15, 1993.

DATES: Written public comments on this proposed rule must be received no later than April 20, 1998.

ADDRESSES: Comments should be sent to Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Attention: Thomas H. Boyd, Office of Subsistence Management, 1011 E. Tudor Road, Anchorage, Alaska 99503. See Supplementary Information section for electronic filing address.

FOR FURTHER INFORMATION CONTACT: Thomas H. Boyd, Office of Subsistence Management; telephone (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–7921.

SUPPLEMENTARY INFORMATION: The Federal Subsistence Board will hold public meetings to receive comments on this proposed rule at various locations in Alaska. Notice of specific dates, times, and meeting locations will be published in local and statewide newspapers prior to the meetings. Locations and dates may need to be changed based on weather or local circumstances.

Comments may also be submitted by sending electronic mail to: ASM@mail.fws.gov.

Background

The Federal Subsistence Board assumed subsistence management responsibility for public lands in Alaska in 1990, after the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska,* 785 P.2d 1 (Alaska. 1989), *reh'g denied* (Alaska 1990), that the rural preference contained in the State's subsistence statute violated the Alaska Constitution. This ruling put the State's subsistence program out of compliance with Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) and resulted in the Secretaries assuming subsistence management on the public lands in Alaska. The ''Temporary Subsistence Management Regulations for Public Lands in Alaska, Final Temporary Rule'' was published in the **Federal Register** (55 FR 27114–27170) on June 29, 1990. The ''Subsistence Management Regulations for Public Lands in Alaska; Final Rule'' was published in the **Federal Register** (57 FR 22940–22964) on May 29, 1992.

In both cases, the rule ''generally excludes navigable waters'' from Federal subsistence management. 55 FR 27114, 27115 (1990); 57 FR 22940, 22942 (1992). In a lawsuit consolidated with *Alaska* v. *Babbitt,* plaintiff Katie John challenged these rules, arguing that navigable waters are properly included within the definition of ''public lands'' set out in ANILCA. At oral argument before the United States District Court for Alaska, the United States took the position that Federal reserved water rights which encompass the subsistence purpose are public lands for purposes of ANILCA. The United States Court of Appeals for the Ninth Circuit subsequently held: ''[T]he definition of public lands includes those navigable waters in which the United States has an interest by virtue of the reserved water rights doctrine.'' *Alaska* v. *Babbitt,* 72 F.3d at 703–704. In the course of its decision, the Ninth Circuit also directed: ''[T]he federal agencies that administer the subsistence priority are responsible for identifying those waters.'' Id. at 704.

The amendments being proposed would conform the Federal subsistence management regulations to the Ninth Circuit's ruling in *Alaska* v. *Babbitt.* As the Ninth Circuit directed, this document identifies Federal land units in which reserved water rights exist. These are ''public lands'' under the Ninth Circuit's decision in *Alaska* v. *Babbitt* and thus are subject to the Federal subsistence priority in Title VIII of ANILCA. The amendments being proposed here also provide the Federal Subsistence Board with clear authority to administer the subsistence priority in these waters.

On July 15, 1993, the Mentasta Village Council, Native Village of Quinhagak, Native Village of Goodnews Bay, Alaska Federation of Natives, Alaska Inter-tribal Council, RurAL CAP, Katie John, Doris Charles, Louie Smith and Annie Cleveland filed a ''Petition for Rulemaking by the Secretaries of Interior and Agriculture that Navigable Waters and Federal Reserved Waters are 'Public Lands' Subject to Title VIII of ANILCA's Subsistence Priority.'' On April 12, 1994, the Northwest Arctic Regional Council, Stevens Village Council, Kawerak, Inc., Copper River Native Assoc., Alaska Federation of Natives, Alaska Inter-tribal Council, RurAL CAP and Dinyee Corporation filed a ''Petition for Rule-Making by the Secretaries of Interior and Agriculture

that Selected But Not Conveyed Lands Are To Be Treated as Public Lands for the Purposes of the Subsistence Priority in Title VIII of ANILCA and that Uses on Non-Public Lands in Alaska May Be Restricted to Protect Subsistence Uses on Public Lands in Alaska.'' A Request for Comments on this Petition was published at 60 FR 6466 (1995). This proposed rule also responds to both petitions for rulemaking.

The Secretaries published an Advance Notice of Proposed Rulemaking (ANPR) (61 FR 15014) on April 4, 1996, and during May and June held ten public hearings around Alaska to solicit comments on the Advance Notice.

Public Review and Comment

In addition to the oral testimony received at the public hearings, an additional 64 written comments including 1 petition representing 1,379 individuals and 1 letter submitted in behalf of 2 individuals, 6 Native organizations, and 4 local governments were received. The comments received both in writing and during the hearings in response to the Advance Notice provided the agencies with a sense of how the public viewed the general jurisdictional concepts outlined in the notice. A number of issues were raised by the public.

- The Federal government should not be interfering in any Alaska management. Previously, the Federal government managed fish and shellfish poorly. The State should manage fishing, hunting, and trapping throughout Alaska. The Secretaries agree that the State should be managing the fish and wildlife resources of Alaska and will work with the State to return management to it as soon as the State is in compliance with Title VIII of ANILCA.
- The State has failed to provide for subsistence uses; the Federal government should take over management of all navigable waters throughout Alaska. Federal jurisdiction should also be extended to include all marine waters. The 9th Circuit Court has ruled that Federal jurisdiction of subsistence fisheries management only includes those waters in which the Federal government has reserved water rights. When hunting, fishing, or trapping activities taking place in Alaska off of the public lands interfere with the subsistence priority on the public lands to such an extent as to result in a failure to provide the subsistence priority, the Federal Subsistence Board may recommend that Secretaries take action to restrict or eliminate the interference.
- The identified waters are too extensive in scope. The waters identified in this rulemaking comply with the court's direction to identify those waters in which the Federal government has reserved water rights.
- Native allotments and water flowing through or past should be included. Native allotments are small, scattered, and remote, parcels whose boundaries are not readily identifiable on the ground. The existence of reserved water rights would have to be determined on a case-by-case basis. It is not practicable in the time available to identify any Federal reserved water rights which might be associated with individual allotments. Authority to make recommendations for inclusion of these lands, if appropriate, may be made by the Board under proposed § ____.10(d)(xviii).
- The Federal government should step in to regulate the Area M (False Pass intercept) fishery. At the present time the Federal government is preparing to assume jurisdiction over waters for which the Federal government has reserved water rights. Area M waters are not included in this jurisdiction. However, if there is interference with the subsistence priority for fishing on public lands as a result of activities in Area M, the proposed regulations clarify that the Secretaries have and will retain the authority to take action.
- ANILCA does not authorize the extension of Federal jurisdiction off of Federal lands. The Federal courts have long ruled that the Federal government may extend jurisdiction off of Federal lands in order to protect the interests and purposes of those Federal areas. This document clarifies that the Secretaries will retain that authority. The Board, located in Alaska and much more familiar with the unique situations there, will evaluate the situation and make recommendations to the Secretaries for their action.
- Congress did not intend for selected but not yet conveyed lands to be subject to Title VIII. Section 906(o)(2) provides that ''the laws applicable to such unit'' are to apply to the Federal lands within the unit until conveyed. Since selected lands are Federal lands, the only question is whether ANILCA's Title VIII governing subsistence uses is part of the body of laws ''applicable to such unit.'' This question is easily answered in the affirmative. Each of the titles of ANILCA that establishes or expands a conservation system unit identifies the laws that apply to the unit. For example, new national parks established by ANILCA ''shall be administered by the Secretary under the laws governing the administration of such lands and under the provisions of this Act.'' In each case, the new units established by ANILCA are to be administered in accordance with ANILCA as well as other applicable organic legislation. The subsistence provisions in Title VIII are part of ANILCA and are therefore part of the body of law applicable to the new units under ANILCA section 906(o)(2). The statutes establishing the new units do not distinguish among the titles of ANILCA which are applicable; they simply say that along with the other statutes, ANILCA applies. Section 906(o)(2) applies this whole body of law to selected but not conveyed lands.
- The Federal Subsistence Board should not be granted authority to identify additional lands for designation as public lands. The authority to identify and include additional lands in the Federal Subsistence Management Program remains with the Secretaries. The change would clarify the Board's duty for identification and recommendation and specify that any inclusion of lands in the program would remain the authority of the Secretaries as provided under existing laws.
- The ANPR violates the Alaska Statehood and Submerged Lands Acts. Case law and subsequent legislation (e.g. Alaska Native Claims Settlement Act, ANILCA, etc.) have modified the Statehood and Submerged Lands Acts. This rulemaking, therefore, does not violate the Acts with their subsequent modifications and revisions.
- Some people commented that various procedural requirements have not been fulfilled, such as complying with NEPA, the Executive Order on Federalism, or preparing a Regulatory Flexibility Act analysis. The preparation of an environmental assessment and an economic analysis have been completed. The final rule will not be promulgated prior to the completion of all procedural requirements.

Alternatives Considered in Preparing the Proposed Rule

The primary consideration in implementation of the Ninth Circuit Court directive is the identification of inland navigable waters considered Federal Public lands in Alaska (non-navigable waters are currently in the Federal program). The Court directed that the Federal Agencies responsible for administering the subsistence priority identify those waters, which are defined as waters in which the United States has a reserved water right. Accordingly, the responsible agencies identified alternatives based on different interpretations of the extent of jurisdiction associated with reserved

water rights. These alternatives are discussed in the Environmental Assessment which has been prepared for this Proposed Rule. The base case (Alternative I) is the no action alternative in which Federal jurisdiction does not change; it is used for purposes of analysis and is not consistent with the Court directive. Alternative II identifies a minimal definition of jurisdiction that includes only those inland navigable waters directly adjacent to Federal public lands. Alternative III is a broader definition than Alternative II and includes all inland navigable waters within the exterior boundaries of listed Parks, Preserves, Wildlife Refuges, and other specified units managed by the Department of the Interior and all inland navigable waters bordered by lands owned by the Federal government within the exterior boundaries of the two National Forests. With the exception of a few areas (National Petroleum Reserve-Alaska, national recreation areas and wild and scenic river corridors), navigable waters on lands managed by the Bureau of Land Management are not included in any of these alternatives. Alaska has a total of 196,234 miles of streams and rivers (data from the Digital Chart of the World); under Alternative II, 80,572 miles would be under Federal jurisdiction; and under Alternative III, 102,491 miles would be under Federal jurisdiction.

An alternative considered but not analyzed was the extension of Federal jurisdiction to all navigable waters in Alaska. This broad definition of jurisdiction was advocated by the plaintiff, Katie John, and adopted by the District Court. The court based this part of its decision on the Federal navigational servitude. The Ninth Circuit Court of Appeals reversed the district court's judgment on this point and remanded the decision. The directive of the Ninth Circuit was based on a determination that navigational servitude is not ''public land'' within the meaning of ANILCA because navigational servitude is not a sufficient Federal interest to define public land in the context of ANILCA. Instead, the appeals court relied upon the reserved water rights doctrine, which holds that when the United States withdraws lands from the public domain and reserves them for a Federal purpose, then the United States implicitly reserves the associated, unappropriated waters to the extent needed to accomplish the purposes of the withdrawal. The court held that these Federal reserved waters are a sufficient interest to constitute public lands under ANILCA.

Alternative III was chosen as the preferred alternative for this Proposed Rule because it would fully implement the Ninth Circuit's ruling while avoiding the serious management difficulties that would arise from checkerboard jurisdiction over segments of rivers within Department of Interior Conservation System Units that is contemplated in Alternative II.

There are two issues that are common to all alternatives that were considered: dual management and customary trade. Two underlying premises are associated with dual management. The first is that the Federal and State programs will cooperate in the management of fisheries. The second premise is that a primary focus of the Federal program will be on the existing State Fishery Management plans, which identify parameters (harvest and escapement goals) used to make in-season decisions. A key aspect of the Federal-State cooperation will be the adoption of what are now the State Fishery Management plans into the Federal program. In general, this will involve the Regional Councils and Federal Subsistence Board in the evaluation of existing plans, modification if necessary to adequately address and accommodate subsistence uses, and development of new plans where necessary.

Although the Federal definition of Customary Trade was initially drawn from the State, the current Federal and State regulations differ in the definition and regulatory restrictions on Customary Trade. The differences are due to changes incorporated by the State to regulations addressing specific fisheries' issues. The proposed Federal regulations provide additional provisions to ensure separation of commercial markets and traditional customary trade practices. The same definition of Customary Trade would apply to all alternatives.

Alternative I—No Action

In the base case, or No Action Alternative, the Federal government would not extend jurisdiction to navigable waters. In this case, the fishery allocation and harvest decisions on all navigable waters would continue to be made by the State; the State would retain jurisdiction over all 196,234 miles of streams and rivers in the state that are not currently in the Federal Program (less than 1 percent of navigable waters are currently under Federal jurisdiction). Fishery decisions by the Federal Subsistence Board would be limited to non-navigable waters on Federal Public Lands and those limited marine waters included in Conservation System Units. This alternative is counter to the Ninth Circuit's directive.

Alternative II—Limited Federal Jurisdiction

Alternative II is a restricted determination of jurisdiction. In this case, jurisdiction would only extend to waters directly adjacent to Federal Public lands; 80,572 miles of streams and rivers (41%) would be under Federal subsistence jurisdiction and 115,662 (59%) would remain under State jurisdiction. Only those navigable waters where at least one shoreline is Federal public land would be included. Lands and waters on selected but not yet conveyed parcels within DOI CSU's, national conservation and recreation areas, and new national forests or forest additions also would be included in Alternative II as well as Alternative III.

Land status becomes paramount for determining jurisdiction and the extent of jurisdiction could be dynamic as land ownership patterns change. With the current pattern of land ownership within the boundaries of CSUs managed by the Department of the Interior, Federal Subsistence fishery management would be fragmented due to the ''checkerboard pattern'' of ''in-holdings'' within most CSUs. Navigable waters within the boundaries of the majority of Bureau of Land Management lands are not included.

Alternative III—Preferred Alternative

Jurisdiction in Alternative III is broader than in Alternative II for lands managed by the Department of Interior but remains the same for lands managed by the Department of Agriculture (Forest Service lands). In Alternative III, all inland navigable waters within and adjacent to exterior boundaries of DOI Conservation System Units would be included under Federal jurisdiction. As in Alternative II, however, navigable waters on most BLM lands would not be included. Of the 196,234 miles of rivers and streams in the State, 102,491 (52%) would be under Federal subsistence jurisdiction and 93,743 (48%) would remain under State jurisdiction.

Land ownership patterns are the same as discussed in Alternative II, however, the extent of jurisdiction differs significantly. The difference is due to the inclusion of inland waters within the outer perimeter of DOI CSU's. The inclusion of these waters avoids the problems associated with the checkerboard pattern of land ownership within lands managed by the Department of the Interior. Jurisdiction on Forest Service lands remains the same as in Alternative II. The

regulations proposed in this document would implement this alternative.

Economic Impacts for All Alternatives

For all three alternatives, economic impacts are expected to be insignificant. Such impacts would only occur due to shifts in harvest allocations between user categories (i.e. from commercial or sport allocations to subsistence allocations). The State's existing fisheries management program already accommodates most subsistence users. No major new groups of users would be added as a result of federal management. Significant shifts in allocations are not proposed or expected under any alternative.

For Alternative I (No Action) there would be no change in allocations and therefore no economic impacts.

For Alternative II, most subsistence fisheries that pose potential conflicts with sport or commercial fisheries would continue under State jurisdiction and management. The State of Alaska has exceptionally abundant fishery resources, and subsistence harvests of salmon are relatively low (about 1 percent of all salmon harvested statewide) compared to other uses. Therefore, any redirection of allocations to subsistence fisheries under Federal jurisdiction would likely be minimal, and would not result in significant reductions to commercial or sport fisheries. Moreover, subsistence uses would remain the highest priority even under State management, even though State law precludes a preference for rural residents. The practical difference between State and Federal management in this Alternative would be minimal. Therefore, Alternative II would not result in any significant economic impacts.

For Alternative III, Federal Subsistence jurisdiction would be more expansive. This expansion may lead to some increases in harvest allocations in subsistence fisheries under Federal jurisdiction. This in turn could possibly lead to some reallocation of harvests from commercial or sport fisheries in the future, though none are contemplated in the current proposed rule. The potential for impacts to commercial and sport fisheries are highest (1) where relatively large subsistence harvests are occurring, such as the Yukon, Kuskokwim, and Copper rivers; (2) in certain locations where a run or species of fish are prized for their subsistence use, such as sockeye salmon in several Southeast and Southcentral Alaska river systems or steelhead in the Situk River; or (3) in certain locations where subsistence uses are relatively common but access to fish is limited, such as at or near some village sites in headwater and tributary stream systems in Alaska's interior. In general, however, any increases in subsistence allocations would have little, if any, effects on commercial or sport fisheries, because fishery resources are generally abundant and subsistence harvests are quite low (1% of salmon harvests statewide) compared to commercial and sport harvests.

Fisheries with the greatest potential for conflict include the Yukon, Kuskokwim, and Copper rivers. However, the Yukon and Kuskokwim rivers both have state-appointed advisory groups in place that provide recommendations for State management. These groups are made up of local users and have been effective in addressing and resolving drainage-wide issues. An important dynamic in balancing concerns between user groups in these drainages is that the subsistence users and commercial users are largely the same group of people (83% of the commercial permits on the Yukon River and 98 percent on the Kuskokwim are held by local rural residents). As an example, the current Yukon River Fall Chum Management Plan was developed through consultation with the Yukon River Drainage Fisheries Association. The YRDFA is made up of both commercial and subsistence users throughout the drainage. This existing plan maintains a subsistence priority at all escapement levels—commercial, sport, and personal use fisheries are opened by emergency order only at higher escapement levels, and the subsistence fishery is larger than the in-river commercial fishery. Effective local involvement would also be important to the Federal program, which would seek to incorporate input from organizations such as YRDFA. A second example, the Copper River Management Plan (5 AAC 01.249), already requires a large escapement that provides for all upriver uses including subsistence. Generally, subsistence needs are already being met through the subsistence and personal use fisheries (60% of the personal use permits were held by local, rural residents) in the Copper River. Therefore, no significant shifts in allocations and therefore no significant economic impacts are anticipated under Alternative III.

Federal Subsistence Regional Advisory Councils

Alaska has been divided into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent geographical, cultural, and user diversity within each region.

The Regional Councils have a substantial role in reviewing the proposed rule and making recommendations for the final rule.

Summary of Proposed Changes

The following sections are proposed to have major revisions:

§ ____ .3(b)—Text is inserted to identify scope of the Federal Subsistence Management Program to include the waters in which the Federal government has reserved water rights.

§ ____.4 ''Federal lands''—The definition is revised to conform to the decision of the 9th Circuit Court of Appeals.

§ ____.4 ''Inland waters''—A new definition is inserted.

§ ____.4 ''Public lands or public lands''—The definition is revised to include the selected but not yet conveyed lands located within the boundaries of conservation system units, national recreation areas, national conservation areas, new additions to the national forests, and new national forests.

§ ____.4 ''Regulatory year''—A change in the regulatory year for fish and shellfish is needed in order to avoid having regulations change in the middle of a fishing season.

§ ____.4 ''Reserved water right(s)''—The definition is added to conform to the decision of the 9th Circuit Court of Appeals.

§ ____.6—Language is inserted to clarify that the subsistence user must possess an Alaska *resident* hunting or trapping license. (No license is required for subsistence fishing.) The language in this section is also reorganized and simplified and some of the text is moved to § ____.10(d).

§ ____.10(a)—Language is added clarifying the Secretaries' existing authority to extend jurisdiction off of Federal lands to protect subsistence uses occurring on Federal lands.

§ ____.10(d)(4)(xvii)—Language is added clarifying Board's authority to evaluate situations where there is a failure to provide the subsistence priority and make recommendations to the Secretaries for their action.

§ ____.10(d)(4)(xviii)—Language is added clarifying Board's authority to identify additional lands where Federal interests exist and to recommend for

inclusion of those lands in the Federal Subsistence Management Program.

§ ____.10(d)(5)—Language is added to allow delegation of the authority to open or close established harvest seasons or harvest limits or open areas to field officials (i.e. Park Superintendents, Refuge Managers, etc).

§ ____.24(a)(2)—The proposed language in this section is based on the last Alaska Department of Fish and Game customary and traditional use determinations that were in compliance with Title VIII (January 1990). Additionally, proposed changes have been added to address backlogged proposals relating to fish in the Kuskokwim and Bristol Bay Areas and Regional Council suggestions in the Southeastern Alaska Area. In these three areas, suggestions were made to include in the Customary and Traditional Use Determinations positive findings for the use of additional species by local residents.

§ ____.26 and .27—The proposed wording of these sections is based on the existing State subsistence regulations with some exceptions. The primary modifications are to:

- accommodate past Federal Subsistence Board actions (making rod and reel a legal method of subsistence harvest, allowing the 24-hour taking of salmon in Kodiak, and restricting the method and harvest of king crab in the Kodiak Area);
- provide for ongoing customary trade practices. In this case, the modification would recognize and legalize the common (and previously prohibited, though unenforced) practice of selling or trading small quantities of subsistence-taken fish by rural residents;
- eliminate specific references to State ''non-subsistence areas'' or other items clearly inconsistent with the Federal Program;
- replace references to the ''Commissioner'' with ''Board';
- remove Board of Fish management guidance to the Department of Fish and Game; and,
- specify a different fin to be removed from subsistence-taken salmon in Southeast to accommodate traditional fish drying practices in response to a request from the Southeast Regional Advisory Council.

For the purpose of clarity and ease of understanding, the entire text of the proposed rule for subparts A, B, and C, and sections ____.26, and ____.27 of subpart D is being printed. The unpublished section (Section ____.25) relates to wildlife regulations that are revised annually. Because this proposed rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text would be incorporated into 36 CFR Part 242 and 50 CFR Part 100.

Conformance With Statutory and Regulatory Authorities

National Environmental Policy Act Compliance

A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

A preliminary environmental assessment has been prepared on the expansion of Federal jurisdiction and is available by contacting the office listed under ''Addresses.''

Compliance With Section 810 of ANILCA

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A section 810 analysis was completed as part of the FEIS process. The final section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

An evaluation of the effects of the Proposed Rule was conducted in accordance with section 810 and it does not appear that the Proposed Rule, if adopted as currently written, would significantly restrict subsistence users.

Paperwork Reduction Act

This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. The information collection requirements are a revision of the collection requirements already approved by OMB under Clearance Number 1018–0075. This revision is being submitted to OMB for approval. A comment period through April 20, 1998, is open on these collection requirements.

Currently, information is being collected by the use of a Federal Subsistence Registration Permit and Designated Hunter Application. The information collected on these two permits establishes whether an applicant qualifies to participate in a Federal subsistence hunt on public land in Alaska and provides a report of harvest and the location of harvest. The collected information is necessary to determine harvest success, harvest location, and population health in order to make management decisions relative to the conservation of healthy wildlife populations. Additional harvest information is obtained from harvest reports submitted to the State of Alaska. The recordkeeping burden for this aspect of the program is negligible (one hour or less). This information is accessed via computer data base. The current overall annual burden of reporting and recordkeeping is estimated to average 0.25 hours per response, including time for reviewing

instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under the existing rule is less than 5,000, yielding a total annual reporting and recordkeeping burden of 1,250 hours or less.

The proposed collection of information will be achieved through the use of a Federal Subsistence Registration Permit Application, which would be the same form as currently approved and used for the hunting program. This collection information will establish whether the applicant qualifies to participate in a Federal subsistence fishery on public land in Alaska and will provide a report of harvest and location of harvest.

The likely respondents to this collection of information are rural Alaska residents who wish to participate in specific subsistence fisheries on Federal land. The collected information is necessary to determine harvest success and harvest location in order to make management decisions relative to the conservation of healthy fish populations. The annual burden of reporting and recordkeeping is estimated to average 0.50 hours per response, including time for reviewing instructions, gathering and maintaining data, and completing and reviewing the form. The estimated number of likely respondents under this rule is less than 10,000, yielding a total annual reporting and recordkeeping burden of 5,000 hours or less.

As required by OMB regulations at 5 CFR 1320.8(d)(1), public comments are solicited as to:

a. whether the collection of information is necessary for the proper performance of the function of the program, including whether the information will have practical utility;

b. the accuracy of the estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

c. the quality, utility, and clarity of the information to be collected; and

d. how to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other forms of information technology.

Direct comments on the burden estimate or any other aspect of this collection to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 224 ARLSQ, Washington, D.C. 20240; and the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Additional information collection requirements may be imposed if Local Advisory Committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Economic Effects

This rule was classified as non-significant under Executive Order 12866 and was not submitted to OMB for review.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined that this rulemaking will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

This rulemaking will impose no significant costs on small entities; the exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources harvested under this rule will be consumed by the local harvester and do not result in a dollar benefit to the economy. However, it is estimated that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by the local subsistence users annually and, if given a dollar value of $3.00 per pound for salmon and $0.58 per pound for other fish, would equate to about $34 million State wide.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Departments have determined that these proposed regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

The Departments have determined and certify pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or state governments or private entities.

Drafting Information

These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Peggy Fox, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Ida Hildebrand, Alaska Area Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National Forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Departments propose to amend Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, as set forth below.

PART ___—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR Part 242 and 50 CFR Part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Revise subparts A, B, and C of 36 CFR part 242 and 50 CFR part 100 to read as follows:

Subpart A—General Provisions

Sec.

____.1 Purpose.
____.2 Authority.
____.3 Applicability and scope.
____.4 Definitions.
____.5 Eligibility for subsistence use.
____.6 Licenses, permits, harvest tickets, tags, and reports.
____.7 Restriction on use.
____.8 Penalties.
____.9 Information collection requirements.

Subpart B—Program Structure

____.10 Federal Subsistence Board.
____.11 Regional advisory councils.

____.12 Local advisory committees.
____.13 Board/agency relationships.
____.14 Relationship to State procedures and regulations.
____.15 Rural determination process.
____.16 Customary and traditional use determination process.
____.17 Determining priorities for subsistence uses among rural Alaska residents.
____.18 Regulation adoption process.
____.19 Closures and other special actions.
____.20 Request for reconsideration.
____.21 [Reserved].

Subpart C—Board Determinations

____.22 Subsistence resource regions.
____.23 Rural determinations.
____.24 Customary and traditional use determinations.

Subpart A—General Provisions

§ _____.1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

§ _____.2 Authority.

The regulations in this part are issued pursuant to authority designated in this part, and specifically the authority vested in the Secretary of the Interior and Secretary of Agriculture specified in section 814 of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3124.

§ _____.3 Applicability and scope.

(a) The regulations in this part implement the provisions of Title VIII of ANILCA relevant to the taking of fish and wildlife on public lands in the State of Alaska. The regulations in this part do not permit subsistence uses in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park established as Mt. McKinley National Park prior to passage of ANILCA, where subsistence taking and uses are prohibited. The regulations in this part do not supersede agency specific regulations.

(b) The regulations contained in this part apply:

(1) On all public lands including all non-navigable waters located on these lands, on all navigable and non-navigable water within the exterior boundaries of the following areas, and on inland waters adjacent to the exterior boundaries of the following areas:

(i) Alaska Maritime National Wildlife Refuge;

(ii) Alaska Peninsula National Wildlife Refuge;

(iii) Aniakchak National Monument and Preserve;

(iv) Arctic National Wildlife Refuge;

(v) Becharof National Wildlife Refuge;

(vi) Bering Land Bridge National Preserve;

(vii) Cape Krusenstern National Monument;

(viii) Denali National Preserve and the 1980 additions to Denali National Park;

(ix) Gates of the Arctic National Park and Preserve;

(x) Glacier Bay National Preserve;

(xi) Innoko National Wildlife Refuge;

(xii) Izembek National Wildlife Refuge;

(xiii) Katmai National Preserve;

(xiv) Kanuti National Wildlife Refuge;

(xv) Kenai National Wildlife Refuge;

(xvi) Kobuk Valley National Park;

(xvii) Kodiak National Wildlife Refuge;

(xviii) Koyukuk National Wildlife Refuge;

(xix) Lake Clark National Park and Preserve;

(xx) National Petroleum Reserve in Alaska;

(xxi) Noatak National Preserve;

(xxii) Nowitna National Wildlife Refuge;

(xxiii) Selawik National Wildlife Refuge;

(xxiv) Steese National Conservation Area;

(xxv) Tetlin National Wildlife Refuge;

(xxvi) Togiak National Wildlife Refuge;

(xxvii) White Mountain National Recreation Area;

(xxviii) Wrangell-St. Elias National Park and Preserve;

(xxix) Yukon-Charley Rivers National Preserve;

(xxx) Yukon Delta National Wildlife Refuge;

(xxxi) Yukon Flats National Wildlife Refuge;

(xxxii) All components of the Wild and Scenic River System located outside the boundaries of National Parks, National Preserves or National Wildlife Refuges, including segments of the Alagnak River, Beaver Creek, Birch Creek, Delta River, Fortymile River, Gulkana River, and Unalakle River.

(2) On all public lands including all inland waters, located on or bordered by other public lands, within or adjacent to the exterior boundaries of the following reservations:

(i) Chugach National Forest;

(ii) Tongass National Forest, including Admiralty Island National Monument and Misty Fjords National Monument.

(c) The public lands described in paragraph (b) of this section remain subject to change through rulemaking pending a Department of the Interior review of title and jurisdictional issues regarding certain submerged lands beneath navigable waters in Alaska.

§ _____.4 Definitions.

The following definitions apply to all regulations contained in this part:

Agency means a subunit of a cabinet level Department of the Federal government having land management authority over the public lands including, but not limited to, the U.S. Fish & Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and USDA Forest Service.

ANILCA means the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, 94 Stat. 2371, (December 2, 1980) (codified, as amended, in scattered sections of 16 U.S.C. and 43 U.S.C.)

Barter means the exchange of fish or wildlife or their parts taken for subsistence uses; for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

Board means the Federal Subsistence Board as described in § ____.10.

Commissions means the Subsistence Resource Commissions established pursuant to section 808 of ANILCA.

Conservation of healthy populations of fish and wildlife means the maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystem, including the recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; ensures the maximum practicable diversity of options for the future; and recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

Customary and traditional use means a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. This use plays an important role in the economy of the community.

Customary trade means cash sale of fish and wildlife resources regulated herein, not otherwise prohibited by Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

FACA means the Federal Advisory Committee Act, Pub.L. 92–463, 86 Stat.

770 (October 6, 1972) (codified as amended, at 5 U.S.C. Appendix II, 1–15).

Family means all persons related by blood, marriage or adoption, or any person living within the household on a permanent basis.

Federal Advisory Committees or Federal Advisory Committee means the Federal Local Advisory Committees as described in § ____.12

Federal lands means lands and waters and interests therein the title to which is in the United States, including navigable and non-navigable waters in which the United States has reserved water rights.

Fish and wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the carcass or part thereof.

Game Management Unit or GMU means one of the 26 geographical areas listed under game management units in the codified State of Alaska hunting and trapping regulations and the Game Unit Maps of Alaska.

Inland Waters means, for the purposes of this part, those waters located landward of the mean high tide line or the waters located upstream of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea. Inland waters include, but are not limited to, lakes, reservoirs, ponds, streams, and rivers.

Person means an individual and does not include a corporation, company, partnership, firm, association, organization, business, trust or society.

Public lands or public land means:

(1) Lands situated in Alaska which are Federal lands, except—

(i) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(ii) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(iii) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1618(b).

(2) Notwithstanding the exceptions in paragraphs (1) (i) through (iii) in this definition, until conveyed, all Federal lands within the boundaries of any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Forest Monument, National Recreation Area, National Conservation Area, new National forest or forest addition shall be treated as public lands for the purposes of the regulations in this part pursuant to section 906(o)(2) of ANILCA.

Regional Councils or *Regional Council* means the Regional Advisory Councils as described in § ____.11.

Regulatory year means July 1 through June 30, except for fish and shellfish where it means March 1 through the last day of February.

Reserved water right(s) means the Federal right to use unappropriated appurtenant water necessary to accomplish the purposes for which a Federal reservation was established. Reserved water rights include nonconsumptive and consumptive uses.

Resident means any person who has his or her primary, permanent home within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented or leased; location of stored household goods; residence of spouse, minor children or dependents; tax documents; or whether the person claims residence in another location for any purpose.

Rural means any community or area of Alaska determined by the Board to qualify as such under the process described in § ____.15.

Secretary means the Secretary of the Interior, except that in reference to matters related to any unit of the National Forest System, such term means the Secretary of Agriculture.

State means the State of Alaska.

Subsistence uses means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

Take or *taking* as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Year means calendar year unless another year is specified.

§ _____.5 Eligibility for subsistence use.

(a) The taking of fish and wildlife on public lands for subsistence uses is restricted to Alaskans who are residents of rural areas or communities. Other individuals, including Alaskans who are residents of non-rural areas or communities listed in § ____.23, are prohibited from taking fish and wildlife on public lands for subsistence uses under the regulations in this part.

(b) Where the Board has made a customary and traditional use determination regarding subsistence use of a specific fish stock or wildlife population, in accordance with, and as listed in, § ____.24, only those Alaskans who are residents of rural areas or communities so designated are eligible for subsistence taking of that population or stock, on public lands for subsistence uses, under the regulations in this part. All other individuals are prohibited from taking fish or wildlife from that population under the regulations in this part.

(c) Where customary and traditional use determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board (e.g. ''no determination''), all Alaskans who are residents of rural areas or communities are eligible to participate in subsistence taking of that stock or population under the regulations in this part.

(d) This section does not limit the authority of the National Park Service to regulate further the eligibility of those individuals qualified to engage in subsistence uses on National Park Service lands in accordance with specific authority in ANILCA, and National Park Service regulations at 36 CFR part 13.

§ _____.6 Licenses, permits, harvest tickets, tags, and reports.

(a) To take fish and wildlife on public lands for subsistence uses, subsistence users must:

(1) Possess the pertinent valid Alaska resident hunting and trapping licenses (no license required to take fish) unless Federal licenses are required or unless otherwise provided for in subpart D of this part;

(2) Possess and comply with the provisions of any pertinent Federal

permits (Federal Subsistence Registration Permit or Federal Designated Hunter Permit) required by subpart D of this part; and

(3) Possess and comply with the provisions of any pertinent permits, harvest tickets, or tags required by the State unless superseded by the requirements in subpart D of this part.

(b) Individuals designated on a permit to take fish and wildlife must have that permit in their possession during the taking and must comply with all requirements of the permit and the regulations in this section pertaining to validation and reporting and to regulations in subpart D of this part pertaining to methods and means, possession and transportation, and utilization. Licenses, permits, harvest tickets, tags or other documents required by this section must be produced by individuals upon the request of a State or Federal law enforcement agent. Persons engaged in taking fish and wildlife under these regulations must allow State or Federal law enforcement agents to inspect any apparatus designed to be used, or capable of being used to take fish or wildlife, or any fish or wildlife in possession.

(c) The subsistence user must validate the harvest tickets, tags, permits, or other required documents before removing the kill from the harvest site. Persons engaged in taking fish and wildlife under these regulations must comply with all reporting provisions as set forth is subpart D of this part.

(d) When a community takes fish and wildlife under a community harvest system, the harvest activity must be reported in accordance with regulations specified for that community in subpart D of this part, and as required by any applicable permit conditions. Individuals may be responsible for particular reporting requirements in the conditions permitting a specific community's harvest. Failure to comply with these conditions is a violation of these regulations. Community harvests are reviewed annually under the regulations in subpart D of this part.

(e) To make a fraudulent application for Federal or State licenses, permits, harvest tickets or tags or intentionally file an incorrect harvest report is prohibited.

§ _____.7 Restriction on use.

(a) When fish and wildlife are taken pursuant to the regulations in this part, trade of the fish and wildlife, other than for customary trade or barter, is prohibited.

(b) When fish and wildlife are taken pursuant to the regulations in this part, use or trade of the fish and wildlife which constitutes a significant commercial enterprise is prohibited.

§ _____.8 Penalties.

A person convicted of violating any provision of 50 CFR part 100 or 36 CFR part 242 may be punished by a fine or by imprisonment in accordance with the penalty provisions applicable to the public land where the violation occurred.

§ _____.9 Information collection requirements.

(a) The rules in this part contain information collection requirements subject to Office of Management and Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to fish and wildlife harvest activities on public lands in Alaska. Subsistence users will not be required to respond to an information collection request unless a valid OMB number is displayed on the information collection form.

(1) Section ____.20, Request for reconsideration. The information collection requirements contained in § ____.20 provide a standardized process to allow individuals the opportunity to appeal decisions of the Board. Submission of a request for reconsideration is voluntary but required to receive a final determination by the Board. The Department of the Interior estimates that a request for reconsideration will take 4 hours to prepare and submit.

(2) Section _____.6, Licenses, permits, harvest tickets, tags, and reports. The information collection requirements contained in § ____.6 (Federal Subsistence Registration Permit or Federal Designated Hunter Permit forms) provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. Identity and location of residence are required to determine eligibility for a harvest and report of success is required after a harvest attempt. These requirements are not duplicative with the requirements of paragraph (a)(3) of this section. The regulations in § ____.6 require this information before a rural Alaska resident may engage in subsistence uses on public lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 0.25 hours.

(3) The remaining information collection requirements contained in this part imposed upon subsistence uses are those adopted from State regulations. These collection requirements would exist in the absence of Federal subsistence regulations and are not subject to the Paperwork Reduction Act. The burden in this situation is negligible and information gained from these reports are systematically available to Federal managers by routine computer access requiring less than one hour.

(b) Direct comments on the burden estimate or any other aspect of the burden estimate to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, N.W., MS 224 ARLSQ, Washington, D.C. 20240; and the Desk Officer for the Interior Department, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Additional information requirements may be imposed if Local Advisory Committees or additional Regional Councils, subject to the Federal Advisory Committee Act (FACA), are established under subpart B of this part. Such requirements will be submitted to OMB for approval prior to their implementation.

Subpart B—Program Structure

§ _____.10 Federal Subsistence Board.

(a) The Secretary of the Interior and Secretary of Agriculture hereby establish a Federal Subsistence Board, and assign them responsibility for, administering the subsistence taking and uses of fish and wildlife on public lands, and the related promulgation and signature authority for regulations of subparts C and D of this part. The Secretaries, however, retain their existing authority to restrict or eliminate hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands when such activities interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority.

(b) Membership. (1) The voting membership of the Board shall consist of a Chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Area Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) [Reserved]

(c) Liaisons to the Board shall consist of a State liaison, and the Chairpersons of each Regional Council. The State liaison and the Chairpersons of each

Regional Council may attend public sessions of all Board meetings and be actively involved as consultants to the Board.

(d) Powers and duties. (1) Meetings shall occur at least twice per year and at such other times as deemed necessary by the Board. Meetings shall occur at the call of the Chair, but any member may request a meeting.

(2) A quorum shall consist of four members.

(3) No action may be taken unless a majority of voting members are in agreement.

(4) The Board is empowered, to the extent necessary, to implement Title VIII of ANILCA, to:

(i) Promulgate regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) Determine which communities or areas of the State are rural or non-rural;

(iii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of specific fish and wildlife populations;

(iv) Allocate subsistence uses of fish and wildlife populations on public lands;

(v) Ensure that the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes;

(vi) Close public lands to the non-subsistence taking of fish and wildlife;

(vii) Establish priorities for the subsistence taking of fish and wildlife on public lands among rural Alaska residents;

(viii) Restrict or eliminate taking of fish and wildlife on public lands;

(ix) Determine what types and forms of trade of fish and wildlife taken for subsistence uses constitute allowable customary trade;

(x) Authorize the Regional Councils to convene;

(xi) Establish a Regional Council in each subsistence resource region and recommend to the Secretaries, appointees to the Regional Councils, pursuant to the FACA;

(xii) Establish Federal Advisory Committees within the subsistence resource regions, if necessary and recommend to the Secretaries that members of the Federal Advisory Committees be appointed from the group of individuals nominated by rural Alaska residents;

(xiii) Establish rules and procedures for the operation of the Board, and the Regional Councils;

(xiv) Review and respond to proposals for regulations, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(xv) Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native corporations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies of the Federal subsistence management program;

(xvi) Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence;

(xvii) Evaluate whether hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority, and after appropriate consultation with the State of Alaska, the Regional Councils, and other Federal agencies, make recommendation to the Secretaries for their action;

(xviii) Identify, in appropriate specific instances, whether there exists additional Federal reservations, Federal reserved water rights or other Federal interests in lands or waters, including those in which the United States holds less than a fee ownership, to which the Federal subsistence priority attaches, and make appropriate recommendation to the Secretaries for inclusion of those interests within the Federal Subsistence Management Program; and

(xix) Take other actions authorized by the Secretaries to implement Title VIII of ANILCA.

(5) The Board may implement one or more of the following harvest and harvest reporting or permit systems:

(i) The fish and wildlife is taken by an individual who is required to obtain and possess pertinent State harvest permits, tickets, or tags, or Federal permit (Federal Subsistence Registration Permit);

(ii) A qualified subsistence user may designate another qualified subsistence user (by using the Federal Designated Hunter Permit) to take fish and wildlife on his or her behalf;

(iii) The fish and wildlife is taken by individuals or community representatives permitted (via a Federal Subsistence Registration Permit) a one-time or annual harvest for special purposes including ceremonies and potlatches; or

(iv) The fish and wildlife is taken by representatives of a community permitted to do so in a manner consistent with the community's customary and traditional practices.

(6) The Board may delegate to agency field officials the authority to set harvest limits, define harvest areas, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.

(7) The Board shall establish a Staff Committee composed of a member from the U.S. Fish and Wildlife Service, National Park Service, U.S. Bureau of Land Management, Bureau of Indian Affairs, and USDA Forest Service for analytical and administrative assistance. The U.S. Fish and Wildlife Service representative shall serve as Chair of the Staff Committee.

(8) The Board may establish and dissolve additional committees as necessary for assistance.

(9) The U.S. Fish and Wildlife Service shall provide appropriate administrative support for the Board.

(10) The Board shall authorize at least two meetings per year for each Regional Council.

(e) Relationship to Regional Councils. (1) The Board shall consider the reports and recommendations of the Regional Councils concerning the taking of fish and wildlife on public lands within their respective regions for subsistence uses. The Board may choose not to follow any Regional Council recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, would be detrimental to the satisfaction of subsistence needs, or in closure situations, for reasons of public safety or administration or to assure the continued viability of a particular fish or wildlife population. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision, in writing, in a timely fashion.

(2) The Board shall provide available and appropriate technical assistance to the Regional Councils.

§ _____.11 Regional advisory councils.

(a) The Board shall establish a Regional Council for each subsistence resource region to participate in the Federal subsistence management program. The Regional Councils shall be established, and conduct their activities, in accordance with the FACA. The Regional Councils shall provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Regional Councils shall provide for public participation in the Federal regulatory process.

(b) Establishment of Regional Councils; membership. (1) The number of members for each Regional Council shall be established by the Board, and shall be an odd number. A Regional Council member must be a resident of the region in which he or she is appointed and be knowledgeable about the region and subsistence uses of the public lands therein. The Board shall accept nominations and recommend to the Secretaries that representatives on the Regional Councils be appointed from those nominated by subsistence users. Appointments to the Regional Councils shall be made by the Secretaries.

(2) Regional Council members shall serve 3 year terms and may be reappointed. Initial members shall be appointed with staggered terms up to three years.

(3) The Chair of each Regional Council shall be elected by the applicable Regional Council, from its membership, for a one year term and may be reelected.

(c) Powers and Duties. (1) The Regional Councils are authorized to:

(i) Hold public meetings related to subsistence uses of fish and wildlife within their respective regions, after the Chair of the Board or the designated Federal Coordinator has called the meeting and approved the meeting agenda;

(ii) Elect officers;

(iii) Review, evaluate, and make recommendations to the Board on proposals for regulations, policies, management plans, and other matters relating to the subsistence take of fish and wildlife under these regulations within the region;

(iv) Provide a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(v) Encourage local and regional participation, pursuant to the provisions of the regulations in this part in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

(vi) Prepare and submit to the Board an annual report containing—

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the public lands; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy;

(vii) Appoint members to each Subsistence Resource Commission (Commission) within their region in accordance with the requirements of section 808 of ANILCA;

(viii) Make recommendations on determinations of customary and traditional use of subsistence resources;

(ix) Make recommendations on determinations of rural status;

(x) Make recommendations regarding the allocation of subsistence uses among rural Alaska residents pursuant to § _____.17;

(xi) Develop proposals pertaining to the subsistence taking and use of fish and wildlife under these regulations, and review and evaluate such proposals submitted by other sources;

(xii) Provide recommendations on the establishment and membership of Federal Advisory Committees.

(2) The Regional Councils shall:

(i) Operate in conformance with the provisions of FACA and comply with rules of operation established by the Board;

(ii) Perform other duties specified by the Board.

§ _____.12 Local advisory committees.

(a) The Board shall establish such Federal Advisory Committees within each region as necessary at such time that it is determined, after notice and hearing and consultation with the State, that the existing State fish and game advisory committees do not adequately provide advice to, and assist, the particular Regional Council in carrying out its function as set forth in § ____.11.

(b) Federal Advisory Committees, if established by the Board, shall operate in conformance with the provisions of the FACA, and comply with rules of operation established by the Board.

§ _____.13 Board/agency relationships.

(a) General. (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on public lands, recognizing that the management policies applicable to some public lands may entail methods of resource and habitat management and protection different from methods appropriate for other public lands.

(2) The Board shall promulgate regulations for subsistence taking of fish and wildlife on public lands. The Board is the final administrative authority on the promulgation of subpart C and D regulations relating to the subsistence taking of fish and wildlife on public lands.

(3) Nothing in the regulations in this part shall enlarge or diminish the authority of any agency to promulgate regulations necessary for the proper management of public lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes National Park and Park Monument Subsistence Resource Commissions. Nothing in the regulations in this part affects the duties or authorities of these commissions.

§ _____.14 Relationship to State procedures and regulations.

(a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by the regulations in this part.

(b) The Board may close public lands to hunting and fishing, or take actions to restrict the taking of fish and wildlife despite any State authorization for taking fish and wildlife on public lands. The Board may review and adopt State closures or restrictions which serve to achieve the objectives of the regulations in this part.

(c) The Board may enter into agreements with the State in order to coordinate respective management responsibilities.

(d) Petition for repeal of subsistence rules and regulations. (1) The State of Alaska may petition the Secretaries for repeal of the subsistence rules and regulations in this part when the State has enacted and implemented subsistence management and use laws which:

(i) Are consistent with sections 803, 804, and 805 of ANILCA; and

(ii) Provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA.

(2) The State's petition shall:

(i) Be submitted to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240, and the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20240.

(ii) Include the entire text of applicable State legislation indicating compliance with sections 803, 804, and 805 of ANILCA; and

(iii) Set forth all data and arguments available to the State in support of legislative compliance with sections 803, 804, and 805 of ANILCA.

(3) If the Secretaries find that the State's petition contains adequate

justification, a rulemaking proceeding for repeal of the regulations in this part will be initiated. If the Secretaries find that the State's petition does not contain adequate justification, the petition will be denied by letter or other notice, with a statement of the ground for denial.

§ _____.15 Rural determination process.

(a) The Board shall determine if an area or community in Alaska is rural. In determining whether a specific area of Alaska is rural, the Board shall use the following guidelines:

(1) A community or area with a population of 2500 or less shall be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.

(2) Communities or areas with populations above 2500 but not more than 7000 will be determined to be rural or non-rural.

(3) A community with a population of more than 7000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.

(5) Community or area characteristics shall be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

(i) Use of fish and wildlife;

(ii) Development and diversity of the economy;

(iii) Community infrastructure;

(iv) Transportation; and

(v) Educational institutions.

(6) Communities or areas which are economically, socially and communally integrated shall be considered in the aggregate.

(b) The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a ten year cycle, commencing with the publication of the year 2000 U.S. census. Rural determinations may be reviewed out-of-cycle in special circumstances. Once the Board makes a determination that a community has changed from rural to non-rural, a waiting period of five years shall be required before the non-rural determination becomes effective.

(c) Current determinations are listed at § ____.23.

§ _____.16 Customary and traditional use determination process.

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

(1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

(2) A pattern of use recurring in specific seasons for many years;

(3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from the community or area;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional Council regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in § _____.24.

§ _____.17 Determining priorities for subsistence uses among rural Alaska residents.

(a) Whenever it is necessary to restrict the subsistence taking of fish and wildlife on public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the rural Alaska residents after considering any recommendation submitted by an appropriate Regional Council.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and

(3) The availability of alternative resources.

(c) If allocation on an area or community basis is not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the criteria in paragraphs (b)(1) through (3) of this section.

(d) In addressing a situation where prioritized allocation becomes necessary, the Board shall solicit recommendations from the Regional Council in the area affected.

§ _____.18 Regulation adoption process.

(a) Proposals for changes to the Federal subsistence regulations in subpart D of this part shall be accepted by the Board according to a published schedule, but at least once a year. The Board shall develop and publish proposed regulations in the **Federal Register** and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § ____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and

means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for their decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart D of this part in the **Federal Register**.

(b) Proposals for changes to subpart C of this part shall be accepted by the Board according to a published schedule. The Board shall develop and publish proposed regulations in the **Federal Register** and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Public and governmental proposals shall be made available for a thirty (30) day review by the regional councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in § ____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for their decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subpart C of this part in the **Federal Register**. A Board decision to change a community's or area's status from rural to non-rural will not become effective until five years after the decision has been made.

(c) [Reserved]

(d) Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR part 14.

§ _____.19 Closures and other special actions.

(a) The Board may make or direct restriction or closure of the taking of fish and wildlife for non-subsistence uses on public lands when necessary to assure the continued viability of particular fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(b) After consulting with the State of Alaska, providing adequate notice to the public, and holding at least one public hearing in the vicinity of the affected communities, the Board may make or direct temporary closures to subsistence uses of a particular fish or wildlife population on public lands to assure the continued viability of a fish or wildlife population, or for reasons of public safety or administration. A temporary closure will not extend beyond the regulatory year in which it is promulgated.

(c) In an emergency situation, the Board may direct immediate closures related to subsistence or non-subsistence uses of fish and wildlife on public lands, if necessary to assure the continued viability of a fish or wildlife population, or for public safety reasons. The Board shall publish notice and reasons justifying the emergency closure in the **Federal Register** and in newspapers of any area affected. The emergency closure shall be effective when directed by the Board, may not exceed 60 days, and may not be extended unless it is determined by the Board, after notice and hearing, that such closure should be extended.

(d) The Board may make or direct a temporary change to open or adjust the seasons or to increase the bag limits for subsistence uses of fish and wildlife populations on public lands. An affected rural resident, community, Regional Council, or administrative agency may request a temporary change in seasons or bag limits. Prior to implementing a temporary change, the Board shall consult with the State, shall comply with the provisions of 5 U.S.C. 551–559 (Administrative Procedure Act or APA), and shall provide adequate notice and opportunity to comment. The length of any temporary change shall be confined to the minimum time period or bag limit determined by the Board to be necessary to satisfy subsistence uses. In addition, a temporary change may be made only after the Board determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations. The decision of the Board shall be the final administrative action.

(e) Regulations authorizing any individual agency to direct temporary or emergency closures on public lands managed by the agency remain unaffected by these regulations, which authorize the Board to make or direct restrictions, closures, or temporary changes for subsistence uses on public lands.

(f) Taking fish and wildlife in violation of a restriction, or temporary change authorized by the Board is prohibited.

§ _____.20 Request for reconsideration.

(a) Regulations in subparts C and D of this part published in the **Federal Register** are subject to requests for reconsideration.

(b) Any aggrieved person may file a request for reconsideration with the Board.

(c) To file a request for reconsideration, the requestor must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earliest, for which reconsideration is requested.

(d) It is the responsibility of a requestor to provide the Board with sufficient narrative evidence and argument to show why the action by the *Board* should be reconsidered. The following information must be included in the request for reconsideration:

(1) The requestor's name, and mailing address;

(2) The action for which reconsideration is requested and the date of **Federal Register** publication of that action;

(3) A detailed statement of how the requestor is adversely affected by the action;

(4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that the requestor believes to be violated and the reason for such allegation;

(5) A statement of how the requestor would like the action changed.

(e) Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council for review and recommendation. The Board shall consider any Regional Council recommendations in making a final decision.

(f) If the request is justified, the Board shall implement a final decision on a request for reconsideration after

compliance with 5 U.S.C. 551–559 (APA).

(g) If the request is denied, the decision of the Board represents the final administrative action.

§ _____.21 [Reserved]

Subpart C—Board Determinations

§ _____.22 Subsistence resource regions.

(a) The following areas are hereby designated as subsistence resource regions:

(1) Southeast Region;
(2) Southcentral Region;
(3) Kodiak/Aleutians Region;
(4) Bristol Bay Region;
(5) Yukon-Kuskokwim Delta Region;
(6) Western Interior Region;
(7) Seward Peninsula Region;
(8) Northwest Arctic Region;
(9) Eastern Interior Region;
(10) North Slope Region.

(b) Maps delineating the boundaries of subsistence resources regions are available from the U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503.

§ _____.23 Rural determinations.

(a)(1) All communities and areas have been determined by the Board to be rural in accordance with § ____.15 except the following:

Adak;
Fairbanks North Star Borough;
Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek;
Juneau area—including Juneau, West Juneau and Douglas;
Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch;
Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Pass, Herring Cove, Saxman East, and parts of Pennock Island;
Municipality of Anchorage;
Seward area—including Seward and Moose Pass; Valdez; and
Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenberg Butte.

(2) Maps delineating the boundaries of non-rural areas listed in paragraph (a)(1) of this section are available from the U.S. Fish and Wildlife Service.

(b) [Reserved]

§ _____.24 Customary and traditional use determinations.

(a) Rural Alaska residents of the listed communities and areas have been determined to have customary and traditional subsistence use of the specified species on Federal public lands in the specified areas. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.

(1) Wildlife determinations.

Area	Species	Determination
Unit 1(C)	Black Bear	Rural residents of Unit 1(C) and Haines, Gustavus, Klukwan, and Hoonah.
1(A)	Brown Bear	Rural residents of Unit 1(A) except no subsistence for residents of Hyder.
1(B)	Brown Bear	Rural residents of Unit 1(A), Petersburg, and Wrangell, except no subsistence for residents of Hyder.
1(C)	Brown Bear	Rural residents of Unit 1(C), Haines, Hoonah, Klukwan, Skagway, and Wrangell, except no subsistence for residents of Gustavus.
1(D)	Brown Bear	Residents of 1(D).
1(A)	Deer	Rural residents of 1(A) and 2.
1(B)	Deer	Rural residents of Unit 1(A), residents of 1(B), 2 and 3.
1(C)	Deer	Rural residents of 1(C) and (D), and residents of Hoonah and Gustavus.
1(D)	Deer	No Federal subsistence priority.
1(B)	Goat	Rural residents of Units 1(B) and 3.
1(C)	Goat	Residents of Haines, Klukwan, and Hoonah.
1(B)	Moose	Rural residents of Units 1, 2, 3, and 4.
1(C) Berner's Bay	Moose	No Federal subsistence priority.
1(D)	Moose	Residents of Unit 1(D).
Unit 2	Brown Bear	No Federal subsistence priority.
2	Deer	Rural residents of Unit 1(A) and residents of Units 2 and 3.
Unit 3	Deer	Residents of Unit 1(B) and 3, and residents of Port Alexander, Port Protection, Pt. Baker, and Meyer's Chuck.
3, Wrangell and Mitkof Islands	Moose	Rural residents of Units 1(B), 2, and 3.
Unit 4	Brown Bear	Residents of Unit 4 and Kake,
4	Deer	Residents of Unit 4 and residents of Kake, Gustavus, Haines, Petersburg, Pt. Baker, Klukwan, Port Protection, Wrangell, and Yakutat.
4	Goat	Residents of Sitka, Hoonah, Tenakee, Pelican, Funter Bay, Angoon, Port Alexander, and Elfin Cove.
Unit 5	Black Bear	Residents of Unit 5(A).
5	Brown Bear	Residents of Yakutat.
5	Deer	Residents of Yakutat.
5	Moose	Residents of Unit 5(A).
Unit 6(A)	Black Bear	Residents of Yakutat and residents of 6(C) and 6(D), except no subsistence for Whittier.
6, Remainder	Black Bear	Residents of Unit 6(C) and 6(D), except no subsistence for Whittier.
6	Brown Bear	No Federal subsistence priority.
6(C) and (D)	Goat	Rural residents of Unit 6(C) and (D).
6	Moose	No Federal subsistence priority.
6	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 7	Brown Bear	No Federal subsistence priority.
7	Caribou	No Federal subsistence priority.
7, Brown Mountain hunt area	Goat	Residents of Port Graham and English Bay.

Area	Species	Determination
7, that portion draining into Kings Bay.	Moose	Residents of Chenega Bay and Tatitlek.
7, Remainder	Moose	No Federal subsistence priority.
7	Sheep	No Federal subsistence priority.
Unit 8	Brown Bear	Residents of Old Harbor, Akhiok, Larsen Bay, Karluk, Ouzinkie, and Port Lions.
8	Deer	Residents of Unit 8.
8	Elk	Residents of Unit 8.
8	Goat	No Federal subsistence priority.
Unit 9(D)	Bison	No Federal subsistence priority.
9(A) and (B)	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
9(A), (C) and (D)	Brown Bear	No Federal subsistence priority.
9(B)	Brown Bear	Residents of Unit 9(B).
9(E)	Brown Bear	Residents of Chignik Lake, Egegik, Ivanof Bay, Perryville, and Port Heiden/Meshik.
9(A) and (B)	Caribou	Residents of Units 9(B), 9(C) and 17.
9(C)	Caribou	Residents of Units 9(B), 9(C), 17 and residents of Egegik.
9(D)	Caribou	Residents of Unit 9(D), and residents of False Pass.
9(E)	Caribou	Residents of Units 9(B), (C), (E), 17, and residents of Nelson Lagoon and Sand Point.
9(A), (B), (C) and (E)	Moose	Residents of Unit 9(A), (B), (C) and (E).
9(D)	Moose	No Federal subsistence priority.
9(B)	Sheep	Residents of Iliamna, Newhalen, Nondalton, Pedro Bay, and Port Alsworth.
9, Remainder	Sheep	No determination.
9	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
9(A), (B), (C), & (E)	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 10 Unimak Island	Caribou	Residents of False Pass.
10, Remainder	Caribou	No determination.
10	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 11	Bison	No Federal subsistence priority.
11	Brown Bear	No Federal subsistence priority.
11, north of the Sanford River	Caribou	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon and Dot Lake.
11, remainder	Caribou	Residents of Units 11 and 13 (A)–(D) and the residents of Chickaloon.
11	Goat	Residents of Unit 11 and the residents of Chitina, Chistochina, Copper Center, Gakona, Gulkana, Mentasta Lake, Tazlina, Tonsina, and Dot Lake.
11, north of the Sanford River	Moose	Residents of Units 11, 12, and 13 (A)–(D) and the residents of Chickaloon and Dot Lake.
11, remainder	Moose	Residents of Unit 11 and Unit 13 (A)–(D) and the residents of Chickaloon.
11, north of the Sanford River	Sheep	Residents of Unit 12 and the communities and areas of Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11, remainder	Sheep	Residents of the communities and areas of Chisana, Chistochina, Chitina, Copper Center, Dot Lake, Gakona, Glennallen, Gulkana, Kenny Lake, Mentasta Lake, Slana, McCarthy/South Wrangell/South Park, Tazlina and Tonsina; Residents along the Tok Cuttoff—Milepost 79–110 (Mentasta Pass), residents along the Nabesna Road—Milepost 0–46 (Nabesna Road), and residents along the McCarthy Road—Milepost 0–62 (McCarthy Road).
11	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
11	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
11	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 12, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 12	Brown Bear	Residents of Unit 12 and Dot Lake.
12	Caribou	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12, South of a line from Noyes Mountain, southeast of the confluence of Tatschunda Creek to Nabesna River.	Moose	Residents of Unit 11 north of 62nd parallel (excluding North Slana Homestead and South Slana Homestead); and residents of Unit 12, 13 (A)–(D) and the residents of Chickaloon and residents of Dot Lake.
12, East of the Nabesna River and Nabesna Glacier, south of the Winter Trail from Pickerel Lake to the Canadian Border.	Moose	Residents of Unit 12.

Area	Species	Determination
12, Remainder	Moose	Residents of Unit 12 and residents of Dot Lake and Mentasta Lake.
12	Sheep	Residents of Unit 12 and residents of Chistochina and Mentasta Lake.
12	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 13	Brown Bear	No Federal subsistence priority.
13	Caribou Nelchina Herd	Residents of Units 11, 13 and the residents of Chickaloon, and 12 (along Nabesna Road).
13(E)	Caribou	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Goat	No Federal subsistence priority.
13(A), (B), and (D)	Moose	Residents of Unit 13 and the residents of Chickaloon.
13(C)	Moose	Residents of Units 12, 13 and the residents of Chickaloon and Dot Lake.
13(E)	Moose	Residents of McKinley Village, and the area along the Parks Highway between milepost 216 and 239 (except no subsistence for residents of Denali National Park headquarters).
13(D)	Sheep	No Federal subsistence priority.
13	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
13	Grouse (Spruce, Blue, Ruffed & Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
13	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 & 23.
Unit 14(B) and (C)	Brown Bear	No Federal subsistence priority.
14	Goat	No Federal subsistence priority.
14	Moose	No Federal subsistence priority.
14(A) and (C)	Sheep	No Federal subsistence priority.
Unit 15(C)	Black Bear	Residents of Port Graham and Nanwalek only.
15, Remainder	Black Bear	No Federal subsistence priority.
15	Brown Bear	No Federal subsistence priority.
15(C), Port Graham and English Bay hunt areas.	Goat	Residents of Port Graham and Nanwalek.
15(C), Seldovia hunt area	Goat	Residents Seldovia area.
15	Moose	Residents of Ninilchik, Nanwalek, Port Graham, and Seldovia.
15	Sheep	No Federal subsistence priority.
15	Ptarmigan (Rock, Willow and White-tailed).	Residents of Unit 15.
15	Grouse (Spruce)	Residents of Unit 15.
15	Grouse (Ruffed)	No Federal subsistence priority.
Unit 16	Brown Bear	No Federal subsistence priority.
16(A)	Moose	No Federal subsistence priority.
16(B)	Moose	Residents of Unit 16(B).
16	Sheep	No Federal subsistence priority.
16	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
16	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
16	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 17	Black Bear	Residents of Units 9(A) and (B), and 17(A), (B), and (C).
17(A)	Brown Bear	Residents of Unit 17, and residents of Goodnews Bay and Platinum.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Brown Bear	Residents of Kwethluk.
17(B) and (C)	Brown Bear	Residents of Unit 17.
17	Caribou	Residents of Units 9(B), 17 and residents of Lime Village and Stony River.

Area	Species	Determination
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake; to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Caribou	Residents of Kwethluk.
17(A) and (B) Those portions north and west of a line beginning from the Unit 18 boundary at the northwest end of Nenevok Lake, to the southern point of upper Togiak Lake, and northeast to the northern point of Nuyakuk Lake, northeast to the point where the Unit 17 boundary intersects the Shotgun Hills.	Moose	Residents of Kwethluk.
17(A)	Moose	Residents of Unit 17 and residents of Goodnews Bay and Platinum; however, no subsistence for residents of Akiachak, Akiak and Quinhagak.
17(B) and (C)	Moose	Residents of Unit 17, and residents of Nondalton, Levelock, Goodnews Bay and Platinum.
17	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
17	Beaver	Residents of Units 9(A), (B), (C), (E), and 17.
Unit 18	Black Bear	Residents of Unit 18, residents of Unit 19(A) living downstream of the Holokuk River, and residents of Chuathbaluk, Aniak, Lower Kalskag, Holy Cross, Stebbins, St. Michael, and Togiak.
18	Brown Bear	Residents of Akiachak, Akiak, Eek, Goodnews Bay, Kwethluk, Mt. Village, Napaskiak, Platinum, Quinhagak, St. Mary's, and Tuluksak.
18	Caribou (Kilbuck caribou herd only).	INTERIM DETERMINATION BY FEDERAL SUBSISTENCE BOARD (12/18/91): residents of Tuluksak, Akiak, Akiachak, Kwethluk, Bethel, Oscarville, Napaskiak, Napakiak, Kasigluk, Atmanthluak, Nunapitchuk, Tuntutliak, Eek, Quinhagak, Goodnews Bay, Platinum, Togiak, and Twin Hills.
18, North of the Yukon River	Caribou (except Kilbuck caribou herd).	Residents of Alakanuk, Andreafsky, Chevak, Emmonak, Hooper Bay, Kotlik, Kwethluk, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's, St. Michael, Scammon Bay, Sheldon Point, and Stebbins.
18, Remainder	Caribou (except Kilbuck caribou herd).	Residents of Kwethluk.
18, that portion of the Yukon River drainage upstream of Russian Mission and that portion of the Kuskokwim River drainage upstream of, but not including the Tuluksak River drainage..	Moose	Residents of Unit 18 and residents of Upper Kalskag, Lower Kalskag, Aniak, and Chuathbaluk.
18, remainder	Moose	Residents of Unit 18 and residents of Upper Kalskag and Lower Kalskag.
18	Muskox	No Federal subsistence priority.
18	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 19(C), (D)	Bison	No Federal subsistence priority.
19(A)	Brown Bear	Residents of Unit 19(A), (D), and Residents of Tuluksak, Lower Kalskag and Kwethluk.
19(B)	Brown Bear	Residents of Kwethluk.
19(C)	Brown Bear	No Federal subsistence priority.
19(D)	Brown Bear	Residents of Unit 19(A) and (D), and residents of Tulusak and Lower Kalskag.
19(A) and (B)	Caribou	Residents of Unit 19(A) and (B) and Kwethluk; and residents of Unit 18 in Kuskokwim Drainage and Kuskokwim Bay during the winter season.
19(C)	Caribou	Residents of Unit 19(C), and residents of Lime Village, McGrath, Nikolai, and Telida.
19(D)	Caribou	Residents of Unit 19(D), and residents of Lime Village, Sleetmute and Stony River.
19(A) and (B)	Moose	Residents of Unit 18 within Kuskokwim River drainage upstream from and including the Johnson River, and Unit 19.
19(C)	Moose	Residents of Unit 19.
19(D)	Moose	Residents of Unit 19 and residents of Lake Minchumina.

Area	Species	Determination
19	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 20(D)	Bison	No Federal subsistence priority.
20(F)	Black Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(E)	Brown Bear	Residents of Unit 12 and Dot Lake.
20(F)	Brown Bear	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20(A), (C) (Delta, Yanert, and 20(C) herds) and (D).	Caribou	No determination, except no subsistence for residents of households of the Denali National Park Headquarters.
20(D) and 20(E)	Caribou 40-Mile Herd	Residents of Unit 12 north of Wrangell Park-Preserve, rural residents of 20(D) and residents of 20(E).
20(A)	Moose	Residents of Cantwell, Minto, and Nenana, McKinley Village, the area along the Parks Highway between mileposts 216 and 239, except no subsistence for residents of households of the Denali National Park Headquarters.
20(B)	Moose	Minto Flats Management Area—residents of Minto and Nenana.
20(B)	Moose	Remainder—rural residents of Unit 20(B), and residents of Nenana and Tanana.
20(C)	Moose	Rural residents of Unit 20(C) (except that portion within Denali National Park and Preserve and that portion east of the Teklanika River), and residents of Cantwell, Manley, Minto, Nenana, the Parks Highway from milepost 300–309, Nikolai, Tanana, Telida, McKinley Village, and the area along the Parks Highway between mileposts 216 and 239. No subsistence for residents of households of the Denali National Park Headquarters.
20(D)	Moose	Rural residents of Unit 20(D) and residents of Tanacross.
20(F)	Moose	Residents of Unit 20(F), Manley, Minto and Stevens Village.
20(F)	Wolf	Residents of Unit 20(F) and residents of Stevens Village and Manley.
20, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
20(D)	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
20(D)	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 21	Brown Bear	Rural residents of Unit 21 and 23.
21	Caribou, Western Arctic Caribou Herd only.	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of 23 and 24.
21(A) and (E)	Caribou	Residents of Unit 21(A) and Aniak, Chuathbaluk, Crooked Creek, Grayling, Holy Cross, McGrath, Shageluk and Takotna.
21(A)	Moose	Residents of Unit 21(A), (E), Takotna, McGrath, Aniak and Crooked Creek.
21(B) and (C)	Moose	Residents of Unit 21(B) and (C), residents of Tanana and Galena.
21(D)	Moose	Residents of Unit 21(D), and residents of Huslia and Ruby.
21(E)	Moose	Residents of Unit 21(E) and residents of Russian Mission.
21	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16–26.
Unit 22(A)	Black Bear	Residents of Unit 22(A) and Koyuk.
22(B)	Black Bear	Residents of Unit 22(B).
22(C), (D), and (E)	Black Bear	No Federal subsistence priority.
22	Brown Bear	Residents of Unit 22
22(A)	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24, and residents of Kotlik, Emmonak, Hooper Bay, Scammon Bay, Chevak, Marshall, Mountain Village, Pilot Station, Pitka's Point, Russian Mission, St. Mary's Sheldon Point, and Alakanuk.
22, Remainder	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, and residents of Units 22 (except residents of St. Lawrence Island), 23, 24.
22	Moose	Residents of Unit 22.
22(B)	Muskox	Residents of Unit 22(B).
22(C)	Muskox	Residents of Unit 22(C).
22(D)	Muskox	Residents of Unit 22(D) excluding St. Lawrence Island.
22(E)	Muskox	Resident of Unit 22(E) excluding Little Diomede Island.
22	Wolf	Residents of Units 23, 22, 21(D) north and west of the Yukon River, and residents of Kotlik.
22	Brouse (Spruce, Blue, Ruffed and Sharp-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
22	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 23	Brown Bear	Rural residents of Units 21 and 23.
23	Caribou	Residents of Unit 21(D) west of the Koyukuk and Yukon Rivers, residents of Galena, and residents of Units 22, 23, 24 including residents of Wiseman but not including other residents of the Dalton Highway Corridor Management Area, and 26(A).
23	Moose	Residents of Unit 23.

Area	Species	Determination
23 South of Kotzebue Sound and west of and including the Buckland River drainage.	Muskox	Residents of Unit 23 South of Kotzebue Sound and west of and including the Buckland River drainage.
23, Remainder	Muskox	Residents of Unit 23 east and north of the Buckland River drainage.
23	Sheep	Residents of Unit 23 north of the Arctic Circle.
23	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon, and 16-26.
23	Grouse (Spruce, Blue, Ruffed and Sharp-tailed).	Resident of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
23	Ptarmigan (Rock, Willow and White-tailed).	Residents of Units 11, 13 and the residents of Chickaloon, 15, 16, 20(D), 22 and 23.
Unit 24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management.	Black Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Black Bear	Residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, that portion south of Caribou Mountain, and within the public lands composing or immediately adjacent to the Dalton Highway Corridor Management Area.	Brown Bear	Residents of Stevens Village and residents of Unit 24 and Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area.
24, remainder	Brown Bear	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area
24	Caribou	Residents of Unit 24 including Wiseman, but not including any other residents of the Dalton Highway Corridor Management Area; residents of Galena, Kobuk, Koyukuk, Stevens Village, and Tanana.
24	Moose	Residents of Unit 24, and residents of Koyukuk and Galena.
24	Sheep	Residents of Unit 24 residing north of the Arctic Circle and residents of Allakaket, Alatna, Hughes, and Huslia.
24	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 25(D)	Black Bear	Residents of Unit 25(D).
25(D)	Brown Bear	Residents of Unit 25(D).
25, remainder	Brown Bear	No Federal subsistence priority.
25(A)	Moose	Residents of Unit 25(A) and 25(D).
25(D) West	Moose	Residents of Beaver, Birch Creek and Stevens Village.
25(D), Remainder	Moose	Residents of Remainder of Unit 25.
25(A)	Sheep	Residents of Arctic Village, Chalkytsik, Fort Yukon, Kaktovik and Venetie.
25 (B) and (C)	Sheep	No Federal subsistence priority.
25(D)	Wolf	Residents of Unit 25(D).
25, remainder	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.
Unit 26	Brown Bear	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Anaktuvuk Pass and Point Hope.
26(A)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26(B)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Caribou	Residents of Unit 26 and the residents of Anaktuvuk Pass and Point Hope.
26	Moose	Residents of Unit 26 (except the Prudhoe Bay-Deadhorse Industrial Complex) and residents of Point Hope and Anaktuvuk Pass.
26(A)	Muskox	Residents of Anaktuvuk Pass, Atqasuk, Barrow, Nuiqsut, Point Hope, Point Lay, and Wainwright.
26(B)	Muskox	Residents of Anaktuvuk Pass, Nuiqsut, and Kaktovik.
26(C)	Muskox	Residents of Kaktovik.
26(A)	Sheep	Residents of Unit 26, Anaktuvuk Pass, and Point Hope.
26(B)	Sheep	Residents of Anaktuvuk Pass, Point Hope, and Wiseman.
26(C)	Sheep	Residents of Unit 26, Arcti Village, Chalkytsik, Fort Yukon, Point Hope, and Venetie.
26	Wolf	Residents of Units 6, 9, 10 (Unimak Island only), 11–13 and the residents of Chickaloon and 16–26.

(2) Fish and shellfish determinations.

Area	Species	Determination
KOTZEBUE-NORTHERN AREA—Northern District.	All fish	Residents of the Northern District, except for those domiciled in State of Alaska Unit 26–B.
Kotzebue District	Salmon, sheefish, char	Residents of the Kotzebue District.
NORTON SOUND-PORT CLARENCE AREA.	Salmon	Residents of the Norton Sound-Port Clarence Area.
YUKON AREA	Salmon	Residents of the Yukon Area, including the community of Stebbins.
	Yukon River Fall chum salmon	Residents of the Yukon River drainage, including the communities of Stebbins, Scammon Bay, Hooper Bay, and Chevak.
	Freshwater fish species, including sheefish, whitefish, lamprey, burbot, sucker, grayling, pike, char, and blackfish.	Residents of the Yukon Area.
KUSKOKWIM AREA	Salmon	Residents of the Kuskokwim Area, except those persons residing on the United States military installation located on Cape Newenham, Sparevohn USAFB, and Tatalina USAFB.
	Rainbow trout	Residents of the communities of Quinhagak, Goodnews Bay, Kwethluk, Eek, Akiachak, Akiak, and Platinum.
	Pacific cod	Residents of the communities of Chevak, Newtok, Tununak, Toksook Bay, Nightmute, Chefornak, Kipnuk, Mekoryuk, Kwigillingok, Kongiganak, Eek, and Tuntutuliak.
Waters adjacent to the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and around Nunivak Island.	Herring and herring roe	Residents within 20 miles of the coast between the westernmost tip of the Naskonant Peninsula and the terminus of the Ishowik River and on Nunivak Island.
BRISTOL BAY AREA—Nushagak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Nushagak District and freshwater drainages flowing into the district.
Naknek-Kvichek District—Naknek River drainage.	Salmon and other freshwater fish	Residents of the Naknek and Kvichek River drainages.
Naknek-Kvichek District—Iliamna-Lake Clark drainage.	Salmon and other freshwater fish	Residents of the Iliamna-Lake Clark drainage.
Togiak District, including drainages flowing into the district.	Salmon and other freshwater fish	Residents of the Togiak District, freshwater drainages flowing into the district, and the community of Manokotak.
KODIAK AREA—except the Mainland District, all waters along the southside of the Alaska Peninsula bounded by the latitude of Cape Douglas (58°52′ North latitude) midstream Shelikof Strait, and west of the longitude of the southern entrance of Kmuya Bay near Kilokak Rocks (57°11′22″ North latitude, 156°20′30″ W longitude).	Salmon	Residents of the Kodiak Island Borough, except those residing on the Kodiak Coast Guard Base.
KODIAK AREA—except the Semidi Island, the North Mainland, and the South Mainland Sections.	King crab	Residents of the Kodiak Island Borough except those residents on the Kodiak Coast Guard base.
COOK INLET AREA—Port Graham Subdistrict.	Dolly Varden	Residents of Port Graham and English Bay.
Port Graham Subdistrict and Koyuktolik Subdistrict.	Salmon	Residents of Port Graham and English Bay.
Tyonek Subdistrict	Salmon	Residents of the village of Tyonek.
PRINCE WILLIAM SOUND AREA—South-Western District and Green Island.	Salmon	Residents of the Southwestern District which is mainland waters from the outer point on the north shore of Granite Bay to Cape Fairfield, and Knight Island, Chenega Island, Bainbridge Island, Evans Island, Elrington Island, Latouche Island and adjacent islands.
PRINCE WILLIAM SOUND AREA—North of a line from Porcupine Point to Granite Point, and south of a line from Point Lowe to Tongue Point.	Salmon	Residents of the villages of Tatitlek and Ellamar.
YAKUTAT AREA—Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to the Tsiu River.	Salmon	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.
Freshwater upstream from the terminus of streams and rivers of the Yakutat Area from the Doame River to Point Manby.	Dolly Varden char, steelhead trout, and smelt.	Residents of the area east of Yakutat Bay, including the islands within Yakutat Bay, west of the Situk River drainage, and south of and including Knight Island.

Area	Species	Determination
SOUTH-EASTERN ALASKA AREA—District 1—Section 1–E in waters of the Naha River and Roosevelt Lagoon.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Saxman.
District 1—Section 1–F in Boca de Quadra in waters of Sockeye Creek and Hugh Smith Lake within 500 yards of the terminus of Sockeye Creek.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Saxman.
District 2—North of the latitude of the northern-most tip of Chasina Point and west of a line from the northern-most tip of Chasina Point to the eastern-most tip of Grindall Island to the eastern-most tip of the Kasaan Peninsula.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kasaan and in the drainage of the southeastern shore of the Kasaan Peninsula west of 132°20′ W. long. and east of 132°25′ W. long.
District 3—Section 3–A	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the townsite of Hydaburg.
District 3—Section 3–B in waters east of a line from Point Ildefonso to Tranquil Point.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 3—Section 3–C in waters of Sarkar Lakes.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Klawock and on Prince of Wales Island within the boundaries of the Klawock Heenya Corporation land holdings as they exist in January 1989, and those residents of the City of Craig and on Prince of Wales Island within the boundaries of the Shan Seet Corporation land holdings as they exist in January 1989.
District 5—North of a line from Point Barrie to Boulder Point.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–A	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 9—Section 9–B north of the latitude of Swain Point.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 10—West of a line from Pinta Point to False Point Pybus.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Kake and in Kupreanof Island drainages emptying into Keku Strait south of Point White and north of the Portage Bay boat harbor.
District 12—South of a line from Fishery Point to south Passage Point and north of the latitude of Point Caution.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island, north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 13—Section 13–A south of the latitude of Cape Edward.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–B north of the latitude of Redfish Cape.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City and Borough of Sitka in drainages which empty into Section 13–B north of the latitude of Dorothy Narrows.
District 13—Section 13–C east of the longitude of Point Elizabeth.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Angoon and along the western shore of Admiralty Island north of the latitude of Sand Island, south of the latitude of Thayer Creek, and west of 134°30′ W. long., including Killisnoo Island.
District 14—Section 14–B and 14–C.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents of the City of Hoonah and in Chichagof Island drainages on the eastern shore of Port Frederick from Gartina Creek to Point Sophia.
District 15—Chilkat and Chilkoot Rivers.	Salmon, Dolly Varden char, trout, smelt and eulachon.	Residents west of the Haines highway between Mile 20 and Mile 24 and east of the Chilkat River, but not elsewhere in Klukwan; and, those residents of other areas of the city and borough of Haines, excluding residents in the drainage of Excursion Inlet.

Subpart D—Subsistence Taking of Fish and Wildlife

3. In subpart D, revise §§ ____.26 and ____.27 of 36 CFR part 242 and 50 CFR part 100 to read as follows:

§ ____.26 Subsistence taking of fish.

(a) *Applicability.* (1) Regulations in this section apply to the taking of fish or their parts for subsistence uses.

(2) Fish may be taken for subsistence uses at any time by any method unless restricted by the subsistence fishing regulations found in this section.

(b) *Definitions.* The following definitions shall apply to all regulations contained in this section and § ____.27:

Abalone Iron means a flat device which is used for taking abalone and

which is more than one inch (24 mm) in width and less than 24 inches (610 mm) in length, with all prying edges rounded and smooth.

ADF&G means the Alaska Department of Fish and Game.

Anchor means a device used to hold a salmon fishing vessel or net in a fixed position relative to the beach; this includes using part of the seine or lead, a ship's anchor, or being secured to another vessel or net that is anchored.

Beach seine means a floating net which is designed to surround fish and is set from and hauled to the beach.

Char means the following species: Arctic char (*Salvelinus alpinis*); lake trout (*Salvelinus namaycush*); brook trout (*Salvelinus fontinalis*), and Dolly Varden (*Salvelinus malma*).

Crab means the following species: red king crab (*Paralithodes camshatica*); blue king crab (*Paralithodes platypus*); brown king crab (*Lithodes aequispina*); *Lithodes couesi;* all species of tanner or snow crab (*Chionoecetes* spp.); and Dungeness crab (*Cancer magister*).

Dip net means a bag-shaped net supported on all sides by a rigid frame; the maximum straight-line distance between any two points on the net frame, as measured through the net opening, may not exceed five feet; the depth of the bag must be at least one-half of the greatest straight-line distance, as measured through the net opening; no portion of the bag may be constructed of webbing that exceeds a stretched measurement of 4.5 inches; the frame must be attached to a single rigid handle and be operated by hand.

Diving Gear means any type of hard hat or skin diving equipment, including SCUBA equipment.

Drainage means all of the waters comprising a watershed including tributary rivers, streams, sloughs, ponds and lakes which contribute to the supply of the watershed.

Drift gill net means a drifting gill net that has not been intentionally staked, anchored or otherwise fixed.

Federal lands means lands and waters and interests therein the title to which is in the United States.

Fishwheel means a fixed, rotating device for catching fish which is driven by river current or other means of power.

Freshwater of streams and rivers means the line at which freshwater is separated from saltwater at the mouth of streams and rivers by a line drawn between the seaward extremities of the exposed tideland banks at the present stage of the tide.

Fyke net means a fixed, funneling (fyke) device used to entrap fish.

Gear means any type of fishing apparatus.

Gill net means a net primarily designed to catch fish by entanglement in a mesh that consists of a single sheet of webbing which hangs between cork line and lead line, and which is fished from the surface of the water.

Grappling hook means a hooked device with flukes or claws, which is attached to a line and operated by hand.

Groundfish—bottomfish means any marine fish except halibut, osmerids, herring and salmonids.

Hand purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by pursing the lead line; pursing may only be done by hand power, and a free-running line through one or more rings attached to the lead line is not allowed.

Harvest Limit means the maximum legal take per person or designated group, per specified time period, even if part or all of the fish are preserved.

Herring pound means an enclosure used primarily to contain live herring over extended periods of time.

Hung measure means the maximum length of the cork line when measured wet or dry with traction applied at one end only.

Jigging gear means a line or lines with lures or baited hooks, drawn through the water by hand, and which are operated during periods of ice cover from holes cut in the ice.

Lead means either a length of net employed for guiding fish into a seine, set gill net, or other length of net, or a length of fencing employed for guiding fish into a fishwheel, fyke net or dip net.

Long line means either a stationary, buoyed, or anchored line, or a floating, free-drifting line with lures or baited hooks attached.

Possession limit means the maximum number of fish a person or designated group may have in possession if the fish have not been canned, salted, frozen, smoked, dried, or otherwise preserved so as to be fit for human consumption after a 15 day period.

Pot means a portable structure designed and constructed to capture and retain live fish and shellfish in the water.

Purse seine means a floating net which is designed to surround fish and which can be closed at the bottom by means of a free-running line through one or more rings attached to the lead line.

Ring net means a bag-shaped net suspended between no more than two frames; the bottom frame may not be larger in perimeter than the top frame; the gear must be nonrigid and collapsible so that free movement of fish or shellfish across the top of the net is not prohibited when the net is employed.

Rockfish means all species of the genus *Sebastes.*

Rod and reel means either a device upon which a line is stored on a fixed or revolving spool and is deployed through guides mounted on a flexible pole, or a line that is attached to a pole.

Salmon means the following species: pink salmon (*Oncorhynchus gorbusha*); sockeye salmon (*Oncorhynchus nerka*); chinook salmon (*Oncorhynchus tshawytscha*); coho salmon (*Oncorhynchus kisutch*); and chum salmon (*Oncorhynchus keta*).

Salmon stream means any stream used by salmon for spawning or for travelling to a spawning area.

Salmon stream terminus means a line drawn between the seaward extremities of the exposed tideland banks of any salmon stream at mean lower low water.

Set gill net means a gill net that has been intentionally set, staked, anchored, or otherwise fixed.

Shovel means a hand-operated implement for digging clams or cockles.

Spear means a shaft with a sharp point or fork-like implement attached to one end which is used to thrust through the water to impale or retrieve fish and which is operated by hand.

Take or *Taking* means to pursue, hunt, shoot, trap, net capture, collect, kill, harm, or attempt to engage in any such conduct.

To operate fishing gear means any of the following: the deployment of gear in the waters of Alaska; the removal of gear from the waters of Alaska; the removal of fish or shellfish from the gear during an open season or period; or the possession of a gill net containing fish during an open fishing period, except that a gill net which is completely clear of the water is not considered to be operating for the purposes of minimum distance requirement.

Trawl means a bag-shaped net towed through the water to capture fish or shellfish.

Trout means the following species: cutthroat trout (*Oncorhynchus clarki*) and rainbow trout or steelhead trout (*Oncorhynchus mykiss*).

(c) *Methods, means, and general restrictions.* (1) Unless otherwise specified in this section or under terms of a required subsistence fishing permit, the following are legal types of gear for subsistence fishing:

(i) A set gillnet;

(ii) A drift gillnet;

(iii) A purse seine;

(iv) A beach seine;

(v) Troll gear;

(vi) A fish wheel;

(vii) A trawl;
(viii) A pot;
(ix) A ring net;
(x) A longline;
(xi) A fyke net;
(xii) A lead;
(xiii) A herring pound;
(xiv) A dip net;
(xv) Jigging gear;
(xvi) A mechanical jigging machine;
(xvii) A handline;
(xviii) A rod and reel; and
(xix) A spear.

(2) All pots used to take fish must contain an opening on the webbing of a sidewall of the pot which has been laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread which upon deterioration or parting of the twine produces an opening in the web with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter.

(3) Gill nets used for subsistence fishing for salmon may not exceed 50 fathoms in length, unless otherwise specified by regulations for particular areas set forth in this section. The gill net web must contain at least 30 filaments of equal diameter or at least 6 filaments, each of which must be at least 0.20 millimeter in diameter.

(4) Any fishing gear used to take fish for subsistence uses may not obstruct more than one-half the width of any stream. A stationary fishing device may obstruct not more than one-half the width of any stream.

(5) The use of live non-indigenous fish as bait is prohibited.

(6) Each fishwheel must have the first initial, last name, and address of the operator plainly and legibly inscribed on the side of the fishwheel facing midstream of the river.

(7) Kegs or buoys attached to any permitted gear may be any color but red.

(8) Each keg, buoy, stakes attached to gill nets, stakes identifying gear fished under the ice, and any other unattended fishing gear which a person employs to take fish for subsistence uses must have the first initial, last name, and address of the operator plainly and legibly inscribed.

(9) No person may use explosives or chemicals to take fish for subsistence uses.

(10) No person may take fish for subsistence uses within 300 feet of any dam, fish ladder, weir, culvert or other artificial obstruction, unless otherwise indicated.

(11) The limited exchange for cash of subsistence-harvested fish, their parts, or their eggs, legally taken under Federal subsistence management regulations to support personal and family needs is permitted as customary trade, so long as it does not constitute a significant commercial enterprise. The Board may recognize regional differences and define customary trade differently for separate regions of the State.

(12) Subsistence-taken fish, their parts, or their eggs may not be purchased for use in a significant commercial enterprise. Persons licensed by the State of Alaska to engage in a fisheries business may not receive for resale or barter or solicit to barter for subsistence-taken fish, their parts or their eggs.

(13) Except as provided elsewhere in this subpart, the taking of rainbow trout and steelhead trout is prohibited.

(14) Fish taken for subsistence use or under subsistence regulations may not be subsequently used as bait for commercial or sport fishing purposes.

(15) Harvest limits authorized in this section or § ____.27 may not be accumulated with harvest limits authorized in State seasons.

(16) Unless specified otherwise in this section, use of a rod and reel to take fish is permitted without a subsistence fishing permit. Harvest limits applicable to the use of a rod and reel to take fish for subsistence uses shall be as follows:

(i) Where a subsistence fishing permit issued by the ADF&G is required by this section, that permit is required to take fish for subsistence uses with rod and reel. The harvest and possessions limits for taking fish for subsistence uses with a rod and reel in those areas are the same as indicated on the ADF&G permit issued for subsistence fishing with other gear types;

(ii) Where a subsistence fishing permit is not required by this section, the harvest and possession limits for taking fish for subsistence uses with a rod and reel is the same as for taking fish under State of Alaska subsistence fishing regulations in those same areas. If the State does not have a specific subsistence season for that particular species, the limit shall be the same as for taking fish under State of Alaska sport fishing regulations.

(17) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, fish for subsistence uses may be taken at any time.

(18) Fish or their parts taken in violation of Federal law may not be possessed, transported, given, received or bartered.

(d) *Fishing by designated fishing permit.* (1) Any species of fish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take fish on his or her behalf. The designated fisherman must obtain a designated fishing permit prior to attempting to harvest fish and must return a completed harvest report. The designated fisherman may fish for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting fish taken under this section, on behalf of a beneficiary.

(4) a person may not fish with more than one legal limit of gear as established by this section.

(5) A beneficiary may not designate more than one person to take or attempt to take fish on the beneficiary's behalf at one time. A beneficiary may not personally take or attempt to take fish at the same time that a designated fisherman is taking or attempting to take fish on behalf of a beneficiary.

(e) *Fishing permits and reports.* If a subsistence fishing permit is required by this section, the following permit conditions apply unless otherwise specified in this section:

(1) The number of fish taken for subsistence use may not exceed the limits sout in the permit;

(2) The permit must be obtained prior to fishing;

(3) The permit must be in the possession of the permittee and readily available for inspection while fishing or transporting subsistence-taken fish;

(4) If specified on the permit, the permittee shall keep accurate daily records of the catch, showing the number of fish taken by species, location and date of catch, and other such information as may be required for management or conservation purposes; and

(5) If the return of catch information necessary for management and conservation purposes is required by a fishing permit, a permittee who fails to comply with such reporting requirements is ineligible to receive a subsistence permit for that activity during the following calendar year, unless the permit applicant demonstrates that failure to report was due to loss in the mail, accident, sickness, or other unavoidable circumstances.

(f) *Relation to commercial fishing activities.* (1) Federally-qualified subsistence users who commercial fish may retain fish for their subsistence purposes from their lawfully-taken commercial catch.

(2) No person, when participating in a commercial and subsistence fishery at the same time, may use an amount of combined fishing gear in excess of that allowed under the appropriate commercial fishing regulations.

(g) No person may possess or transport subsistence-taken fish or their parts which have been taken contrary to Federal law or regulation or State law or regulation (unless superseded by regulations in this part).

(h) *Fishery management area restrictions.*—(1) *Kotzebue-Northern Area.* The Kotzebue-Northern Area includes all waters of Alaska north of the latitude of the westernmost tip of Cape Prince of Wales and west of 141° West longitude, including those waters draining into the Chukchi Sea and Arctic Oceans.

(i) Fish may be taken for subsistence purposes without a permit.

(ii) Salmon may be taken only by gill nets, beach seines, or a rod and reel.

(iii) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(iv) In the Kotzebue District, gill nets used to take sheefish may not be more than 50 fathoms in length, nor more than 12 meshes in depth, nor have a mesh size larger than 7 inches.

(v) In the Kotzebue District, the Noatak River one mile upstream and one mile downstream from the mouth of the Kelly River, and the Kelly River from its mouth to ¼ mile upstream are closed to subsistence char fishing from June 1 through September 20.

(2) *Norton Sound-Port Clarence Area.* The Norton Sound-Port Clarence Area includes all waters of Alaska between the latitude of the westernmost tip of Cape Prince of Wales and the latitude of Canal Point light, including those waters of Alaska surrounding St. Lawrence Island and those waters draining into the Bering Sea.

(i) In the Port Clarence District, fish may be taken at any time except that during the period July 1 through August 15, salmon may only be taken from 6:00 p.m. Thursday until 6:00 p.m. Tuesday.

(ii) In the Norton Sound District, fish may be taken at any time except as follows:

(A) In Subdistricts 2 through 6, commercial fishermen may not fish for subsistence purposes during the weekly closures of the commercial salmon fishing season, except that from July 15 through August 1, commercial fishermen may take salmon for subsistence purposes seven days per week in the Unalakleet and Shaktoolik River drainages with gillnets which have a mesh size that does not exceed 4½ inches, and with beach seines;

(B) In the Unalakleet River from June 1 through July 15, salmon may be taken only from 8:00 a.m. Monday until 8:00 p.m. Saturday.

(iii) Salmon may be taken only by gill nets, beach seines, fishwheel, or a rod and reel.

(iv) In Subdistrict 1, only set gillnets may be used, except as otherwise specified.

(v) In the Unalakleet River from June 1 through July 15, no person may operate more than 25 fathoms of gillnet in the aggregate and no person may operate an unanchored fishing net.

(vi) In the Norton Sound District, fish may not be taken for subsistence purposes seaward of the mouth of the Unalakleet River in an area between ADF&G regulatory markers on each side of the river to an outer line established by ADF&G regulatory markers and buoys.

(vii) Fish may be taken for subsistence purposes without a subsistence fishing permit.

(3) *Yukon Area.* The Yukon Area includes all waters of Alaska between the latitude of Canal Point light and the latitude of the westernmost point of Naskonat Peninsula, including those draining into the Bering Sea.

(i) Unless otherwise restricted in this section, salmon may be taken in the Yukon Area at any time.

(ii) In the following locations, salmon may be taken only during the open weekly fishing periods of the commercial salmon fishing season and may not be taken for 24 hours before the opening and 24 hours after the closure of the commercial salmon fishing season:

(A) District 4, excluding the Koyukuk and Innoko River drainages;

(B) in Subdistricts 4–B and 4–C from June 15 through September 30, salmon may be taken from 6:00 p.m. Sunday until 6:00 p.m. Tuesday and from 6:00 p.m. Wednesday until 6:00 p.m. Friday;

(C) District 6, excluding the Kantishna River drainage.

(iii) During any commercial salmon fishing season closure of greater than five days in duration, salmon may not be taken during the following periods in the following districts:

(A) In District 4, excluding the Koyukuk and Innoko River drainages, salmon may not be taken from 6:00 p.m. Friday until 6:00 p.m. Sunday;

(B) In Subdistricts 6–A and 6–B, excluding the Kantishna River drainage and that portion of the Tanana River drainage upstream of the mouth of the Salcha River, salmon may not be taken from 6:00 p.m. Wednesday until 6:00 p.m. Friday.

(iv) Except as provided in this section, and except as may be provided by the terms of a subsistence fishing permit, there is no closed season on fish other than salmon.

(v) In Districts 1, 2, 3, and Subdistrict 4–A, salmon may not be taken for subsistence purposes:

(A) During the 24 hours immediately before the opening of the commercial salmon fishing season; and

(B) 18 hours immediately before, during, and 12 hours after each weekly fishing period of the commercial salmon fishing season.

(vi) In the upper Yukon River drainage, Birch Creek, the Dall River from June 10–September 10, and within 500 feet of their mouths are closed to subsistence fishing, except that whitefish and suckers may be taken under the authority of a subsistence fishing permit.

(vii) The following drainages located north of the main Yukon River are closed to subsistence fishing:

(A) Kanuti River upstream from a point five miles downstream of the state highway crossing;

(B) Fish Creek upstream from the mouth of Bonanza Creek;

(C) Middle Fork of the Koyukuk River system upstream from the mouth of the North Fork; and

(D) North Fork of the Chandalar River system upstream from the mouth of Quartz Creek.

(viii) Salmon may be taken only by gillnet, beach seine or fish wheel, subject to the restrictions set forth in this section.

(ix) In District 4, commercial fishermen may not take salmon for subsistence purposes during the commercial salmon fishing season using gillnets larger than six-inch mesh after a date specified by ADF&G emergency order issued between July 10 and July 31.

(x) In Districts 4, 5, and 6, salmon may not be taken for subsistence purposes by drift gillnets, except as follows:

(A) In Subdistrict 4–A upstream from the mouth of Stink Creek, king salmon may be taken by drift gillnets from June 21 through July 14, and chum salmon may be taken by drift gillnets after August 2;

(B) In Subdistrict 4–A downstream from the mouth of Stink Creek, king salmon may be taken by drift gillnets from June 15 through July 14; and

(C) No person may operate a drift gillnet that is more than 150 feet in length during the seasons described in paragraphs (h)(3)(x)(A) and (B) of this section.

(xi) Unless otherwise specified in this section, fish other than salmon may be taken subject to the following

restrictions, which also apply to subsistence salmon fishing:

(A) During the open weekly fishing periods of the commercial salmon fishing season, a commercial fisherman may not operate more than one type of gear at a time, for commercial and subsistence purposes;

(B) The aggregate length of set gillnet in use by an individual may not exceed 150 fathoms and each drift gillnet in use by an individual may not exceed 50 fathoms in length; and

(C) In Districts 4, 5, and 6, it is unlawful to set subsistence fishing gear within 200 feet of other operating commercial or subsistence fishing gear except that, at the site approximately one mile upstream from Ruby on the south bank of the Yukon River between ADF&G regulatory markers containing the area known locally as the ''Slide,'' subsistence fishing gear may be set within 200 feet of other operating commercial or subsistence fishing gear.

(xii) In District 4, from September 21 through May 15, jigging gear may be used from shore ice.

(xiii) Except as provided in this section, fish may be taken for subsistence purposes without a subsistence fishing permit.

(xiv) A subsistence fishing permit is required as follows:

(A) For the Yukon River drainage from ADF&G regulatory markers placed near the upstream mouth of 22 Mile Slough upstream to the U.S.-Canada border;

(B) For whitefish and suckers in Birch Creek, Dall River from June 10–September 10, and within 500 feet of their mouths;

(C) For the taking of salmon in Subdistricts 6–A and 6–B.

(xv) Only one subsistence fishing permit will be issued to each household per year.

(xvi) Permits issued for the taking of salmon in Subdistricts 6–A and 6–B must also contain the following requirements:

(A) Salmon may be taken only by set gillnet or fish wheel. No household may operate more than one fish wheel;

(B) Each subsistence fisherman shall keep accurate daily records of his or her catch, the number of fish taken by species, location and date of the catch, and other information that the department may require for management or conservation purposes;

(C) The annual harvest limit for the holder of a Subdistrict 6–A or 6–B subsistence salmon fishing permit is 60 chinook salmon and 500 chum salmon for the period through August 15 of a year, and 2,000 chum and coho salmon combined for the period after August 15;

(D) Unless otherwise provided, from June 20 through September 30, open subsistence salmon fishing periods are concurrent with open commercial salmon fishing periods. During closures of the commercial salmon fishery, open subsistence salmon fishing periods will be identified by ADF&G;

(E) In the Kantishna River drainage, the open subsistence salmon fishing periods are seven days per week.

(xvii) In Districts 1, 2, and 3, no person may possess king salmon taken for subsistence purposes unless the dorsal fin has been removed immediately after landing.

(xviii) A commercial salmon permit holder registered for the setnet only locations may not use drift gillnets for the subsistence taking of salmon in Districts 1, 2, and 3.

(xix) A commercial salmon fisherman who is registered for District 1, 2, or 3 may not take salmon for subsistence purposes in any other district located downstream from Old Paradise Village.

(4) *Kuskokwim Area.* The Kuskokwim Area consists of all waters of Alaska between the latitude of the westernmost point of Naskonat Peninsula and the latitude of the southernmost tip of Cape Newenham, including the waters of Alaska surrounding Nunivak and St. Matthew Islands and those waters draining into the Bering Sea.

(i) Unless otherwise restricted in this section, fish may be taken in the Kuskokwim Area at any time without a subsistence fishing permit.

(ii) In District 1 and in those waters of the Kuskokwim River between Districts 1 and 2, excluding the Kuskokuak Slough, salmon may not be taken for 16 hours before, during, and for six hours after, each open commercial salmon fishing period for District 1.

(iii) In District 1, Kuskokuak Slough only from June 1 through July 31, salmon may not be taken for 16 hours before and during each open commercial salmon fishing period in the district.

(iv) In Districts 4 and 5, from June 1 through September 8, salmon may not be taken for 16 hours before, during, and 6 hours after each open commercial salmon fishing period in each district.

(v) In District 2, and anywhere in tributaries that flow into the Kuskokwim River within that district, from June 1 through September 8 salmon may not be taken for 16 hours before, during, and six hours after each open commercial salmon fishing period in the district.

(vi) The Kanektok River is closed to the subsistence taking of fish by nets upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and six hours after each open commercial salmon fishing period.

(vii) The Arolik River is closed to the subsistence taking of fish by nets upstream of ADF&G regulatory markers placed near the mouth 16 hours before, during, and six hours after each open commercial salmon fishing period.

(viii) Salmon may be taken only by gillnet, beach seine, or fish wheel subject to the restrictions set out in this section, except that salmon may also be taken by spear in the Holitna River drainage, Kanektok River drainage, and Arolik River drainage.

(ix) The aggregate length of set gillnets or drift gillnets in use by any individual for taking salmon may not exceed 50 fathoms.

(x) Each subsistence gillnet operated in tributaries of the Kuskokwim River must be attached to the bank, fished substantially perpendicular to the bank and in a substantially straight line.

(xi) In that portion of the Kuskokwim River drainage from the north end of Eek Island upstream to the mouth of the Kolmakoff River, no part of a set gillnet located within a tributary to the Kuskokwim River may be set or operated within 150 feet of any part of another set gillnet.

(xii) The maximum depth of gillnets is as follows:

(A) Gillnets with six-inch or smaller mesh may not be more than 45 meshes in depth;

(B) Gillnets with greater than six-inch mesh may not be more than 35 meshes in depth.

(xiii) Subsistence set and drift gillnets operated in Whitefish Lake in the Ophir Creek drainage may not exceed 15 fathoms in length.

(xiv) A person may not operate more than one subsistence set or drift gillnet at a time in Whitefish Lake in the Ophir Creek drainage. A person operating a subsistence set or drift gillnet shall check the net at least once every 24 hours.

(xv) Rainbow trout may be taken by residents of Goodnews Bay, Platinum. Quinhagak, Eek, Kwethluk, Akiachak, and Akiak, subject to the following restrictions:

(A) Rainbow trout may be taken only by the use of gill nets, rod and reel, or jigging through the ice;

(B) The use of gill nets for taking rainbow trout is prohibited from March 15–June 15.

(5) *Bristol Bay Area.* The Bristol Bay Area includes all waters of Bristol Bay including drainages enclosed by a line from Cape Newenham to Cape Menshikof.

(i) Unless restricted in this section, or unless under the terms of a subsistence fishing permit, fish, may be taken at any time in the Bristol Bay area.

(ii) In all commercial salmon districts, from May 1 through May 31 and October 1 through October 31, subsistence fishing for salmon is permitted from 9:00 a.m. Monday until 9:00 a.m. Friday. From June 1 through September 30, within the waters of a commercial salmon district, salmon may be taken only during open commercial salmon fishing periods.

(iii) In the Egegik, and Ugashik Rivers from 9:00 a.m. June 23 through 9:00 a.m. July 17, salmon may be taken only from 9:00 a.m. Tuesday to 9:00 a.m. Wednesday and 9:00 a.m. Saturday to 9:00 a.m. Sunday.

(iv) Except for the western shore of the Newhalen River, waters within 300 feet of a stream mouth used by salmon are closed to the subsistence taking of fish.

(v) Within any district, salmon, herring, and capelin may be taken only by drift and set gillnets.

(vi) Gillnets are prohibited in that portion of the Naknek River upstream from Savonaski.

(vii) Outside the boundaries of any district, salmon may only be taken by set gillnet, except that salmon may also be taken by spear in the Togiak River excluding its tributaries.

(viii) The maximum lengths for set gillnets used to take salmon are as follows:

(A) Set gillnets may not exceed 10 fathoms in length in the Egegik and Ugashik Rivers, in the Nushagak District during the emergency order subsistence openings; in Naknek Lake;

(B) In the remaining waters of the area, set gillnets may not exceed 25 fathoms in length.

(ix) In the Nushagak District, during special subsistence openings, no set gillnet may be set or operated within 450 feet of another set gillnet.

(x) No part of a set gillnet may be operated within 300 feet of any part of another set gillnet.

(xi) Each set gillnet must be staked and buoyed.

(xii) No person may operate or assist in operating subsistence salmon net gear while simultaneously operating or assisting in operating commercial salmon net gear.

(xiii) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(xiv) Only one subsistence fishing permit may be issued to each household per year.

(xv) After August 20, no person may possess coho salmon for subsistence purposes in the Togiak River section and the Togiak River drainage unless the head has been immediately removed from the salmon.

(6) *Aleutian Islands Area.* The Aleutian Islands Area includes all waters of Alaska west of the longitude of the tip of Cape Sarichef, east of 172° East longitude, and south of 54° 36′ North latitude.

(i) Fish, other than salmon, rainbow trout, and steelhead trout, may be taken at any time unless restricted under the terms of a subsistence fishing permit. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries are lawfully taken and may be retained for subsistence purposes.

(ii) In the Unalaska District, salmon may be taken for subsistence purposes from 6:00 a.m. until 9:00 p.m. from January 1 through December 31, except:

(A) That from June 1 through September 15, a salmon seine vessel may not be used to take salmon for subsistence 24 hours before, during, or 24 hours after an open commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing;

(B) That from June 1 through September 15, a purse seine vessel may be used to take salmon only with a gillnet and no other type of salmon gear may be on board the vessel while subsistence fishing; or

(C) As may be specified on a subsistence fishing permit.

(iii) In the Akutan and Umnak Districts, salmon may be taken at any time.

(iv) The waters of Unalaska Lake (at Unalaska Village), its drainages and the outlet stream and within 500 yards of its terminus are closed to subsistence fishing.

(v) The Adak District is closed to the taking of salmon.

(vi) Salmon may be taken by seine and gillnet, or with gear specified on a subsistence fishing permit.

(vii) Fish other than salmon may be taken by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) Salmon, trout and char may only be taken under the terms of a subsistence fishing permit, except that a permit is not required in the Akutan, Umnak and Adak Districts.

(ix) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit except that in the Unalaska District, the holder of a subsistence salmon fishing permit may take no more than 25 salmon plus an additional 25 salmon for each member of the same household whose name is listed on the permit.

(x) A record of subsistence-caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned no later than October 31.

(7) *Alaska Peninsula Area.* The Alaska Peninsula Area includes all Pacific Ocean waters of Alaska between a line extending southeast (135°) from the tip of Kupreanof Point and the longitude of the tip of Cape Sarichef, and all Bering Sea waters of Alaska east of the latitude of the tip of Cape Menshikof.

(i) Fish, other than salmon, rainbow trout and steelhead trout, may be taken at any time unless restricted by the terms of a subsistence fishing permit. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries or through the ice, are lawfully taken and may be retained for subsistence purposes.

(ii) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit.

(iii) A record of subsistence-caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned to the local representative of the department no later than October 31.

(iv) Salmon may be taken at any time except within 24 hours before and within 12 hours following each open weekly commercial salmon fishing period within a 50-mile radius of the area open to commercial salmon fishing, or as may be specified on a subsistence fishing permit.

(v) The following waters are closed to subsistence fishing for salmon:

(A) Russell Creek and Nurse Lagoon and within 500 yards outside the mouth of Nurse Lagoon;

(B) Trout Creek and within 500 yards outside its mouth;

(C) Inshore of a line from the Pacific Pearl Dock to Black Point, including the inlet and Humboldt Creek.

(vi) Salmon may be taken by seine, gill net, rod and reel, or with gear specified on a subsistence fishing permit.

(vii) Fish other than salmon may be taken by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(viii) No set gillnet may exceed 100 fathoms in length.

(ix) Not more than 250 salmon may be taken for subsistence purposes unless otherwise specified on the subsistence fishing permit.

(8) *Chignik Area.* The Chignik Area includes all waters of Alaska on the south side of the Alaska Peninsula enclosed by 156° 21′ 13″ West longitude (the longitude of the southern entrance to Imuya Bay near Kilokak Rocks) and a line extending southeast (135°) from the tip of Kupreanof Point.

(i) Fish, other than rainbow trout and steelhead trout, may be taken at any time, except as may be specified by a subsistence fishing permit. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries, are lawfully taken and may be retained for subsistence purposes.

(ii) Salmon may not be taken in the Chignik River, upstream from the ADF&G weir site or counting tower, in Black Lake, or any tributary to Black and Chignik Lakes.

(iii) Salmon may be taken by seines, gill nets, rod and reel, or with gear specified on a subsistence fishing permit, except that in Chignik Lake salmon may not be taken with purse seines.

(iv) Fish other than salmon may be taken by gear listed in this part unless restricted under the terms of a subsistence fishing permit.

(v) Salmon, trout and char may only be taken under the authority of a subsistence fishing permit.

(vi) Not more than 250 salmon may be taken for subsistence purpose unless otherwise specified on the subsistence fishing permit.

(vii) A record of subsistence-caught fish must be kept on the reverse side of the permit. The record must be completed immediately upon taking subsistence-caught fish and must be returned no later than October 31.

(viii) From 48 hours before the first commercial salmon fishing opening in the Chignik Area through September 30, a commercial fishing license holder may not subsistence fish for salmon.

(9) *Kodiak Area.* The Kodiak Area includes all waters of Alaska south of a line extending east from Cape Douglas (58° 52′ N. lat.), west of 150° W. long., north of 55° 30′ N. lat.; and east of the longitude of the southern entrance of Imuya Bay near Kilokak Rocks (156° 20′ 13″ W. long.).

(i) Fish, other than salmon, rainbow trout and steelhead trout, may be taken at any time unless restricted by the terms of a subsistence fishing permit. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries, are lawfully taken and may be retained for subsistence purposes.

(ii) Salmon may be taken for subsistence purposes 24 hours a day from January 1 through December 31, with the following exceptions:

(A) From June 1 through September 15, salmon seine vessels may not be used to take subsistence salmon for 24 hours before, during, and for 24 hours after any open commercial salmon fishing period;

(B) From June 1 through September 15, purse seine vessels may be used to take salmon only with gillnets and no other type of salmon gear may be on board the vessel.

(iii) The following locations are closed to the subsistence taking of salmon:

(A) All freshwater systems of Little Afognak River and Portage Creek drainage in Discoverer Bay;

(B) All waters closed to commercial salmon fishing in Anton Larsen Bay and all waters closed to commercial salmon fishing within 100 yards of the terminus of Selief Bay Creek and north and west of a line from the tip of Last Point to the tip of River Mouth Point in Afognak Bay;

(C) All waters 300 yards seaward of the terminus of Monks Creek;

(D) From August 15 through September 30, all waters 500 yards seaward of the terminus of Little Kitoi Creek;

(E) All freshwater systems of Afognak Island.

(iv) Salmon may only be taken by gill net, rod and reel, or seine.

(v) Subsistence fishermen must be physically present at the net at all times the net is being fished.

(vi) A subsistence fishing permit is required for taking salmon, trout, and char for subsistence purposes. A subsistence fishing permit is required for taking herring and bottomfish for subsistence purposes during the commercial herring sac roe season from April 15 through June 30.

(vii) A subsistence salmon fishing permit allows the holder to take 25 salmon plus an additional 25 salmon for each member of the same household whose names are listed on the permit. An additional permit may be obtained if it can be shown that more fish are needed.

(viii) All subsistence fishermen shall keep a record of the number of subsistence fish taken each year. The number of subsistence fish taken shall be recorded on the reverse side of the permit. The record must be completed immediately upon landing subsistence-caught fish, and must be returned by February 1 of the year following the year the permit was issued.

(10) *Cook Inlet Area.* The Cook Inlet Area includes all waters of Alaska enclosed by a line extending east from Cape Douglas (58° 52′ N. lat.) and a line extending south from Cape Fairfield (148° 40′ W. long.).

(i) Unless restricted in this section, or unless restricted under the terms of a subsistence fishing permit, fish, other than rainbow trout and steelhead trout, may be taken at any time in the Cook Inlet Area. Rainbow trout and steelhead trout, taken incidentally in other subsistence finfish net fisheries and through the ice, are lawfully taken and may be retained for subsistence purposes.

(ii) Salmon may be taken for subsistence purposes only as follows: no part of a set gillnet may be set or operated within 600 feet of any part of another set gill-net.

(iii) No person may operate or assist in the operation of subsistence salmon net gear on the same day that person operates or assists in the operation of commercial salmon gear.

(iv) Bottomfish may be taken by legal gear for commercial bottomfish fishing in the area.

(v) Herring may be taken only with gill nets. Gill nets used to take herring may not exceed 50 feet in length and 2 inches in mesh size.

(vi) Gill nets may not be used in fresh water.

(vii) Dolly Varden may be taken in fresh water only by beach seines not exceeding 10 fathoms in length.

(viii) Salmon may be taken only under the authority of a subsistence fishing permit issued by ADF&G; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily salmon catches on forms provided by ADF&G.

(ix) Whitefish may not be taken.

(x) Dolly Varden may be taken in fresh water only under the authority of a subsistence fishing permit issued by ADF&G; only one permit may be issued to a household each year. A subsistence fishing permit holder shall record daily Dolly Varden catches on forms provided by ADF&G.

(xi) No person may possess salmon taken under the authority of a subsistence fishing permit unless both lobes of the caudal fin (tail) have been immediately removed from the salmon.

(xii) The total annual possession limit for each subsistence salmon fishing permit is as follows:

(A) 25 salmon for the head of a household and 10 salmon for each dependent of the permit holder;

(B) In addition to the limits in paragraph (h)(10)(xii)(A) of this section, the holder of a Tyonek Subdistrict subsistence salmon fishing permit may take 70 king salmon.

(xiii) In the subsistence taking of smelt there are no harvest or possession limits and smelt may be taken only with dip nets or gill nets:

(A) In salt water from April 1 through May 31 and September 1 through October 30;

(B) In fresh water from April 1 through June 15;

(C) No gillnet fished in salt water may exceed 50 feet in length and two inches in mesh size;

(D) No gillnet fished in fresh water may exceed 20 feet in length and two inches in mesh size;

(E) Each gillnet must be attended by the fisherman at all times when it is being used to take fish.

(11) *Prince William Sound Area.* The Prince William Sound Area includes all waters of Alaska between the longitude of Cape Fairfield and the longitude of Cape Suckling.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish, other than rainbow trout and steelhead trout, may be taken at any time in the Prince William Sound Area.

(ii) Salmon may be taken in the Upper Copper River District only as follows:

(A) In the Glennallen Subdistrict, from June 1 through September 30;

(B) The Chitina Subdistrict is closed to subsistence salmon fishing.

(iii) Rainbow trout and steelhead trout taken incidentally in other subsistence finfish net fisheries are lawfully taken and may be retained for subsistence purposes.

(iv) All tributaries of the Copper River and waters of the Copper River not in the Upper Copper River District are closed to the taking of salmon.

(v) Salmon, other than chinook salmon, may be taken in the vicinity of the former Native village of Batzulnetas under the following conditions:

(A) Salmon may be taken only under the authority of a Batzulnetas subsistence salmon fishing permit;

(B) Salmon may be taken only in those waters of the Copper River between ADF&G regulatory markers located near the mouth of Tanada Creek and approximately one-half mile downstream from that mouth and in Tanada Creek between ADF&G regulatory markers identifying the open waters of the creek;

(C) Fish wheels and dip nets only may be used on the Copper River; dip nets and spears only may be used in Tanada Creek;

(D) Salmon may be taken only from June 1 through September 1 or until the season is closed; openings will be established by the Board and will be two days per week during the month of June and 3.5 days per week for the remainder of the season;

(E) Chinook salmon taken must be released to the water unharmed; fish wheels must be equipped with a livebox or be monitored at all times;

(F) Annual harvest and possession limits are as specified in this section;

(G) The permit must be returned no later than September 30 of each year.

(vi) Salmon may not be taken in any area closed to commercial salmon fishing unless specifically permitted in this section.

(vii) Fish may be taken by gear listed in this part unless restricted in this section or under the terms of a subsistence fishing permit.

(viii) Salmon may be taken only by the following types of gear:

(A) In the Glennallen Subdistrict by fish wheels, rod and reel, or dip nets;

(B) In salt water by gill nets and seines; and

(C) Fish wheels used for subsistence fishing may not be rented, leased, or otherwise used for personal gain. Subsistence fish wheels must be removed from the water at the end of the permit period. Each permittee may operate only one fish wheel at any one time. No person may set or operate a fish wheel within 75 feet of another fish wheel. No fish wheel may have more than two baskets.

(ix) A permit holder (permittee) must personally operate the fish wheel or dip net. A subsistence fish wheel or dip net permit may not be loaned or transferred.

(x) A wood or metal plate at least 12 inches high by 12 inches wide, bearing the permit holder's name and address in letters and numerals at least one inch high, must be attached to each fish wheel so that the name and address are plainly visible.

(xi) Except as provided in this section, fish other than salmon and freshwater fish species may be taken for subsistence purposes without a subsistence fishing permit.

(xii) Salmon and freshwater fish species may be taken only under authority of a subsistence fishing permit.

(xiii) Only one subsistence fishing permit will be issued to each household per year.

(xiv) A subsistence fishing permit for the Upper Copper River District will be issued only to residents of this state. The following apply to Upper Copper River District subsistence salmon fishing permits:

(A) Only one type of gear may be specified on a permit;

(B) Only one permit per year may be issued to a household;

(C) Permits must be returned no later than October 31, or a permit for the following year may be denied;

(D) A household may not be issued both a Copper River salmon fishing permit and a Chitina Subdistrict salmon fishing permit.

(xv) The total annual possession limit for an Upper Copper River District subsistence salmon fishing permit is as follows:

(A) No more than a total of 200 salmon for a permit issued to a household with one person, of which no more than five may be chinook salmon if taken by dip net;

(B) No more than a total of 500 salmon for a permit issued to a household with two or more persons, of which no more than five may be chinook salmon if taken by dip net.

(xvi) A person may not possess salmon taken under the authority of an Upper Copper River District subsistence fishing permit unless both lobes of the caudal (tail) fin have been immediately removed from the salmon.

(xvii) In locations open to commercial salmon fishing, the annual subsistence salmon limit is as follows:

(A) 15 salmon for a household of one person;

(B) 30 salmon for a household of two persons;

(C) 10 salmon for each additional person in a household; and

(D) No more than five king salmon may be taken per permit.

(12) *Yakutat Area.* The Yakutat Area includes all waters of Alaska between the longitude of Cape Suckling and the longitude of Cape Fairweather.

(i) Unless restricted in this section or unless restricted under the terms of a subsistence fishing permit, fish may be taken at any time in the Yakutat Area.

(ii) Salmon may not be taken during the period commencing 48 hours before an opening until 48 hours after the closure of an open commercial salmon net fishing season. This applies to each river or bay fishery individually.

(iii) When the length of the weekly commercial salmon net fishing period exceeds two days in any Yakutat Area salmon net fishery the subsistence fishing period is from 6:00 a.m. to 6:00 p.m. on Saturday in that location.

(iv) In the Situk River, each subsistence salmon fishing permit holder shall attend his or her gill net at all times when it is being used to take salmon.

(v) Any gillnet nor seine used for subsistence fishing may block up to two-thirds of a stream.

(vi) Salmon, trout and char may only be taken under authority of a subsistence fishing permit.

(vii) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(viii) Subsistence fishermen must remove the dorsal fin from subsistence-caught salmon when taken.

(ix) No person may possess subsistence-taken and sport-taken salmon on the same day.

(13) *Southeastern Alaska Area.* The Southeastern Alaska Area includes all waters between a line projecting southwest from the westernmost tip of Cape Fairweather and Dixon Entrance.

(i) Unless restricted in this section or under the terms of a subsistence fishing permit, fish, other than rainbow trout and steelhead trout, may be taken in the Southeastern Alaska Area at any time.

(ii) Coho salmon may only be taken from Salt Lake and Mitchell Bay from August 1 through October 31. Only one subsistence salmon fishing permit will be issued for a household for the Salt Lake and Mitchell Bay coho fishery.

(iii) From July 7 through July 31, sockeye salmon may be taken in the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, the Klawock River, and Klawock Lake only from 8:00 a.m. Monday until 5:00 p.m. Friday.

(iv) In District 15, saltwaters of Lynn Canal including Chilkat and Chilkoot, are closed to the subsistence taking of salmon during closed periods of the commercial salmon net fishery in the district.

(v) Fish may be taken by gear listed in this part except as may be restricted under the terms of a subsistence fishing permit and except as follows:

(A) In District 13, Redoubt Bay, gill net or seine gear may not be used to take salmon in any waters of the bay closed to commercial salmon fishing;

(B) Beach seines, rod and reel, and gaffs only may be used to take coho salmon;

(C) Set gill nets may be used in Yes Bay north of a line from Bluff Point to Syble Point, except within 500 yards of the terminus of Wolverine Creek; the subsistence permit holder shall be physically present at the gill net while it is in operation.

(vi) Salmon, trout, and char may only be taken under authority of a subsistence fishing permit.

(vii) Permits will not be issued for the taking of chinook or coho salmon, except for coho salmon as provided in this section, but chinook or coho salmon taken incidentally by gear operated under terms of a subsistence permit for other salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon fishing permit must report any chinook or coho salmon taken in this manner on his or her permit calendar.

(viii) In the Chilkat River, the subsistence fishing permit holder shall be physically present at the net while it is fishing.

(ix) Salmon, trout, or char taken incidentally by gear operated under the terms of a subsistence permit for salmon are legally taken and possessed for subsistence purposes. The holder of a subsistence salmon permit must report any salmon, trout, or char taken in this manner on his or her permit calendar.

(x) Subsistence fishermen shall immediately remove the pelvic fins of all salmon when taken.

(xi) No person may possess subsistence-taken and sport-taken salmon on the same day.

(xii) No permits for the use of nets will be issued for the salmon streams flowing across or adjacent to the road systems of Petersburg, Wrangell, and Sitka.

(xiii) In the waters of Klawock Inlet enclosed by a line from Klawock Light to the Klawock Oil Dock, no person may subsistence salmon fish from a vessel that is powered by a motor of greater than 35 horsepower.

§ ___.27 Subsistence taking of shellfish.

(a) Regulations in this section apply to subsistence taking of dungeness crab, king crab, tanner crab, shrimp, clams, abalone, and other shellfish or their parts.

(b) Shellfish may be taken for subsistence uses at any time in any area of the public lands by any method unless restricted by the subsistence fishing regulations of § ___.26 or this section.

(c) Methods, means, and general restrictions.

(1) The harvest limit specified in this section for a subsistence season for a species and the State harvest limit set for a State season for the same species are not cumulative. This means that a person or designated group who has taken the harvest limit for a particular species under a subsistence season specified in this section may not after that, take any additional shellfish of that species under any other harvest limit specified for a State season.

(2) Unless otherwise provided in this section, gear as specified in the definitions of § ___.26 is legal for subsistence taking of shellfish.

(3) It is prohibited to buy or sell subsistence-taken shellfish, their parts, or their eggs, unless otherwise specified.

(4) The use of explosives and chemicals is prohibited, except that chemical baits or lures may be used to attract shellfish.

(5) Each subsistence fisherman shall plainly and legibly inscribe their first initial, last name and address on a keg or buoy attached to unattended subsistence fishing gear. Subsistence fishing gear may not display a permanent ADF&G vessel license number. The keg or buoy may be any color except red.

(6) A side wall of all subsistence shellfish pots must contain an opening with a perimeter equal to or exceeding one-half of the tunnel eye opening perimeter. The opening must be laced, sewn, or secured together by untreated cotton twine or other natural fiber no larger than 120 thread. Dungeness crab and shrimp pots may have the pot lid tiedown straps secured to the pot at one end by untreated cotton twine no larger than 120 thread, as a substitute for the above requirement.

(7) No person may mutilate or otherwise disfigure a crab in any manner which would prevent determination of the minimum size restrictions until the crab has been processed or prepared for consumption.

(8) In addition to the marking requirements in paragraph (c)(5) of this section, kegs or buoys attached to subsistence crab pots must also be inscribed with the name or U.S. Coast Guard number of the vessel used to operate the pots.

(9) No more than five pots per person and 10 pots per vessel may be used to take crab, except as specified in paragraph (f) of this section.

(10) In the subsistence taking of shrimp in the Glacier Bay National Preserve, no person may use more than 10 pots, and no more than 20 pots may be operated from a vessel. In the subsistence taking of shellfish other than shrimp in the Glacier Bay National Preserve, no person may operate more than five pots of any type, and no more than 10 pots of any type may be operated from a vessel.

(d) Taking shellfish by designated fishing permit. (1) Any species of shellfish that may be taken by subsistence fishing under this part may be taken under a designated harvest permit.

(2) A Federally-qualified subsistence user (recipient) may designate another Federally-qualified subsistence user to take shellfish on his or her behalf. The designated fisherman must obtain a designated shellfish permit prior to

attempting to harvest shellfish and must return a completed harvest report. The designated fisherman may harvest for any number of recipients but may have no more than two harvest limits in his/her possession at any one time.

(3) The designated fisherman must have in possession a valid designated fishing permit when taking, attempting to take, or transporting shellfish taken under this section, on behalf of a beneficiary.

(4) a person may not fish with more than one legal limit of gear as established by this section.

(5) A beneficiary may not designate more than one person to take or attempt to take shellfish on the beneficiarry's behalf at one time. A beneficiary may not personally take or attempt to take shellfish at the same time that a designated fisherman is taking or attempting to take shellfish on behalf of a beneficiary.

(e) If a subsistence fishing permit is required by this chapter, the following conditions apply unless otherwise specified by the subsistence fishing regulations this section:

(1) The numbers of shellfish taken for subsistence use may not exceed the limits set out in the permit;

(2) Permits must be obtained prior to subsistence fishing;

(3) Permits must be retained in the possession of the permittee and be readily available for inspection while taking or transporting the species for which the permit is issued;

(4) If specified on the permit, each subsistence fisherman shall keep accurate daily records of the catch involved, showing the number of shellfish taken by species, location and date of the catch and such other information may be required for management or conservation purposes;

(5) Subsistence fishing reports must be completed and submitted at a time specified for each particular area and fishery;

(6) If the return of catch information necessary for management and conservation purposes is required by a subsistence fishing permit, a permittee who fails to comply with such reporting requirements is ineligible to receive a subsistence permit for that activity during the following calendar year, unless the permit applicant demonstrates to the department that failure to report was due to loss in the mail, accident, sickness or other unavoidable circumstances.

(f) Subsistence take by commercial vessels. No fishing vessel which is commercially licensed and registered for shrimp pot, shrimp trawl, king crab, tanner crab, or dungeness crab fishing may be used for subsistence take during the period starting 14 days before an opening until 14 days after the closure of a respective open season in the area or areas for which the vessel is registered. However, commercial fishermen may retain shellfish for their own use from their lawfully taken commercial catch.

(g) No person may take or possess shellfish smaller than the minimum legal size limits.

(h) Unlawful possession of subsistence shellfish. Shellfish or their parts taken in violation of Federal or State regulations may not be possessed, transported, given, received or bartered.

(i) Subsistence shellfish areas and pertinent restrictions. (1) *Southeastern Alaska-Yakutat Area.* (i) Shellfish may be taken for subsistence purposes in the Glacier Bay National Preserve only under the authority of a subsistence shellfish fishing permit.

(ii) Sea cucumbers may not be taken with the use of diving gear.

(iii) In the subsistence taking of shrimp, no more than 10 pots per person, and no more than 20 pots per vessel may be used; in the subsistence taking of shellfish other than shrimp, no more than five pots of any type, per person, and no more than 10 pots of any type, per vessel, may be used.

(iv) No commercially licensed and registered shrimp fishing vessel may be used to take shrimp for subsistence purposes in Districts 6, 7, 8 and 10 from February 15 through April 30.

(v) In the subsistence taking of Dungeness crab:

(A) The daily harvest and possession limit is 20 crab per person except that, in waters of Thorne Bay west of the longitude of the southernmost tip of Thorne Head, the daily harvest and possession limit is five crab;

(B) Only male crab six and one-half inches or greater in shoulder width may be taken or possessed;

(C) Spears and gaffs may not be used in Districts 1 through 16;

(D) Live holding facilities utilized to accumulate or pool multiple harvest limits by an individual or individuals are not allowed.

(vi) In the subsistence taking of king crab:

(A) Red and blue king crab may not be taken from April 1 through June 30;

(B) Only male red and brown king crab seven inches and male blue king crab six and one-half inches or larger in width of shell may be taken or possessed;

(C) In the Yakutat Area the daily harvest and possession limit is two crab per person and only male crab may be taken;

(D) An operator of a commercially licensed and registered king crab fishing vessel shall obtain a permit before taking king crab for subsistence purposes in waters of Yakutat Bay enclosed by a line from the westernmost tip of Ocean Cape to the easternmost tip of Point Manby during the open commercial king crab fishing season.

(vii) The possession limit for Tanner crab is 30 crab per person per day.

(viii) The harvest limit is six geoducks per person per day.

(ix) In the subsistence taking of abalone:

(A) The possession limit is 50 abalone per person;

(B) The minimum legal size is three inches (76 mm) in greatest diameter of shell, except in District 13 the minimum legal size is three and one-half inches (89 mm) in greatest diameter of shell;

(C) Subsistence fishing is prohibited while engaged in commercial abalone fishing; prior to engaging in the subsistence fishery, commercial abalone fishermen must return the commercial permit to ADF&G and land the commercial catch in possession.

(x) In the subsistence taking of rock scallops (Hinnites sp) and weathervane scallops (Pecten sp), the daily harvest and possession limit is five rock scallops and 10 weathervane scallops.

(2) *Cook Inlet Area.* (i) Except as otherwise provided in this section, no person may take shellfish for subsistence purposes.

(ii) All waters within the boundaries of the Kenai National Wildlife Refuge are closed to the taking of shellfish for subsistence purposes.

(3) *Kodiak Area.* (i) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G before subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection. The permit shall specify the area and the date the vessel operator intends to fish. No more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male dungeness crab per person; only male Dungeness crab with a shell width of six and one-half inches or greater may be taken or possessed. Taking of Dungeness crab is prohibited in water 25 fathoms or more in depth during the 14 days immediately before the opening of a commercial king or

Tanner crab fishing season in the location.

(iv) In the subsistence taking of king crab:

(A) The annual limit is three crabs per household; only male king crab seven inches or greater in width of shell may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) No more than one crab pot no more than 75 cubic feet in capacity may be used to take king crab;

(D) King crab may be taken only from June 1–January 31, except that the subsistence taking of king crab is prohibited in waters 25 fathoms or greater in depth during the period 14 days before and 14 days after open commercial fishing seasons for red king crab, blue king crab, or tanner crab in the location;

(E) The waters of the Pacific Ocean enclosed by the boundaries of Womans Bay, Gibson Cove, and an area defined by a line ½ mile on either side of the mouth of the Karluk River, and extending seaward 3,000 feet, and all waters within 1,500 feet seaward of the shoreline of Afognak Island are closed to the harvest of king crab except by Federally-qualified subsistence users.

(v) In the subsistence taking of tanner crab:

(A) No more than five crab pots may be used to take tanner crab;

(B) From July 15–February 10, the subsistence taking of tanner crab is prohibited in waters 25 fathoms or greater in depth during the 14 days immediately before the opening of a commercial king or tanner crab fishing season in the location;

(C) The daily harvest and possession limit is 12 male crab with a shell width five and one-half inches or greater per person.

(4) *Alaska Peninsula-Aleutian Islands Area.* (i) Shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G.

(ii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section, or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iii) The daily harvest and possession limit is 12 male dungeness crab per person; only crabs with a shell width of five and one-half inches or greater may be taken or possessed.

(iv) In the subsistence taking of king crab:

(A) The daily harvest and possession limit is six male crab per person; only crabs with a shell width of six and one-half inches or greater may be taken or possessed;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) Crab may be taken only from June 1–January 31.

(v) The daily harvest and possession limit is 12 male tanner crab per person; only crabs with a shell width of five and one-half inches or greater may be taken or possessed.

(5) *Bering Sea Area.* (i) In waters South of 60° North latitude, shellfish may be taken for subsistence purposes only under the authority of a subsistence shellfish fishing permit issued by the ADF&G.

(ii) In that portion of the area north of the latitude of Cape Newenham, shellfish may only be taken by shovel, jigging gear, pots and ring net.

(iii) The operator of a commercially licensed and registered shrimp fishing vessel must obtain a subsistence fishing permit from the ADF&G prior to subsistence shrimp fishing during a closed commercial shrimp fishing season or within a closed commercial shrimp fishing district, section or subsection; the permit shall specify the area and the date the vessel operator intends to fish; no more than 500 pounds (227 kg) of shrimp may be in possession aboard the vessel.

(iv) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male dungeness crab per person.

(v) In the subsistence taking of king crab:

(A) In waters south of 60° N. lat., the daily harvest and possession limit is six male crab per person;

(B) All crab pots used for subsistence fishing and left in saltwater unattended longer than a two-week period shall have all bait and bait containers removed and all doors secured fully open;

(C) In waters south of 60° N. lat., crab may be taken only from June 1–January 31.

(vi) In waters south of 60° N. lat., the daily harvest and possession limit is 12 male tanner crab.

Dated: December 1, 1997.

Bruce Babbitt,

Secretary of the Interior.

Dated: December 4, 1997.

Phil Janik,

Regional Forester, USDA Forest Service.

[FR Doc. 97–32345 Filed 12–15–97; 8:45 am]

BILLING CODE 3410–11–P; 4310–55–P

Federal Register

Wednesday
December 17, 1997

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

Special Flight Rules in the Vicinity of Grand Canyon National Park; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. 28537; Amendment Nos. 92–255, 93–75, 121–267, 135–71]

RIN 2120–AG54

Special Flight Rules in the Vicinity of Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final Rule; request for comments.

SUMMARY: On February 26, 1997, the FAA delayed the implementation of certain provisions of the December 31, 1996 final rule, Special Flight Rules in the Vicinity of Grand Canyon National Park. That final rule codified the provisions of Special Federal Aviation Regulation (SFAR) No. 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park (GCNP); modified the dimensions of the GCNP Special Flight Rules Area (SFRA); established new and modified existing flight-free zones; established new and modified existing flight corridors; established reporting requirements for commercial sightseeing companies operating in the SFRA; prohibited commercial sightseeing operations in certain areas during certain time periods; and limited the number of aircraft that can be used for commercial sightseeing operations in the SFRA. Specifically, the February 1997 action delayed the effective date for the new and modified flight-free zones, SFRA modification, and corridors portion of the final rule and reinstated portions of and amended the expiration date of SFAR No. 50–2. However, that action did not affect or delay the implementation of the curfew, aircraft restrictions, reporting requirements or other portions of the rule. This action further delays the effective date for the flight-free zones, SFRA modification, and corridors portions of the December 31, 1996, final rule until January 31, 1999, and extends the expiration date of SFAR 50–2 until 0900 UTC January 31, 1999. This action is necessary to allow the FAA time to establish a route structure for the GCNP.

DATES: The effective date of January 31, 1998, for 14 CFR Sections 93.301, 93.305, and 93.307, is delayed until 0901 UTC January 31, 1999. Section 9 of SFAR No. 50–2 is amended effective January 16, 1998. Comments must be received on or before January 16, 1998.

ADDRESSES: Comments should be mailed, in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 28537, 800 Independence Ave., SW., Washington, DC 20591. Comments may be sent electronically to the Rules Docket by using the following Internet address 9-nprm-cmts@faa.dot.gov. Comments must be marked Docket No. 28537. Comments may be examined in the Rules Docket in Room 915G on weekdays between 8:30 a.m. and 5:00 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Manager, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is a final rule, and was not preceded by notice and public procedure, comments are invited on the rule. This rule will become effective on the date specified in the **DATES** section. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule, and in determining whether additional rulemaking is required.

Background

On December 31, 1996, the FAA published three concurrent actions (a final rule, a Notice of Proposed Rulemaking, and a Notice of Availability of Proposed Commercial Air Tour Routes) in the **Federal Register** (62 FR 69301) as part of an overall strategy to reduce further the impact of aircraft noise on the GCNP environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100–91. The final rule amended part 93 of the Federal Aviation Regulations and added a new subpart to codify the provisions of SFAR No. 50–2, modified the dimensions of the GCNP SFRA; established new and modified existing flight-free zones; established new and modified existing flight corridors; and established reporting requirements for commercial sightseeing companies operating in the Special Flight Rules Area. In addition, to provide further protection for park resources, the final rule prohibited commercial sightseeing operations in the Zuni and Dragon corridors during certain time periods, and placed a temporary limit on the number of aircraft that can be used for commercial sightseeing operations in the GCNP SFRA. These provisions originally were to become effective on May 1, 1997.

Also published was an NPRM, Notice No. 96–15, proposing to establish noise limitations for certain aircraft operating in the vicinity of GCNP. Finally, a Notice of Availability of Proposed Commercial Air Tour Routes for the GCNP was published. This Notice requested comment on the proposed new or modified existing air tour routes, which would complement the final rule affecting the Special Flight Rules in the Vicinity of GCNP.

On February 21, 1997, the FAA issued a final rule that delayed the implementation of certain sections of the final rule (62 FR 8862; February 26, 1997). Specifically, this action delayed the implementation date, until January 31, 1998, of those sections of the rule that address the SFRA, flight-free zones, and flight corridors, respectively sections 93.301, 93.305, and 93.307. In addition, certain portions of SFAR No. 50–2 were reinstated and the expiration date was extended. With the goal to produce the best air tour routes possible, implementation was delayed to allow the FAA and the Department of Interior (DOI) to consider comments and suggestions to improve the proposed route structure. This latter action did not affect or delay the implementation of the curfew, aircraft cap, or reporting requirements of the rule.

On May 15, 1997, the FAA published an NPRM, Notice No. 97–6, and a companion Notice of Availability of Proposed Routes that proposed two quiet technology corridors in GCNP. The first corridor, through the Bright Angel flight-free zone, would be used for quiet technology aircraft only. The second corridor, through National Canyon, would be for quiet technology aircraft for westbound traffic after December 21, 2001.

After certain provisions of the final rule become effective on May 1, the FAA discovered that it had significantly underestimated the number of commercial air tour aircraft operating over the GCNP in 1995. Based on this new information, the FAA reevaluated the economic and environmental analyses completed for the final rule. While the benefits of the final rule, as analyzed with the new information, are less than originally predicted by the FAA, the rule continues to provide benefits in comparison to withdrawing portions of the rule or the rule in its entirety. Since the final rule is one step towards the substantial restoration of natural quiet that will be augmented by further steps, the changes in the

analyses are not of such magnitude as to affect the Agency's position on the implementation of the final rule or the Federal government's overall policy to address the effects of air tour operations in GCNP. An explanation of the new information, along with the reevlaution of the economic and environmental analyses, was published as a Notice of Clarification on October 31, 1997 (62 FR 58898).

Also in the Notice of Clarification, the FAA announced that after discussions with the DOI and NPS, the Agencies jointly agreed to delay the final route selection for commercial air tour operations in the GCNP until the fall of 1998. This delay would permit valuable time for further review and discussions to take place with particular emphasis on the proposed National Canyon corridor.

Notice and Comment

Development of the air tour routes is a critical step in the completion of the airspace structure for GCNP and towards achieving NPS's goal of substantially restoring the natural quiet in GCNP. The air tour routes, flight-free zones and flight corridors must be implemented at the same time in order to complete the airspace structure and to provide for the transition to the new operating environment in GCNP. If the FAA were to implement, as scheduled, the airspace portions of the final rule, particularly the expansion of the flight-free zones, without the corresponding new routes, certain air tour routes currently in use would disappear on January 31, 1998. The loss of these air tour routes would force the commercial air tour traffic onto the remaining air tour routes, creating a potentially unsafe operating situation in GCNP. Since the agencies have determined to delay selection and finalization of the air tour routes, the FAA finds that the airspace portions of the final rule, which were to be effective on January 31, 1998, must also be further delayed. In order for the commercial air tour operators conducting operations in GCNP to be made aware of the delay of the implementation of the airspace portions of the final rule and to avoid any confusion that could result in an unsafe operating environment at GCNP, the FAA finds that there is sufficient justification under 5 U.S.C. 553(b) to issue this rule without notice and prior opportunity for comment.

The FAA maintains its past position that the training of pilots on new routes during a peak tourist season could be unsafe. Peak season at GCNP extends approximately from May through October. To eliminate the potential for unsafe operations within the Park, the FAA has determined that the training should take place in the Park when the volume of air traffic traditionally decreases, i.e., after the summer tourist season. The FAA expects that the new route structure will be completed by the Fall of 1998. For the above reasons, the FAA is delaying implementation of sections 93.301, 93.305, and 93.307 of the December 31, 1996, final rule for a full season, until January 31, 1999, to give the operators sufficient time to train their pilots adequately and safely after the close of the busy summer season. Additionally, the FAA is amending the expiration date for those portions of SFAR No. 50–2 reinstated in the February 26, 1997, final rule until January 31, 1999.

While there is not sufficient time to allow prior notice and comment concerning the FAA decision to delay the January 31, 1998, effective date, comments are invited concerning any other aspect of this rule, including the new implementation date of January 31, 1999.

Economic Evaluation

In issuing the final rule for Special Flight Rules in the Vicinity of the GCNP, the FAA prepared a cost benefit analysis of the rule. A copy of the regulatory evaluation is located in docket No. 28537. That economic evaluation was later revised based on new information that showed that the number of aircraft being operated in the GCNP was greater than originally estimated. The reevaluation of the economic data, including alternatives considered, was published in the Notice of Clarification discussed earlier (62 FR 58898). In the notice, the FAA concluded that the rule is still cost beneficial. This extension of the effective date for the final rule will not affect that reevaluation, although the delay in the implementation of the extended FFZs will be cost relieving.

Regulatory Flexibility Analysis

As required by the Regulatory Flexibility Act of 1980, as amended, the FAA completed a final regulatory flexibility analysis of the final rule. This analysis was also reevaluated and revised findings were published in the Notice of Clarification referenced above, as a Supplemental Regulatory Flexibility Analysis. This extended delay of the compliance date will not affect that supplemental analysis.

Federalism Implications

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

Conclusion

The FAA has determined that this regulation imposes no additional burden on any person. Accordingly, it determines that this action: (1) is not a significant action under Executive Order 12866; and, (2) is not a significant action under Department of Transportation Regulatory Policy and Procedures (44 FR 11034). In addition, the FAA certifies that this action, delaying certain provisions of the final rule issued on December 31, 1996, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. However, when ultimately implemented, the final rule will have a significant impact on a substantial number of small entities as described in the Notice of Clarification.

List of Subjects

14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Noise control.

14 CFR Part 93

Air traffic control, Airports, Navigation (Air).

14 CFR Part 121

Aircraft, Airmen, Aviation safety, Charter flights, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety.

Adoption of Amendments

Accordingly, the Federal Aviation Administration (FAA) amends 14 CFR parts 91, 93, 121, and 135 as follows:

PARTS 91, 121 AND 135—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

2. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

4. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, Section 9 is revised to read as follows:

SFAR 50–2—Special Flight Rules in the Vicinity of the Grand Canyon National Park, AZ

* * * * *

Section 9, Termination date. Sections 1. Applicability, Section 4, Flight-free zones, and Section 5. Minimum flight altitudes, expire on 0900 UTC, January 31, 1999.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

5. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

The effective date of May 1, 1997, for new Sections 93.301, 93.305, and 93.307 published at 61 FR 69330 (December 31, 1996), corrected at 62 FR 2445 (January 16, 1997), and delayed at 62 FR 8862 (February 26, 1997) to be added to 14 CFR Part 93 is delayed until 0901 UTC, January 31, 1999.

Issued in Washington, DC, on December 11, 1997.

Jane F. Garvey,

Administrator.

[FR Doc. 97–32832 Filed 12–12–97; 11:16 am]

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Wednesday, December 17, 1997

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FEDERAL REGISTER PAGES AND DATES, DECEMBER

63441–63626 1
63627–63824 2
63825–64130 3
64131–64262 4
64263–64510 5
64511–64676 8
64677–65004 9
65005–65196 10
65197–65308 11
65309–65592 12
65593–65740 15
65741–65990 16
65991–66250 17

CFR PARTS AFFECTED DURING DECEMBER

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7056 64127
7057 64131
7058 65003
7059 65309
7060 65987

Executive Orders:
13069 65989

Administrative Orders:

Presidential Determinations:
No. 98–4 of November 14, 1997 63823
No. 98–5 of November 17, 1997 63619
No. 96–6 of December 2, 1997 65005

5 CFR

213 63627
315 63627
410 63630
531 65311
591 63630

7 CFR

2 65593
17 63606
247 64511
301 ..... 64133, 64263, 64677
319 65007
320 65007
330 65007
352 65007
401 ..... 63631, 65313
422 65321
437 65338
443 65344
454 63631
457 ..... 63631, 63633, 65130, 65313, 65321, 65338, 65344, 65741, 65991
1412 63441

Proposed Rules:
51 66033
70 63471
205 65850
610 64174
729 63678
800 66036
810 66036
1301 65226

8 CFR

213a 64048
299 64048

9 CFR

78 ..... 64134, 65596
91 64265
93 64265
94 ..... 65747, 65999

Proposed Rules:
85 65630
381 64767
441 64767

10 CFR

30 63634
32 63634
50 63825
70 63825
73 63640

Proposed Rules:
40 65039
50 ..... 63892, 63911, 66038
70 63911

11 CFR

Proposed Rules:
114 65040

12 CFR

8 64135
226 ..... 63441, 66179
265 64996
516 64138
543 64138
545 64138
552 64138
556 64138
563 64138
614 63644
703 64146
704 64148
790 65197
791 64266
934 65197
1806 64440

Proposed Rules:
225 64997
226 64769
404 64177
405 64177
708a 64185
708b 64187

14 CFR

39 ..... 63622, 63828, 63830, 63831, 63835, 63836, 64268, 64511, 64513, 64514, 64517, 64519, 64680, 65009, 65011, 65198, 65352, 65355, 65597, 65600, 65601, 65603, 65604, 65749, 65750, 66001
71 ..... 64148, 64150, 64151, 64152, 64268, 64268, 64269, 64271, 64272, 64273, 64521, 65012, 65013, 65014, 65015, 65201, 65357, 65358, 65606, 66179
73 ..... 65359, 65360, 66002
91 66248
93 66248
95 ..... 65016, 65361, 65363

97 .....63447, 63449, 63451
121.....65202, 66248
135.....66248
255.....63837
1260.....63452

Proposed Rules:
39 .....63473, 63475, 63476, 63624, 63912, 63914, 64523, 64775, 64777, 64779, 64780, 64782, 64784, 64785, 64787, 65227, 65228, 65230, 65231, 65233, 65768
71 .....63916, 63917, 64321, 64321, 64322, 64323, 64525, 65040, 65041, 65308, 65383, 65631

15 CFR

295.....64682
922.....66003

Proposed Rules:
806.....65043
960.....65384

17 CFR

15.....65203
230.....64968, 65043
239.....64968
270.....64968
274.....64687, 64968

18 CFR

35.....64688
37.....64715
401.....64154

20 CFR

255.....64161
340.....64273
404.....64274
422.....64274

Proposed Rules:
211.....64188
422.....63681

21 CFR

101 .....63647, 63653, 64634
179.....64102, 64107
520.....65020
524.....65752
866.....66003

Proposed Rules:
200.....64048
808.....65384, 66179
876.....65770
1020.....65235
1308.....64526

22 CFR

Proposed Rules:
22.....63478
51.....63478
53.....63478

23 CFR

1327.....63655

Proposed Rules:
655.....64324

24 CFR

201.....65180
202.....65180
203.....65180
570.....64634
888.....64521

25 CFR

Proposed Rules:
514.....65775

26 CFR

Proposed Rules:
1.....64190

28 CFR

0.....63453
540.....65184, 65196

29 CFR

520.....64956
521.....64956
522.....64956
523.....64956
527.....64956
1614.....63847
1910.....65203
4011.....65607
4022.....65607
4044.....65609, 65610

Proposed Rules:
1910.....65388

30 CFR

206.....65753

Proposed Rules:
56.....65777
57.....64789, 65777
62.....65777
70.....65777
71.....65777
75.....64789
917.....63684, 65044
926.....63685, 64327
936.....65632

31 CFR

500.....64720

Proposed Rules:
356.....64528

32 CFR

320.....65020

Proposed Rules:
199.....64191
901.....63485

33 CFR

100.....65021
117 .....63847, 66005, 66006
160.....65203
165.....65022

Proposed Rules:
117.....66039

36 CFR

701.....64279

Proposed Rules:
1.....63488
14.....63488
242.....66216
327.....64192

37 CFR

202.....63657

Proposed Rules:
253.....63502, 65777
255.....63506, 65778

38 CFR

4.....65207
17.....64722
21.....63847, 63848
36.....63454

Proposed Rules:
20.....64790

39 CFR

111.....63850
262.....64280
265.....64280

40 CFR

52 .....63454, 63456, 63658, 64284, 64522, 64722, 64725, 65224, 65611, 65613, 66007
62.....65616
63.....64736, 65022
64.....63662
70.....63662
71.....63662
80.....63853
81 .....64284, 64725, 65025
180 .....63662, 63858, 64048, 64287, 64294, 65030, 65365, 65367, 65369, 66008, 66014, 66020
185 .....64048, 64284, 64287, 66020
186.....64048, 66020
261.....63458
264.....64636, 64795
265.....64636
268.....64504
270.....64636
300.....65225
721.....64738

Proposed Rules:
51.....64532
52 .....63687, 64329, 64543, 647389, 65046, 65634, 66040, 66042, 66043, 66046
62.....65635
63.....65049, 66049
80.....63918
81.....63687
112.....63812
194.....64327
441.....66182
721.....64738

41 CFR

105–60.....64740
301.....63798

42 CFR

417.....63669

Proposed Rules:
1001.....63689, 65049

43 CFR

3740.....65376
3810.....65376
3820.....65376

Proposed Rules:
4.....64544

44 CFR

61.....66026

45 CFR

205.....64301
232.....64301
233.....64301
235.....64301
250.....64301
251.....64301
255.....64301
256.....64301
257.....64301

Proposed Rules:
1302.....65778

46 CFR

114.....64303
116.....64303
117.....64303
118.....64303
121.....64303
122.....64303
175.....64303, 65739
177.....64303
178.....64303
180.....64303
185.....64303
514.....63463

47 CFR

20.....63864
22.....63864
25.....64167
43.....64741
52.....64759
54.....65036, 65389
63.....64741
64.....64741, 64759
69.....65619, 66029
73 .....63674, 65392, 65764, 65765, 65766, 66030, 66031
74.....65392

Proposed Rules:
1.....65780
21.....65780
32.....65053
73 .....63690, 65781, 65782
74.....65780

48 CFR

Ch. I.....64912, 64952
1.....64913, 64940
2.....64914
4.....64915, 64916
5.....64914
6.....64916
7.....64914
8.....64914, 64916
9.....64914
12.....64914, 64916
13.....64914, 64916
16.....64914, 64916
17.....64914
19 .....64914, 64916, 64940
22.....64914
25.....64929
29.....64930
31 .....64930, 64931, 64932
32.....64914, 64916
33.....64914, 64933
34.....64914
37.....64914
38.....64914
39.....64914
41.....64916
42 .....64915, 64931, 64934, 64940
43.....64916
45.....64914
46.....64914
47.....64936
49.....64916
51.....64914
52 .....64914, 64915, 64916

53 .....64914, 64916, 64934, 64936, 64940

Proposed Rules:

204.....65782
1843.....64545
1852.....64545

49 CFR

171.....65188
219.....63464, 63675
225.....63675
240.....63464
1241.....65378

Proposed Rules:

Ch. X.....64193
195.....65635
213.....65401
243.....65479
572.....64546

50 CFR

17.....64306
20.....63608
222.....63467
622.....63677
648.....63872, 64765
660.....63876
679 .....63877, 63878, 63880, 64760, 65379, 65622, 65626, 66031

Proposed Rules:

14.....64335
17 .....64337, 64340, 64799, 64800, 65237, 65783, 65787
23.....64347
100.....66216
229.....65402
600.....65055
622.....65056
648.....65055
660.....66049
679 .....63690, 65402, 65635, 65638, 65644

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT DECEMBER 17, 1997

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Imported plants and plant parts; interstate movement prohibition subsequent to importation; published 11-17-97

AGRICULTURE DEPARTMENT

Federal Crop Insurance Corporation

Crop insurance regulations:

Canola and rapeseed; published 12-17-97

AGRICULTURE DEPARTMENT

Food Safety and Inspection Service

Poultry inspection:

Nutrition labeling—

Raw poultry products; use of term ''fresh''; published 12-17-96

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Ocean and coastal resource management:

Marine sanctuaries—

Florida Keys National Marine sanctuary; published 12-17-97

COMMODITY FUTURES TRADING COMMISSION

Reporting requirements:

Large trader reports; reporting levels changes; published 11-17-97

Correction; published 12-11-97

DEFENSE DEPARTMENT

Navy Department

Environmental statements; availability, etc.:

Base realignment and closure—

Naval Station Puget Sound at Sand Point, Seattle, WA; disposal and reuse; published 12-17-97

EDUCATION DEPARTMENT

Educational research and improvement:

Exemplary and promising programs designation; conduct standards and activities evaluation; published 11-17-97

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Colorado; published 12-17-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Ohio et al.; published 11-17-97

Virginia; published 11-17-97

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Ethalflualin; published 12-17-97

Primisulfuron-methyl; published 12-17-97

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Access charges-

Local exchange carriers; price cap performance, etc; correction; published 12-17-97

Access charges—

Local exchange carriers; price cap performance review, etc.; published 12-15-97

FEDERAL RESERVE SYSTEM

Freedom of Information Act; implementation

Federal Open Market Committee; information availability; published 11-17-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Tumor-associated antigen immunological test system reclassification; published 12-17-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Airbus; published 11-12-97

Dornier; published 11-12-97

Fokker; published 11-12-97

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Cherries (tart) grown in—

Michigan et al.; comments due by 12-22-97; published 10-23-97

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Plant-related quarantine, domestic:

Karnal bunt disease—

Texas et al.; comments due by 12-24-97; published 11-24-97

Mediterranean fruit fly; comments due by 12-22-97; published 10-21-97

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Northeastern United States fisheries—

Atlantic mackerel, squid, and butterfish; comments due by 12-26-97; published 11-26-97

Atlantic surf clam and ocean quahog; comments due by 12-24-97; published 11-24-97

DEFENSE DEPARTMENT

Closures and realignment:

Closed, transferred, and transferring military ranges containing munitions; appropriate response actions evaluation process; comments due by 12-26-97; published 9-26-97

Federal Acquisition Regulation (FAR):

Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97

ENVIRONMENTAL PROTECTION AGENCY

Air pollution control; new motor vehicles and engines:

Nonroad diesel engines; emission standards; comments due by 12-22-97; published 11-18-97

Air quality implementation plans; approval and promulgation; various States:

Arizona; comments due by 12-22-97; published 11-20-97

Illinois; comments due by 12-26-97; published 11-26-97

New Jersey; comments due by 12-22-97; published 11-20-97

Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:

Tennessee; comments due by 12-26-97; published 11-25-97

Hazardous waste program authorizations:

Alabama; comments due by 12-22-97; published 11-21-97

Georgia; comments due by 12-24-97; published 11-24-97

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Cyromazine; comments due by 12-22-97; published 10-22-97

Pyrithiobac sodium salt; comments due by 12-22-97; published 10-22-97

FEDERAL COMMUNICATIONS COMMISSION

Radio services, special:

Private land mobile services—

Public safety communications in 746-806 MHz band; technical and spectrum requirements development; comments due by 12-22-97; published 11-7-97

Radio stations; table of assignments:

Alaska; comments due by 12-22-97; published 11-19-97

Oregon; comments due by 12-22-97; published 11-19-97

Texas; comments due by 12-22-97; published 11-19-97

Utah; comments due by 12-22-97; published 11-19-97

Television broadcasting:

Cable television systems—

Inside wiring; comments due by 12-23-97; published 11-14-97

FEDERAL DEPOSIT INSURANCE CORPORATION

Risk-based capital:

Construction loans on presold residential

properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97

Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

FEDERAL RESERVE SYSTEM

Risk-based capital:

Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97

Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

GENERAL SERVICES ADMINISTRATION

Federal Acquisition Regulation (FAR):

Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Biological products:

Manufacturing errors and accidents reporting; comments due by 12-22-97; published 9-23-97

Human drugs:

Inhalation solution products; sterility requirements; comments due by 12-22-97; published 9-23-97

New drug applications—

Products for life-threatening diseases; clinical hold; comments due by 12-23-97; published 9-24-97

INTERIOR DEPARTMENT

Indian Affairs Bureau

Fish and wildlife:

Columbia River Indian in-lieu fishing sites; use; comments due by 12-23-97; published 10-28-97

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Topeka shiner; comments due by 12-23-97; published 10-24-97

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

Illinois; comments due by 12-26-97; published 11-26-97

Maryland; comments due by 12-22-97; published 11-21-97

Montana; comments due by 12-22-97; published 12-5-97

INTERNATIONAL TRADE COMMISSION

Practice and procedure:

Import investigations; antidumping and countervailing duties; comments due by 12-22-97; published 10-23-97

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Permanent residence status eligibility restrictions; temporary removal; comments due by 12-22-97; published 10-23-97

LIBRARY OF CONGRESS

Copyright Office, Library of Congress

Copyright arbitration royalty panel rules of procedure:

Noncommercial educational broadcasting compulsory license; comments due by 12-26-97; published 12-1-97

Copyright office and procedures:

Mechancial and digital phonorecord delivery rate adjustment proceeding; comments due by 12-26-97; published 12-1-97

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Federal Acquisition Regulation (FAR):

Alternative dispute resolution (1996); comments due by 12-26-97; published 10-27-97

POSTAL SERVICE

Domestic mail Manual:

Commercial mail receiving agency; delivery of mail; procedure clarification; comments due by 12-24-97; published 11-24-97

RAILROAD RETIREMENT BOARD

Railroad Retirement Act:

Annuity eligibility; comments due by 12-22-97; published 10-23-97

SMALL BUSINESS ADMINISTRATION

Disaster loan program:

Physical disaster and economic injury loans; increase request requirements; comments due by 12-26-97; published 11-25-97

STATE DEPARTMENT

Nationality and passports:

Passports; denying, revoking, or canceling procedures; comments due by 12-26-97; published 11-25-97

TRANSPORTATION DEPARTMENT

Coast Guard

International Conventions on Standards of Training, Certification and Watchkeeping for Seafarers 1978 (STCW):

Licensing and documentation of personnel serving on U.S. seagoing vessels; comments due by 12-23-97; published 6-26-97

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Aircraft products and parts; certification procedures:

Primary category seaplanes; weight limit increase; comments due by 12-26-97; published 11-25-97

Airmen certification:

Robinson model R-22 or R-44 helicopters; pilots and certified instructors special training and experience requirements; comments due by 12-22-97; published 11-21-97

Airworthiness directives:

Aeromot-Industria Mecanico Metalurgica Ltda.; comments due by 12-26-97; published 11-25-97

Airbus; comments due by 12-26-97; published 11-25-97

Airbus Industrie; comments due by 12-26-97; published 11-26-97

British Aerospace; comments due by 12-26-97; published 11-26-97

Dassault; comments due by 12-26-97; published 11-26-97

New Piper Aircraft, Inc.; comments due by 12-26-97; published 10-21-97

Pratt & Whitney Canada; comments due by 12-23-97; published 10-24-97

Airworthiness standards:

Special conditions—

Cessna model 525 Citation Jet airplane; comments due by 12-22-97; published 11-20-97

EXTRA Flugzeugbau GmbH EA-400 airplane design; comments due by 12-22-97; published 11-20-97

Class E airspace; comments due by 12-22-97; published 11-10-97

Restricted areas; comments due by 12-26-97; published 11-10-97

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Traffic operations:

Traffic control devices; national standards—

Uniform traffic control devices manual; railroad-highway grade crossings; comments due by 12-22-97; published 10-21-97

TRANSPORTATION DEPARTMENT

Federal Railroad Administration

Track safety standards:

Miscellaneous amendments

Comment request; comments due by 12-22-97; published 12-12-97

TRANSPORTATION DEPARTMENT

Research and Special Programs Administration

Pipeline safety:

Hazardous liquid and carbon dioxide—

Pressure testing older pipelines; comments due by 12-22-97; published 10-21-97

TREASURY DEPARTMENT

Comptroller of the Currency

Risk-based capital:

Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97

Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

TREASURY DEPARTMENT

Fiscal Service

Financial management services:

Administrative wage garnishment; comments due by 12-22-97; published 11-21-97

TREASURY DEPARTMENT

Internal Revenue Service

Procedure and administration:

Tax exempt organizations; public disclosure requirements; guidance availability and hearing; comments due by 12-26-97; published 9-26-97

TREASURY DEPARTMENT

Thrift Supervision Office

Risk-based capital:

Construction loans on presold residential properties, junior liens on 1- to 4-family residential properties, etc.; comments due by 12-26-97; published 10-27-97

Equity securities; unrealized holding gains; comments due by 12-26-97; published 10-27-97

VETERANS AFFAIRS DEPARTMENT

Board of Veterans Appeals:

Appeals regulations and rules of practice—

Continuation of representation following claimant's death; comments due by 12-22-97; published 10-23-97

LIST OF PUBLIC LAWS

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. 1604/P.L. 105–143

Michigan Indian Land Claims Settlement Act (Dec. 15, 1997; 111 Stat. 2652)

H.R. 2979/P.L. 105–144

To authorize acquisition of certain real property for the Library of Congress, and for other purposes. (Dec. 15, 1997; 111 Stat. 2667)

H.J. Res. 95/P.L. 105–145

Granting the consent of Congress to the Chickasaw Trail Economic Development Compact. (Dec. 15, 1997; 111 Stat. 2669)

Last List December 10, 1997