7–10–98
Vol. 63 No. 132
Pages 37243–37474

federal register

Friday
July 10, 1998

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Contents

Federal Register

Vol. 63, No. 132

Friday, July 10, 1998

Agricultural Marketing Service
NOTICES
Meetings:
National Organic Standards Board, 37314

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Forest Service

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Brucellosis in catle and bison—
State area classifications, 37243

Army Department
See Engineers Corps
PROPOSED RULES
Environmental quality:
Radiation sources on army land, 37296–37297

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Assassination Records Review Board
NOTICES
Meetings; Sunshine Act, 37316–37317

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Census Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37317–37318

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV)—
HIV prevention interventions; technology translation and transfer, 37383–37387

Children and Families Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Child welfare demonstration projects, 37387–37394

Coast Guard
RULES
Drawbridge operations:
California, 37251
North Carolina, 37250–37251
Regattas and marine parades:
Swim Buzzards Bay Day, 37249–37250
PROPOSED RULES
Anchorage regulations:
New York, 37297–37299

Commerce Department
See Census Bureau
See Economic Analysis Bureau
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 37317

Defense Department
See Army Department
See Engineers Corps
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37351
Arms sales notification; transmittal letter, etc., 37351–37356
Senior Executive Service:
Performance Review Board; membership, 37361–37362

Economic Analysis Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37318–37319

Education Department
PROPOSED RULES
Special education and rehabilitative services:
Children with disabilities; personal preparation program to improve services and results, 37465–37474
NOTICES
Grants and cooperative agreements; availability, etc.:
National Institute on Disability and Rehabilitation Research—
Research fellowship program; correction, 37449–37451

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 37414–37415

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site specific Advisory Board—
Pantex Plant, 37362–37363

Engineers Corps
NOTICES
Nationwide permits (NWPs); issuance, reissuance, and modification; public hearing, 37362

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Ohio, 37255–37258

Air quality planning purposes; designation of areas:
California, 37258–37280
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Bifenthrin, 37280–37286
Gliocladium catenulatum (strain J1446), 37286–37289
Myclobutanil, 37289–37295
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Ohio, 37307
Hazardous waste:
Project XL program; site-specific projects—
OSi Specialities, Inc. plant, Sisterville, WV, 37309–37311
State underground storage tank program approvals—
Tennessee, 37311–37313
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Food and food by-products; tolerance requirement exemption, 37307–37309
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 37382–37383
Weekly receipts, 37382

Executive Office of the President
See Management and Budget Office

Export Administration Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Materials Processing Equipment, Regulations and Procedures, and Transportation and Related Equipment Technical Advisory Committees, 37319
Meetings:
Materials Technical Advisory Committee, 37319–37320

Federal Aviation Administration
RULES
IFR altitudes, 37243–37246
NOTICES
Meetings:
RTCA, Inc., 37440–37441

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 37383

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
MAD River Power Authority, et al., 37375–37378
PP&L, Inc., et al., 37379–37382
Applications, hearings, determinations, etc.:
Algonquin Gas Transmission Co., 37363
Algonquin LNG, Inc., 37363
ANR Pipeline Co., 37363–37364
Black Marlin Pipeline Co., 37364
Canyon Creek Compression Co., 37364
Caprock Pipeline Co., 37364
Columbia Gulf Transmission Co., 37364–37365
Florida Gas Transmission Co., 37365
Garden Banks Gas Pipeline, LLC, 37365
Granite State Gas Transmission, Inc., 37365
Great Lakes Gas Transmission L.P., 37366
Kansas Pipeline Co., 37366
KN Interstate Pipeline Co., 37366–37367
KN Wattenberg LLC, 37367
Michigan Gas Storage Co., 37367
National Fuel Gas Supply Corp., 37367
Natural Gas Pipeline Co. of America, 37368
NorAm Energy Services, Inc., 37369
Northern Border Pipeline Co., 37369
Northern Natural Gas Co., 37369
Ozark Gas Transmission System, 37369–37370
Panhandle Eastern Pipe Line Co., 37370
Point Arguello Natural Gas Line Co., 37370
Shell Gas Pipeline Co., 37371
Stingray Pipeline Co., 37371
TCP Gathering Co., 37371
Texas Gas Transmission Corp., 37371–37372
Trailblazer Pipeline Co., 37372
Transcontinental Gas Pipe Line Corp., 37372
Transwestern Pipeline Co., 37372
Trunkline LNG Co., 37373
Tuscarora Gas Transmission Co., 37373–37374
Venice Gathering System, L.L.C., 37374
Viking Gas Transmission Co., 37374
Warren Transportation, Inc., 37374–37375
Williams Gas Pipelines Central, Inc., 37375

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 37383

Federal Maritime Commission
NOTICES
Investigations, hearings, petitions, etc.:
Kin Bridge Express, Inc., et al.; correction, 37449–37451

Federal Reserve System
NOTICES
Reporting and recordkeeping requirements, 37383

Food and Drug Administration
RULES
Food additives:
Adhesive coatings and components—
Polyurethane resins, 37246–37249
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37394–37396
Submission for OMB review; comment request, 37396–37397
Biological products:
Patent extension; regulatory review period determinations—
VERLUMA, 37397–37398
Human drugs:
Patent extension; regulatory review period determinations—
Flowmax, 37399–37400
STROMECTOL, 37398–37399
Meetings:
Antimicrobial drugs and resistance, 37400
Science Forum, 1998 FDA; Biotechnology: Advances, Applications, and Regulatory Challenges, 37400–37401
Prescription drugs; user fees (1998 FY); five-year plan, 37401

Reports and guidance documents; availability, etc.:
Human blood and blood components intended for transfusion or further manufacture, and for the completion of FDA form 356h; application to market a new drug,
biologic, or antibiotic drug for human use, 37401–37402
Human immunodeficiency virus type 1, manufacture and clinical evaluation of invitro tests to detect nucleic acid sequences, 37402–37403

Forest Service
NOTICES
Environmental statements; availability, etc.:
National Forests in Sierra Nevada, CA, 37314–37315
Environmental statements; notice of intent:
Tongass National Forest, AK; correction, 37449–37451
Meetings:
Southwest Washington Provincial Advisory Committee, 37315
Reporting and recordkeeping requirements, 37315–37316

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
See Public Health Service

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 37406

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37411–37412

Interior Department
See Land Management Bureau

Internal Revenue Service
PROPOSED RULES
Income taxes, etc.:
Partnerships and branches; guidance under Subpart F; cross-reference
Hearing canceled, 37296
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37446–37447
Committees; establishment, renewal, termination, etc.:
Internal Revenue Service Advisory Council, 37447

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Antidumping:
Corrosion-resistant carbon steel flat products from—
Canada, 37320–37328
Dynamic random access memory semiconductors of one megabyte or above from—
Korea, 37328
Helical spring lock washers from—
China, Peoples Republic of, 37328–37329
Industrial nitrocellulose from—
Korea, 37329–37331
Mechanical transfer presses from—
Japan, 37331–37334
Polyethylene terephthalate film, sheet, and strip from—
Korea, 37334–37338
Small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from—
Brazil, 37338–37339
Tapered roller bearings and parts, finished and unfinished, etc., from—
China, 37339–37344
Japan, 37344–37349
Applications, hearings, determinations, etc.:
Montana State University-Bozeman, 37349
Stanford University, 37349
University of—
Texas at Austin et al., 37349–37350

Justice Department
See Immigration and Naturalization Service
See Justice Programs Office

Justice Programs Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37412

Labor Department
See Employment Standards Administration
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37412–37414

Land Management Bureau
NOTICES
Classification of public lands:
Utah, 37407
Environmental statements; availability, etc.:
Green River Resource Area, WY; resource management plan and off-road vehicle designations, 37407–37409
Meetings:
Resource advisory councils—
Utah, 37410
Realty actions; sales, leases, etc.:
Nevada, 37410–37411

Management and Budget Office
NOTICES
Designated Federal entities and Federal entities; list, 37421–37422

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37419

National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37403–37404
Meetings:
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 37404
National Institute of General Medical Sciences, 37404

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico shrimp; correction, 37246
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 37350–37351

National Science Foundation
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37419–37420
Meetings:
Human Resource Development Special Emphasis Panel, 37420

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37420
Meetings:
Reactor Safeguards Advisory Committee, 37420–37421

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37415–37416
Nationally recognized testing laboratories, etc.:
Entela, Inc., 37416–37417
Reporting and recordkeeping requirements, 37417

Office of Management and Budget
See Management and Budget Office

Overseas Private Investment Corporation
NOTICES
Privacy Act:
Systems of records, 37411

Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 37418–37419

Postal Service
RULES
Domestic Mail Manual:
Mixed BMC/ADC pallets of packages and flats; elimination of mailer options, 37254–37255
International Mail Manual:
Global package link (GPL) service—
Germany and France, 37251–37254

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Meetings:
National Institute of Environmental Health Sciences; National Toxicology Program, 37404–37406

Research and Special Programs Administration
RULES
Hazardous materials:
Hazardous materials transportation—
Miscellaneous amendments, 37453–37463

Securities and Exchange Commission
NOTICES
Privacy Act:
Systems of records, 37423–37426
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 37426–37430
Chicago Board Options Exchange, Inc., 37430–37433
Municipal Securities Rulemaking Board, 37434–37435
Applications, hearings, determinations, etc.:
Public utility holding company filings, 37422–37423

Small Business Administration
NOTICES
Disaster loan areas:
Massachusetts, 37435–37436
Michigan, 37436
Minnesota, 37436

State Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 37436–37440

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Oklahoma, State of, et al., 37441
Stillwater Central Railroad, Inc., et al., 37441
Tongue River Railroad Co., 37442–37445
Webb, Richard B. et al., 37445
Railroad services abandonment:
Grand Trunk Western Railroad, Inc., 37445–37446

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
NOTICES
Meetings:
Debt Management Advisory Committee, 37446

United States Institute of Peace
NOTICES
Grants and cooperative agreements; availability, etc.:
Peaceful resolution of international conflict; senior fellowships, 37447

Veterans Affairs Department
PROPOSED RULES
Medical benefits:
Veterans' Health Care Eligibility Reform Act of 1996; implementation—
National enrollment system; hospital and outpatient care provisions, 37299–37307
NOTICES
Meetings:
Veterans Readjustment Advisory Committee, 37447–37448

Privacy Act:
Computer matching programs, 37448

Separate Parts In This Issue

Part II
Department of Transportation, Research and Special Programs Administration, 37453–37463

Part III
Department of Education, 37465–37474

Reader Aids

Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

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.

9 CFR
78.....37243

14 CFR
95.....37243

15 CFR
902.....37246

21 CFR
175.....37246

26 CFR

Proposed Rules:
1.....37296
301.....37296

32 CFR

Proposed Rules:
655.....37296

33 CFR
100.....37249
117 (2 documents) 37250, 37251

Proposed Rules:
110.....37297

34 CFR

Proposed Rules:
304.....37465

38 CFR

Proposed Rules:
17.....37299

39 CFR
20.....37251
111.....37254

40 CFR
52.....37255
81.....37258
180 (3 documents) 37280, 37286, 37289

Proposed Rules:
52.....37307
180.....37307
264.....37309
265.....37309
281.....37311

49 CFR
171.....37453
172.....37453
173.....37453
175.....37453
177.....37453
178.....37453
180.....37453

50 CFR
622.....37246

Rules and Regulations

Federal Register
Vol. 63, No. 132
Friday, July 10, 1998

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

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 98–036–2]

Brucellosis in Cattle; State and Area Classifications; Alabama

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Alabama from Class A to Class Free. We have determined that Alabama meets the standards for Class Free status. The interim rule was necessary to relieve certain restrictions on the interstate movement of cattle from Alabama.

EFFECTIVE DATE: The interim rule was effective on April 14, 1998.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: rrollo@aphis.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective April 14, 1998, and published in the **Federal Register** on April 17, 1998 (63 FR 19169–19170, Docket No. 98–036–1), we amended the brucellosis regulations in 9 CFR part 78 by removing Alabama from the list of Class A States in § 78.41(b) and adding it to the list of Class Free States in § 78.41(a).

Comments on the interim rule were required to be received on or before June 16, 1998. We did not receive any comments. The facts presented in the interim rule still provide a basis for the rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 78—BRUCELLOSIS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR 78 and that was published at 63 FR 19169–19170 on April 17, 1998.

Authority: 21 U.S.C. 111–114a-1, 114g, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 2nd day of July 1998.

Charles P. Schwalbe,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–18435 Filed 7–9–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29265; Amdt. No. 410]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 URC, August 13, 1998.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current.

It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace Navigation (air).

Issued in Washington, D.C. on July 2, 1998.

Tom E. Stuckey,

Acting Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC,

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

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

2. Part 95 is amended to read as follows:

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 410 effective date, August 13, 1998]

From	To	MEA
§ 95.6001 VOR Federal Airway 1 is Amended to Read in Part		
Salisbury, MD VORTAC *1800–MOCA	Waterloo, DE VOR/DME	*5000
§ 95.6016 VOR Federal Airway 16 is Amended to Read in Part		
Tappa, VA FIX *1500–MOCA	Colin, VA FIX	*4000
§ 95.6020 VOR Federal Airway 20 is Amended to Read in Part		
Tappa, VA FIX *1500–MOCA	Colin, VA FIX	*4000
§ 95.6029 VOR Federal Airway 29 is Amended to Read in Part		
Salisbury, MD VORTAC *1800–MOCA	Lafln, DE FIX	*5000
Laflin, DE FIX	Smyrna, DE VORTAC	1800
§ 95.6044 VOR Federal Airway 44 is Amended to Read in Part		
Paleo, MD FIX *7000–MOCA	Donil, DE FIX	*13000
§ 95.6049 VOR Federal Airway 49 is Amended to Read in Part		
Elked, AL FIX *2800–MOCA	Nashville, TN VORTAC	*3500
§ 95.6155 VOR Federal Airway 155 is Amended to Read in Part		
Colliers, SC VORTAC *3000–MRA	*Wider, SC FIX	2500
§ 95.6157 VOR Federal Airway 157 is Amended to Read in Part		
Key West, FL VORTAC *5700–MRA **1300–MOCA	*Famin, FL FIX	**5000
Famin, FL FIX *1500–MOCA	Dolphin, FL VORTAC	*5000
Tappa, VA FIX *1500–MOCA	Colin, VA FIX	*4000
§ 95.6159 VOR Federal Airway 159 is Amended to Read in Part		
Vulcan, AL VORTAC *2200–MOCA	Hamilton, AL VORTAC	*2600
§ 95.6213 VOR Federal Airway 213 is Amended to Read in Part		
Tappa, VA FIX	Colin, VA FIX	*4000

REVISIONS TO MINIMUM ENROUTE IFR ALTITUDES AND CHANGEOVER POINTS—Continued

[Amendment 410 effective date, August 13, 1998]

From	To	MEA
*1500–MOCA		
§ 95.6218 VOR Federal Airway 218 is Amended to Read in Part		
Waukon, IA VORTAC *4000–MRA **300–MOCA	*Baulk, WI FIX	**4000
§ 95.6267 VOR Federal Airway 267 is Amended to Read in Part		
Pahokee, FL VORTAC *1400–MOCA	Diddy, FL FIX	*2000
Diddy, FL FIX	Orlando, FL VORTAC	2600
§ 95.6295 VOR Federal Airway 295 is Amended to Read in Part		
Vero Beach, FL VORTAC	Orlando, FL VORTAC	2600
§ 95.6296 VOR Federal Airway 296 is Amended to Read in Part		
Fayetteville, NC VOR/DME *3000–MRA	*Gands, NC FIX	2000
Gands, NC FIX, NC VOR/DME *3000–MRA	*Urrie, NC FIX	2000
§ 95.6310 VOR Federal Airway 310 is Amended to Read in Part		
Burch, NC FIX	Greensboro, NC VORTAC	3500
§ 95.6345 VOR Federal Airway 345 is Amended to Read in Part		
Dells, WI VORTAC *2800–MOCA	Milto, WI FIX	*3500
Falen, WI FIX	Eau Claire, WI VORTAC	3500
§ 95.6359 VOR Federal Airway 359 is Amended to Read in Part		
U.S. Mexican Border *2500–MOCA	Laredo, TX VORTAC	*3000
§ 95.6441 VOR Federal Airway 441 is Amended to Read in Part		
Melbourne, FL VOR/DME	Lakeland, FLVORTAC	2600
§ 95.6529 VOR Federal Airway 529 is Amended to Read in Part		
*Famin, FL FIX 5700–MRA **1500–MOCA	Swags, FL FIX	*5700
§ 95.6531 VOR Federal Airway 531 is Amended to Read in Part		
Bairn, FL FIX	Orlando, FL VORTAC	2600
§ 95.6605 VOR Federal Airway 605 is Added to Read		
Spartanburg, SC VORTAC *4200–MOCA	Genod, NC FIX	*5000
Genod, NC FIX	Holston Mountain, TN VORTAC	8500
§ 95.6415 Hawaii VOR Federal Airway 15 is Amended to Read in Part		
Paris, HI FIX *8000–MRA *3000–MOCA	*Arbor, HI FIX	**4000

From	To	MEA	MAA
§ 95.7118 Jet Route No. 118 is Amended to Read in Part			
Memphis, TN VORTAC	Choo Choo, TN VORTAC	18000	45000

[FR Doc. 98–17853 Filed 7–9–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 622

[Docket No. 980513127–8127–01; I.D. 050598A]

RIN 0648–AL15

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Data Collection; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim rule; correction.

SUMMARY: This document contains corrections to the interim rule (I.D. 050598A) that was published in the **Federal Register** on May 19, 1998. That interim rule requires vessels in the shrimp fishery of the Gulf of Mexico to maintain and submit fishing records, to carry a NMFS-approved observer, and/or to carry a vessel monitoring system unit, if selected by NMFS to do so. This document corrects information regarding estimated compliance costs associated with the interim rule and corrects the estimated reporting burden associated with the requirement to maintain and submit fishing records.

DATES: Effective July 10, 1998 through November 16, 1998.

FOR FURTHER INFORMATION CONTACT: Michael E. Justen, phone: 813–570–5305 or fax: 813–570–5583.

SUPPLEMENTARY INFORMATION: The interim rule that is the subject of this correction was published on May 19, 1998 (63 FR 27485). That interim rule requires vessels in the shrimp fishery of the Gulf of Mexico to maintain and submit fishing records, to carry a NMFS-approved observer, and/or to carry a vessel monitoring system unit (VMS unit), if selected by NMFS to do so. That rule also informed the public of the approval by the Office of Management and Budget (OMB) of the collection-of-information requirements contained in that rule and published the OMB control numbers for those collections.

Need for Correction

As published, the preamble to the interim rule contains an incorrect estimate of the cost that shrimpers, in aggregate, would incur to comply with the observer, logbook, and VMS unit requirements and associated vessel safety and sanitation requirements. The preamble, in one instance, also incorrectly attributed costs related to vessel safety and sanitation to U.S. Coast Guard regulations rather than a pending NMFS rule. Finally, the preamble to the interim rule contains an incorrect estimate of the reporting burden associated with the requirement for a vessel owner or operator, if selected by NMFS, to maintain and submit fishing records.

Correction of Publication

Accordingly, the publication on May 19, 1998, of the interim rule (I.D. 050598A), which was the subject of FR Doc. 98–13290, is corrected as follows:

1. On page 27487, in the second column, under the heading ''Classification,'' paragraph 4:

a. In line 23, correct ''$23,770'' to read ''$21,040''.

b. In line 39, correct ''to USCG regulations.'' to read ''to the separate rule, amending regulations at 50 CFR 600.725 and 600.746, that NMFS intends to issue shortly.''

2. On page 27487, in the third column, last paragraph, fifth line from the bottom of the paragraph, correct ''10'' to read ''20''.

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

Dated: July 2, 1998.

David L. Evans,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 98–18341 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 175

[Docket No. 90F–0142]

Indirect Food Additives: Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyurethane resins derived from the reaction of toluene diisocyanate or 4,4′ methylenebis(cyclohexylisocyanate) with fumaric acid-modified polypropylene glycol or fumaric acid-modified tripropylene glycol, triethylamine, and ethylenediamine as a component of adhesives for articles intended to contact food. This action responds to a petition filed by Olin Corp.

DATES: The regulation is effective July 10, 1998. Submit written objections and requests for a hearing by August 10, 1998.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3084.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** of May 10, 1990 (55 FR 19667), FDA announced that a food additive petition (FAP OB4201) had been filed by Olin Corp., 120 Long Ridge Rd., Stamford, CT 06904. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105) to provide for the safe use of polyurethane resins derived from the reactions of toluene diisocyanate or 4,4′ methylenebis(cyclohexylisocyanate) with carboxylic acid-modified polypropylene glycol and with triethylamine and ethylenediamine as a component of adhesives for articles intended to contact food. In a notice published in the **Federal Register** of September 5, 1997 (62 FR 46979), FDA amended the May 10, 1990, notice to state that upon further review of the petition, the petitioner specifically requested the approval of the use of polyurethane resins derived from the reaction of toluene diisocyanate or 4,4′ methylenebis(cyclohexylisocyanate) with fumaric acid-modified propylene glycol or fumaric acid-modified tripropylene glycol, triethylamine, and ethylenediamine.

In its evaluation of the safety of this additive, FDA has reviewed the safety of the additive itself and the chemical impurities that may be present in the additive resulting from its manufacturing process. Although the additive itself has not been shown to cause cancer, it may contain minute amounts of toluenediamine (TDA), which is a carcinogenic impurity resulting from the manufacture of the additive. Residual amounts of impurities are commonly found as

constituents of chemical products, including food additives.

II. Determination of Safety

Under the so-called general safety clause of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), a food additive cannot be approved for a particular use unless a fair evaluation of the data available to FDA establishes that the additive is safe for that use. FDA's food additive regulations (21 CFR 170.3(i)) define safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use.''

The food additives anticancer, or Delaney, clause of the act (21 U.S.C. 348(c)(3)(A)) provides that no food additive shall be deemed safe if it is found to induce cancer when ingested by man or animal. Importantly, however, the Delaney clause applies to the additive itself and not to impurities in the additive. That is, where an additive itself has not been shown to cause cancer, but contains a carcinogenic impurity, the additive is properly evaluated under the general safety standard using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the intended use of the additive (*Scott v. FDA*, 728 F.2d 322 (6th Cir. 1984)).

III. Safety of the Petitioned Use of the Additive

FDA estimates that the petitioned use of the additive, polyurethane resins derived from the reaction of toluene diisocyanate or 4,4′ methylenebis(cyclohexylisocyanate) with fumaric acid-modified polypropylene glycol or fumaric acid-modified tripropylene glycol, triethylamine, and ethylenediamine, will result in exposure to the additive that would be virtually nil (Ref. 1).

FDA does not ordinarily consider chronic toxicological studies to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Ref. 2), and the agency has not required such testing here. However, the agency has reviewed the available toxicological data on the additive and concludes that the ''virtually nil'' dietary exposure resulting from the petitioned use of this additive is safe.

FDA has evaluated the safety of this additive under the general safety standard, considering all available data and using risk assessment procedures to estimate the upper-bound limit of lifetime human risk presented by TDA, the carcinogenic chemical that may be present as an impurity in the additive. The risk evaluation of TDA has two aspects: (1) Assessment of exposure to the impurity from the proposed use of the additive; and (2) extrapolation of the risk observed in the animal bioassay to the conditions of exposure to humans.

A. Toluenediamine

FDA has estimated the cumulative exposure to TDA from all currently regulated uses of the additives where TDA may be present as an impurity and from the petitioned use of the additive in polyurethane adhesive applications to be no more than 0.059 part per billion in the daily diet (3 kilograms) or 0.18 microgram (µg)/person/day (Ref. 3). The agency used data from long-term rodent bioassays on 2,4′ toluenediamine conducted by the National Cancer Institute (Ref. 4) to estimate the upper-bound limit of lifetime human risk from the cumulative exposure to this chemical resulting from the currently regulated food additive uses where TDA may be present as an impurity and the proposed use of the additive. The authors reported that the test material caused significant amounts of hepatocellular carcinomas in both male and female rats and carcinomas of the mammary gland in female rats. The test chemical was also carcinogenic for female mice, causing hepatocellular carcinomas.

Based on the agency's estimate that exposure to TDA will not exceed 0.18 µg/person/day, FDA estimates that the upper-bound limit of lifetime human risk from all regulated uses of the additives where TDA may be present as an impurity and from the proposed use of the subject additive is 6.1×10^{-7}, or 6 in 10 million (Ref. 5). Because of the numerous conservative assumptions used in calculating the exposure estimate, the actual lifetime-averaged individual exposure to TDA is likely to be substantially less than the estimated exposure, and therefore, the probable lifetime human risk would be less than the upper-bound limit of lifetime human risk. Thus, the agency concludes that there is reasonable certainty that no harm from exposure to TDA would result from the proposed use of the additive.

B. Need for Specifications

The agency has also considered whether specifications are necessary to control the amount of TDA as an impurity in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) Because of the low levels at which TDA may be expected to remain as an impurity following production of the additive, the agency would not expect this impurity to become a component of food at other than extremely low levels; and (2) the upper-bound limit of lifetime human risk from exposure to TDA is very low (6 in 10 million).

IV. Conclusion

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive as a component of adhesives for articles intended to contact food is safe, and that the additive will achieve its intended technical effect. Therefore, the agency concludes that the regulations in § 175.105 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

V. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

VI. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. No comments were received during the 30-day comment period specified in the May 10, 1990, filing notice for comments on the environmental assessment submitted with the petition.

VII. Objections

Any person who will be adversely affected by this regulation may at any time on or before August 10, 1998, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each

numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VIII. References

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

1. Memorandum from the Food and Color Additives Review Section (HFF–415) to the Indirect Additives Branch (HFS–335) entitled ''FAP 0B4201—Olin Corporation: Polyurethane resins from carboxyl-modified polyols as components of adhesives of coatings contacting foods: submission of 3–12–90,'' dated July 18, 1990.

2. Kokoski, C. J., ''Regulatory Food Additive Toxicology'' in *Chemical Safety Regulation and Compliance*, edited by F. Homburger, J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.

3. Memorandum from the Chemistry Review Branch (HFS–247) to the Indirect Additives Branch (HFS–216) entitled ''FAP 0B4201 MATS# 471): Newly Revised Exposure Estimate for Tolenediamine (TDA) from Polyurethane Adhesive Applications and Cumulative Exposure to TDA,'' dated March 2, 1993.

4. ''Bioassay of 2,4–Diaminotoluene for Possible Carcinogenicity,'' National Cancer Institute. NCI-CG-TR-162, 1979.

5. Report of the Quantitative Risk Assessment Committee entitled ''FAP 0B4201: Upper Bound Lifetime Carcinogenic Risk from Exposure to Toluenediamine (TDA) from Polyurethane Adhesive Applications and Cumulative Exposure to TDA,'' dated June 14, 1996.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR part 175 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 175.105 is amended in the table in paragraph (c)(5) by revising the entry for ''Polyurethane resins * * *'' under the heading ''Substances'' to read as follows:

§ 175.105 Adhesives.

* * * * *

(c) * * *

(5) * * *

Substances	Limitations
* * *	* * * *
Polyurethane resins produced by: (1) reacting diisocyanates with one or more of the polyols or polyesters named in this paragraph, or (2) reacting the chloroformate derivatives of one or more of the polyols or polyesters named in this paragraph with one or more of the polyamines named in this paragraph, or (3) reacting toluene diisocyanate or 4,4′ methylenebis(cyclohexylisocyanate) (CAS Reg. No. 5124–30–1) with: (i) one or more of the polyols or polyesters named in this paragraph and with either *N*-methyldiethanolamine (CAS Reg. No. 105–59–9) and dimethyl sulfate (CAS Reg. No. 77–78–1) or dimethylolpropionic acid (CAS Reg. No. 4767–03–7) and triethylamine (CAS Reg. No. 121–44–8), or (ii) a fumaric acid-modified polypropylene glycol or fumaric acid-modified tripropylene glycol), triethylamine (CAS Reg. No. 107–15–3), and ethylenediamine (CAS Reg. No. 121–44–8), or (4) reacting *meta*-tetramethylxylene diisocyanate (CAS Reg. No. 2778–42–9) with one or more of the polyols and polyesters listed in this paragraph and with dimethylolpropionic acid (CAS Reg. No. 4767–03–7) and triethylamine (CAS Reg. No. 121–44–8), *N*-methyldiethanolamine (CAS Reg. No. 105–59–9), 2–dimethylaminoethanol (CAS Reg. No. 108–01–0), 2–dimethylamino–2–methyl–1–propanol (CAS Reg. No. 7005–47–2), and/or 2–amino–2–methyl–1–propanol (CAS Reg. No. 124–68–5).	
* * *	* * * *

Dated: June 30, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–18406 Filed 7–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD01–96–015]

RIN 2115–AE46

Special Local Regulation: Swim Buzzards Bay Day, New Bedford, MA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent special local regulation for a swimming event known as Swim Buzzards Bay Day. The event is held annually on a day during the last weekend of July or first weekend in August. This swimming event takes place in Buzzards Bay, on the Acushnet River. The actual date time will be published in a **Federal Register** document. This regulation is needed to protect the participants from vessel traffic during the swimming event.

DATES: This section is effective on July 24, 1998.

FOR FURTHER INFORMATION CONTACT: Lieutenant Timothy J. Carton, Office of Search and Rescue, First Coast Guard District, (617) 223–8460.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking (NPRM) was published on May 6, 1996 (61 FR 20196) proposing the establishment of a permanent special local regulation for the annual swimming competition, Swim Buzzards Bay Day, New Bedford, MA. The NPRM proposed to restrict vessels from approaching within 200 feet of any participating swimmer to ensure the safety of participants during the event. No comments were received and no hearing was requested.

Background and Purpose

The annual Swim Buzzards Bay Day is a local, traditional event that has been held for many years on the Acushnet River, New Bedford/Fairhaven, MA. In the past, the Coast Guard has promulgated individual regulations for the event. Given the recurring nature of the event, the Coast Guard is establishing a permanent regulation. This rule establishes a permanent regulation for an annual event to be held during the last week of July or first week in August on the Acushnet River. This rule restricts vessels from approaching within 200 feet of participating swimmers.

The event will consist of approximately 50 swimmers transversing the Acushnet River from Fort Phoenix Beach in Fairhaven, MA, to Billy Woods Wharf in New Bedford, MA. There will be one rowing skiff per participant, along with sponsor provided vessels on scene to augment a Coast Guard patrol to alert boating traffic of the presence of the swimmers. The time period for the event is dictated by tidal conditions. Subject to Coast Guard approval, the sponsor selects a day during the last weekend of July or the first weekend of August that most closely exhibits low tide at a daytime hour reasonable for holding the event. Spectator craft are authorized to watch the race from any area as long as they remain 200 feet away from any participating swimmer. In emergency situations, provisions may be made to establish safe escort by a Coast Guard or Coast Guard designated vessel for vessels requiring transit within 200 feet of participating swimmers.

Good cause exists for providing this rule to become effective in less than 30 days. This rule is being made effective less than 30 days after publication due to the need to publish a notice in the **Federal Register**, which will provide an exact date and time of the annual event. Any delay encountered in effecting this rule would be contrary to the public interest, as the rule is needed to ensure the safety of the boating pubic during this event.

Regulatory Evaluation

This 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. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DOT, is unnecessary. This conclusion is based on the limited duration of the event, the extensive advisories that will be made to the affected maritime community and the minimal restrictions that the regulation places on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. ''Small entities'' may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

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

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(h), of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

Final Regulation

For the reasons set out in the preamble, the Coast Guard is amending 33 CFR Part 100 as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new section, 100.116, is added to read as follows:

§ 100.116 Swim Buzzards Bay Day, New Bedford, MA.

(a) *Regulated Area.* All waters of the Acushnet River, within 200 feet of participating swimmers.

(b) *Special Local Regulations.* (1) The Coast Guard patrol commander may delay, modify, or cancel the race as conditions or circumstances require.

(2) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or unless authorized by the Coast Guard patrol commander.

(3) Vessels encountering emergencies which require transit through the regulated area should contact the Coast Guard patrol commander on VHF Channel 16. In the event of an emergency, the Coast Guard patrol commander may authorize a vessel to transit through the regulated area with a Coast Guard designated escort.

(4) All persons and vessels shall comply with the instructions of the Coast Guard on-scene patrol commander. On-scene patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon hearing five or more short blasts from a U.S. Coast Guard vessel, the operator of a vessel shall proceed as directed. Members of the Coast Guard Auxiliary may also be present to inform vessel operators of this section and other applicable laws.

(c) *Effective period.* This section is in effect annually on one day during the last week of July or first week in August. Actual dates and time will be published in a **Federal Register** document.

Dated: June 24, 1998.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 98–18392 Filed 7–9–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05–97–080]

RIN 2115–AE47

Drawbridge Operation Regulations; Beaufort Channel, Beaufort, North Carolina

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing 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, at the request of the North Carolina Department of Transportation.

The final rule eliminates 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 regulations for this bridge remain the same. This final rule is intended to reduce motor vehicular 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: This final rule is effective on August 10, 1998.

ADDRESSES: Documents as indicated in this preamble are available for inspection for 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 Deaton, Bridge Administrator, Fifth Coast Guard District (757) 398–6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 17, 1997, the Coast Guard published a Notice of Proposed Rulemaking (NPRM) entitled ''Drawbridge Operation Regulations; Beaufort Channel, Beaufort, North Carolina'' in the **Federal Register** (62 FR 66039). The Coast Guard received 21 letters commenting on the proposed rulemaking. No public hearing was requested and none was held.

Background and Purpose

The Greydon Paul Drawbridge across Beaufort Channel, located in Beaufort, North Carolina, is owned and operated by the North Carolina Department of Transportation (NCDOT). The current regulations at 33 CFR 117.822 require the bridge to open on signal except that from 6 a.m. to 10 p.m., the draw opens on signal for all vessels waiting to pass every hour on the hour, twenty minutes past the hour and forty minutes past the hour.

NCDOT requested that openings of the Greydon Paul Drawbridge be further restricted during weekday morning and evening rush hours. This request to change the current regulation is based on heavy vehicular commuter 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 contended that by eliminating one scheduled opening per hour during rush hours, vehicular traffic congestion on US Highway 70 will be reduced and highway safety will be increased without placing undue hardship on vessel traffic.

NCDOT provided the Coast Guard with statistical data which shows the total number of openings and of vessels passing through the Beaufort Bridge at the regularly scheduled 7:40 a.m., 8:40 a.m., 4:40 p.m., and 5:40 p.m. openings during August, 1997, which is one of the peak summer months for boating traffic in this area. The data revealed that only 42 out of a possible 120 drawbridge openings were required at these scheduled opening times, and a total of 65 vessels passed through the bridge. The Coast Guard has determined that since vessel traffic only needed 35% of these rush hour openings, and there was minimal vessel traffic at these times, a reduction in the number of openings will not substantially impact navigational traffic, but will provide a positive offsetting benefit to vehicular traffic.

Therefore, the Coast Guard is amending 117.822 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. All other provisions of the existing regulation will remain the same.

Discussion of Comments and Changes

The Coast Guard received 20 comments on the NPRM in support of permanently closing the bridge to all vessel traffic. These comments did not address the proposed change to the regulations. One comment was received requesting no additional restrictions or changes to the current regulations. Since all but one of the comments did not address the proposed change for which comments were being solicited, and the Coast Guard has determined permanently closing the bridge to all vessel traffic is unreasonable and unfair, the final 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. The Coast Guard reached this conclusion based on the fact that the final rule will not prevent mariners from transiting the bridge, but merely require them to plan their transits in accordance with the scheduled bridge openings.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this final rule will have a 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 final rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule contains no collection of information requirement under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast 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 figure 2–1, paragraph (32)(e) of COMDTINST M16475.1C, this final rule is categorically excluded from further environmental documentation based on the fact that it is a promulgation of the operating regulations for a drawbridge. 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. 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: June 23, 1998.

P.M. Stillman,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 98–18395 Filed 7–9–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD11–98–008]

Drawbridge Operation Regulations; Cerritos Channel, CA, Commodore Schuyler F. Heim Bridge

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulation governing the opening of the Commodore Schuyler F. Heim Bridge vertical lift bridge over the Cerritos Channel of Los Angeles/Long Beach Harbor. The deviation specifies that the bridge need not be opened for vessels during the hours of 8 p.m. to 5 a.m., seven days a week beginning August 10, 1998 through September 22, 1998, except federal holidays. The purpose of this deviation is to allow the California Department of Transportation and its contractors to inspect, clean, and reweld the tower bracing to increase resistance to seismic forces. During this work the bridge must be closed to both highway and vessel traffic.

DATES: The effective period of the deviation is August 10, 1998 through September 22, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Worden, Bridge Administrator, Eleventh Coast Guard District, Building 50–6 Coast Guard Island, Alameda, CA 94501–5100, telephone (510) 437–3461.

SUPPLEMENTARY INFORMATION: The Coast Guard anticipates that the economic consequences of this deviation will be minimal. The closure period is a time of reduced highway and vessel traffic. If mariners require an opening they have an alternate route available through the outer harbor, and they can avoid delays and detours by timing their transits during the hours of 5 a.m. to 8 p.m. daily.

This deviation from the normal operating regulations in 33 CFR 117.147(a) is authorized in accordance with the provisions of 33 CFR 117.35.

Dated: June 17, 1998.

J.C. Card,

Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 98–18393 Filed 7–9–98; 8:45 am]

BILLING CODE 4910–13–M

POSTAL SERVICE

39 CFR Part 20

Interim Rule for Global Package Link to Germany and France

AGENCY: Postal Service.

ACTION: Interim rule with request for comments.

SUMMARY: The Postal Service is amending the rule in the International Mail Manual on Global Package Link to Germany and France to add a merchandise return service for customers utilizing the GPL service to Germany and France.

DATES: The interim regulations take effect as of 12:01 a.m. on July 10, 1998. Comments must be received on or before August 10, 1998.

ADDRESSES: Written comments should be mailed or delivered to International Business Unit, U.S. Postal Service, 475 L'Enfant Plaza SW, room 370–IBU, Washington, DC 20260–6500. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Bill Brandt (202) 314–7165.

SUPPLEMENTARY INFORMATION:

I. Introduction

There currently is no method for GPL customers to Germany and France to receive return packages beyond traditional means such as international mail. In response to requests from these mailers, a GPL return service is being established in Germany and France. These services will allow GPL customers to receive returns as well as advanced data on those returns providing them a means to more effectively service their customers.

II. GPL Return Services to Germany and France

A. Qualifying Criteria

Customers wishing to use the GPL Return Services for Germany and France must be a GPL customer to those countries. There may be some additional set up requirements as required by the foreign returns agent to provide the service. The Postal Service will discuss all set up requirements with the mailer prior to establishment of the return service.

B. Rates

The rates for return services are detailed in the Global Package Link rate charts in the Individual Country Listings.

III. Conclusion

Accordingly, the Postal Service hereby adopts the inclusion of these new services for GPL on an interim basis, at the rates set forth in the schedules below. Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding proposed rule making (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning this interim rule.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

The Postal Service adopts the following interim amendment to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Subchapter 620 of the International Mail Manual, Issue 20, is amended as follows:

6 Special Programs

* * * * *

620 Global Package Link

* * * * *

626 Services Available

* * * * *

626.2 Merchandise Return Service

* * * * *

626.24 Germany

A merchandise return service is available to Global Package Link mailers to Germany. The return service includes in-country shipping, processing, consolidation and international air shipment and delivery to the mailers' designated address in the United States. In addition, the returns agent will apply for a refund of duties and taxes from German Customs. The returns prices, per parcel, are detailed in the Global Package Link rate charts in the individual Country Listings.

626.25 France

A merchandise return service is available to Global Package Link mailers to France. The return service includes in-country shipping, processing, consolidation and international air shipment and delivery to the mailers' designated address in the United States. In addition, the returns agent will apply for a refund of duties and taxes from French Customs. The returns prices, per parcel, are detailed in the Global Package Link rate charts in the individual Country Listings.

GLOBAL PACKAGE LINK TO GERMANY RATE CHART

Weight not to exceed (pounds)	Rate all volumes	Returns	Weight not to exceed (pounds)	Rate all volumes	Returns
1	$10.74	$14.50	36	$67.16	$57.00
2	12.35	15.00	37	68.77	58.00
3	13.96	17.00	38	70.38	59.50
4	15.57	18.00	39	71.99	60.50
5	17.18	19.50	40	73.60	62.00
6	18.80	20.00	41	75.22	63.00
7	20.41	22.00	42	76.83	64.50
8	22.02	23.00	43	78.44	65.50
9	23.63	24.50	44	80.05	66.50
10	25.24	25.00	45	81.66	67.50
11	26.86	26.00	46	83.28	68.50
12	28.47	27.50	47	84.89	70.00
13	30.08	28.50	48	86.50	71.00
14	31.69	30.00	49	88.11	72.50
15	33.30	31.00	50	89.72	73.50
16	34.92	32.50	51	91.34	75.00
17	36.53	33.50	52	92.95	76.00
18	38.14	35.00	53	94.56	77.50
19	39.75	36.00	54	96.17	78.50
20	41.36	37.50	55	97.78	79.50
21	42.98	38.50	56	99.40	81.00
22	44.59	39.50	57	101.01	81.50
23	46.20	41.00	58	102.62	83.00
24	47.81	42.00	59	104.23	84.00
25	49.42	43.00	60	105.84	85.50
26	51.04	44.00	61	107.46	86.50
27	52.65	45.50	62	109.07	88.00
28	54.26	46.50	63	110.68	89.00
29	55.87	48.00	64	112.29	91.00

GLOBAL PACKAGE LINK TO GERMANY RATE CHART—Continued

Weight not to exceed (pounds)	Rate all volumes	Returns	Weight not to exceed (pounds)	Rate all volumes	Returns
30	57.48	49.00	65	113.90	92.00
31	59.10	50.50	66	115.52	93.00
32	60.71	51.50	67	117.13	94.00
33	62.32	52.50	68	118.74	95.00
34	63.93	54.00	69	120.35	96.50
35	65.54	55.00	70	121.96	97.00

GLOBAL PACKAGE LINK TO FRANCE RATE CHART

Weight not over (pounds)	Price per piece standard service		Returns
	<100,000 pieces	>100,000 pieces	
1	$6.75	$6.55	$8.00
2	8.75	8.49	10.00
3	10.75	10.43	12.50
4	12.75	12.37	14.50
5	14.75	14.31	16.00
6	16.75	16.25	17.00
7	18.75	18.19	19.50
8	20.75	20.13	21.00
9	22.75	22.07	22.50
10	24.75	24.01	23.50
11	26.75	25.95	25.00
12	28.75	27.89	28.00
13	30.75	29.83	29.50
14	32.75	31.77	30.50
15	34.75	33.71	31.50
16	36.75	35.65	35.00
17	38.75	37.59	36.50
18	40.75	39.53	37.50
19	42.75	41.47	38.50
20	44.75	43.41	40.00
21	46.75	45.35	41.00
22	48.75	47.29	42.00
23	50.75	49.23	43.00
24	52.75	51.17	44.00
25	54.75	53.11	45.00
26	56.75	55.05	46.50
27	58.75	56.99	47.50
28	60.75	58.93	48.50
29	62.75	60.87	49.50
30	64.75	62.81	51.00
31	66.75	64.75	52.00
32	68.75	66.69	53.00
33	70.75	68.63	54.00
34	72.75	70.57	55.00
35	74.75	72.51	56.50
36	76.75	74.45	57.50
37	78.75	76.39	58.50
38	80.75	78.33	59.50
39	82.75	80.27	60.50
40	84.75	82.21	62.00
41	86.75	84.15	63.00
42	88.75	86.09	64.00
43	90.75	88.03	65.00
44	92.75	89.97	66.00
45	94.75	91.91	67.00
46	96.75	93.85	68.50
47	98.75	95.79	69.50
48	100.75	97.73	70.50
49	102.75	99.67	71.50
50	104.75	101.61	73.00
51	106.75	103.55	74.00
52	108.75	105.49	75.00
53	110.75	107.43	76.00
54	112.75	109.37	77.00
55	114.75	111.31	78.00

Discounts: Postage is reduced by the following discounts once the applicable volume thresholds are reached during a 12-month period: over 100,000—Discount 3%.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–18433 Filed 7–7–98; 4:36 pm]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Elimination of Mixed BMC/ADC Pallets of Packages of Flats

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule revises Domestic Mail Manual (DMM) sections M020, M041, and M045 to eliminate the options for mailers to place packages and bundles of Periodicals Mail on mixed ADC pallets and to place packages and bundles of Standard Mail (A) and Standard Mail (B) on mixed BMC pallets. Mailers will continue to have the options to place sacks, trays, or parcels on mixed ADC or mixed BMC pallets, as appropriate for the class of mail.

EFFECTIVE DATE: September 8, 1998.

FOR FURTHER INFORMATION CONTACT: Cheryl Beller, (202) 268–5166.

SUPPLEMENTARY INFORMATION: On February 18, 1998, the Postal Service published in the **Federal Register** (63 FR 8154–8156) proposed revisions to the DMM to eliminate the options, available since the implementation of Classification Reform in July 1996, to place packages and bundles on mixed ADC pallets (Periodicals) and mixed BMC pallets (Standard Mail). Although these options offer some benefits in mailers' manufacturing and distribution handling processes by reducing sack usage, they have had a negative impact on service and mailpiece integrity.

The deadline for submitting comments on the proposed revisions was April 6, 1998. All comments received or mailed by that date have been considered.

Evaluation of Comments Received

There were only three written responses to the proposed revisions. One commenter noted that, as a printer, it prefers to place as much mail as possible on pallets because sacking is more labor intensive, but it also recognizes that mixed pallets may be more costly for the Postal Service to process. However, it was not in favor of implementation of the revisions at this time due to problems it has been experiencing in obtaining a sufficient supply of brown sacks for Periodicals. When the revised standards are implemented, the Periodicals that this company currently places on mixed ADC pallets will have to be placed in sacks. The mailer was concerned that the brown sack shortage would affect service.

The Postal Service has completed its largest purchase ever of brown sacks and is confident that a sufficient quantity will be available on a regular basis to handle the volume shifts. In addition, the Chicago Mail Transport Equipment Service Center (MTESC) has recently opened. This is the first of 22 MTESCs that will open during the next year to ensure the availability of sacks.

The second commenter is primarily concerned that the potential increase in sack usage will result in a slowdown and higher costs in its manufacturing process, which relies heavily on automation and robotics. These processes are not compatible with sacking. The commenter urged the Postal Service to continue to work with mailers on alternative preparation options that will help to eliminate sack usage. During the past several years, the Postal Service has been working with the mailing industry to understand how mailers sort mail to pallets and to identify opportunities for improvement. The joint industry/Postal Service Mailers Technical Advisory Committee (MTAC) Presort Optimization Work Group is currently discussing mail reallocation rules related to presort that would provide a means for mailers to optimize palletization. Although protecting the SCF pallet is the initial priority of the group, this effort could prevent some mail from falling to the mixed level. The Postal Service intends to publish draft rules this summer for mailer comment.

In addition to using presort optimization to enhance palletization, mailers who prepare palletized plant verified drop shipments (PVDS) may be able, under the provisions of DMM M041.5.3, to reduce the volume of mail that may have to be sacked as a result of these revisions. DMM M041.5.3 states that in a mailing or mailing job presented for acceptance at a single postal facility, one overflow pallet may be prepared containing less than 250 pounds or three tiers/layers of letter trays if the mail is for the service area of the entry facility and the pallet is properly labeled under M045, based on its contents. No special authorization is needed. For example, if a PVDS mailer is entering mail at the Springfield, MA, BMC and has prepared one or more Springfield, MA, destination BMC pallets, the mailer may currently be placing overflow of less than 250 pounds from these pallets on a mixed BMC pallet. However, the mailer does have the option to place this overflow mail on a Springfield, MA, pallet instead of sacking the mail or placing it on a mixed ADC/BMC pallet under current standards, provided the less-than-minimum-volume pallet is deposited at the Springfield BMC. This addresses some of the service and cost issues that the revised standards are intended to address while providing mailers with an alternative to sacking under the conditions noted.

The third commenter does not prepare many mixed pallets but is interested in any changes that could improve mail delivery times. Although not convinced that mixed pallets contribute to slower delivery, this mailer stated it would support the change, but suggested a longer implementation period than the 45 days suggested in the proposed rule. It needs additional lead time to implement the changes for mailings that are prepared on a 6-week select lead time. For over a year, the Postal Service has been communicating with the mailing industry on plans to eliminate the mixed pallet preparation option for packages and bundles as soon as a sufficient supply of sacks was available on a regular basis to handle the shift in volume. Now that this precondition is satisfied, the Postal Service believes it is reasonable to implement the changes as quickly as possible without causing a severe negative impact on our customers. Therefore, to address the concerns of this commenter and other mailers with similar production issues, the Postal Service has postponed the required implementation for 60 days.

The *Domestic Mail Manual* is revised as follows. These changes are incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552 (a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Revise the following section of the *Domestic Mail Manual* as follows:

M Mail Preparation And Sortation

M000 General Preparation Standards

* * * * *

M020 Packages and Bundles

1.0 BASIC STANDARDS

* * * * *

1.4 Palletization

[Amend the third sentence in 1.4 by deleting the reference to mixed BMC pallets to read as follows:]

* * * Packages and bundles on BMC pallets must be shrinkwrapped and machinable on BMC parcel sorters; machinability is determined by the USPS.* * *

* * * * *

M040 Pallets

M041 General Standards

* * * * *

5.0 PREPARATION

5.1 Presort

[Amend 5.1 by revising the last sentence and adding new sentences to read as follows:]

* * * For sacks, trays, or machinable parcels on pallets, the mailer must prepare all required pallet levels before any mixed ADC or mixed BMC pallets are prepared for a mailing or job. Packages and bundles prepared under M045 must not be placed on mixed ADC or mixed BMC pallets. Packages and bundles that cannot be placed on pallets must be prepared in sacks under the standards for the rate claimed.

5.2 Required Preparation

[Amend 5.2 by deleting the second and third sentences and revising the fourth sentence to read as follows:]

* * * Mixed pallets of sacks, trays, or machinable parcels must be labeled to the BMC or ADC (as appropriate) serving the post office where mailings are entered into the mailstream. * * *

* * * * *

5.6 Sacked Mail

[Amend 5.6 by revising the first sentence to read as follows:]

Mail that is not palletized (e.g., the mailer chooses not to prepare BMC pallets, or the packages do not meet the machinability standards in M020) must be prepared under the standards for the rate claimed. * * *

* * * * *

M045 Palletized Mailings

* * * * *

[Revise the heading of 2.0 to read as follows:]

2.0 PACKAGES OF FLATS

2.1 Standards

[Amend 2.1 by revising the second sentence to read as follows:]

* * * The palletized portion of a mailing may not include packages sorted to mixed ADCs, mixed BMCs, or to foreign destinations.

* * * * *

2.4 Size—Standard Mail (B)

* * * * *

[Amend 2.4c by revising the second sentence to read as follows:]

* * * Packages at other rates must be sorted to 5-digit, 3-digit, optional SCF, and ADC destinations, as appropriate.

* * * * *

3.0 OPTIONAL BUNDLES—PERIODICALS AND STANDARD MAIL (A)

3.1 Standards

[Amend 3.1 by revising the second sentence to read as follows:]

* * * The palletized portion of a mailing may not include bundles sorted to mixed ADCs, mixed BMCs, or to foreign destinations.

* * * * *

4.0 PALLET PRESORT AND LABELING

[Amend the heading to read as follows:]

4.1 Packages, Bundles, and Sacks

* * * * *

e. As appropriate:

[Amend the beginning of (1) by adding ''(sacks and trays only)'' to read as follows:]

(1) Periodicals (sacks and trays only): mixed ADC: optional; * * *

[Amend the beginning of (2) by adding ''(sacks and trays only)'' to read as follows:]

(2) Standard Mail (sacks and trays only): mixed BMC: optional; * * *

* * * * *

5.0 PALLETS OF PACKAGES, BUNDLES, AND TRAYS OF LETTER-SIZE MAIL

* * * * *

[Amend 5.3 to eliminate references to mixed BMC pallets and to insert ''(trays only)'' to read as follows:]

5.3 BMC and Mixed BMC Pallets

Packages and bundles placed on BMC pallets must be machinable on BMC parcel sorting equipment. Line 2 on pallet labels must reflect the processing category of the pieces. A BMC or mixed BMC (trays only) pallet may include pieces that are eligible for the DBMC rate and others that are ineligible if the mailer provides documentation showing the pieces that qualify for the DBMC rate.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–18434 Filed 7–9–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH 114–1a; FRL–6123–1]

Approval and Promulgation of Maintenance Plan Revisions; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is approving through ''direct final'' procedure, a March 13, 1998, request from Ohio, for a State Implementation Plan (SIP) maintenance plan revision for the Columbus ozone maintenance area (Franklin, Delaware and Licking Counties). The maintenance plan revision establishes a new maintenance year of 2010 for the area and a new transportation conformity mobile source emissions budget for the year 2010. The 2010 emissions budget projections incorporate future emission reductions from area and point sources. The newly established 2010 emissions projections determine the area's safety margins for Oxides of Nitrogen (NO_X) and Volatile Organic Compounds (VOCs). Also being approved is the State's request that a portion of the safety margins be allocated to the area's 2010 mobile source emissions budget for transportation conformity purposes. The area's safety margin is defined as the difference between the attainment inventory level (the Columbus area's attainment inventory year is 1990) of the total emissions and the projected levels of the total emissions in the final year of the maintenance plan (as established for Columbus in this rule to be 2010).

DATES: This direct final rule is effective on September 8, 1998, unless EPA receives relevant adverse or critical written comments by August 10, 1998. If adverse comment is received, the EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is informed that

this action will take effect on September 8, 1998.

ADDRESSES: Copies of the documents relevant to this action are available for inspection during normal business hours at the following location: Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Please contact Scott Hamilton at (312) 353–4775 before visiting the Region 5 office.

Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Scott Hamilton, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4775.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act, in section 176(c), requires conformity of activities to an implementation plan's purpose of attaining and maintaining the National Ambient Air Quality Standards. On November 24, 1993, EPA promulgated a final rule establishing criteria and procedures for determining conformity of transportation plans, programs and projects funded or approved under Title 23 U.S.C. of the Federal Transit Act. The State of Ohio finalized and adopted State transportation conformity rules on August 1, 1995, the rules became effective August 21, 1995, and Ohio submitted the rules as a SIP revision request on August 17, 1995. The rules were approved by EPA on July 15, 1996 (61 FR 24702).

The transportation conformity rules require, among other things, a comparison to the mobile source emissions budget established by a control strategy SIP. A control strategy SIP is defined by the conformity rules to be a maintenance plan, an attainment demonstration, or a rate of progress plan. The Columbus area is an attainment area with an approved maintenance plan. The EPA approval of the maintenance plan established the mobile source emissions budget for transportation conformity purposes.

The emissions budget concept is explained in the preamble to the November 24, 1993, transportation conformity rule (58 FR 62188). The preamble also describes how to establish the mobile source emissions budget in the SIP and how to revise the emissions budget. The State transportation conformity rule at 3745–101–16 of the Ohio Administrative Code allows the mobile source emissions budget to be changed as long as the total level of emissions from all sources remain below the milestone level. In the case of a maintenance plan the milestone level is the attainment level established in the maintenance plan.

The maintenance plan is designed to provide for future growth while still maintaining the ozone air quality standard. Growth in industries, population and traffic is offset with reductions from cleaner cars and other emissions reduction programs. Through the maintenance plan the State and local agencies can manage and maintain air quality while providing for growth.

II. Evaluation of the State Submittal

On March 13, 1998, Ohio submitted to EPA a SIP revision request for the Columbus maintenance area. A public hearing on this proposal was held on April 15, 1998. Documentation on the public hearing was submitted on May 14, 1998 to complete the SIP revision request.

In the submittal Ohio requested to establish a new maintenance year of 2010, and new 2010 mobile source emissions budget for transportation conformity for the Columbus, Ohio maintenance area.

A. 2010 Budget Projections for Point and Area Sources

The 2010 emissions projections for point and area sources were developed by multiplying the individual 1990–2010 population growth factors for each county in the area by the individual county 1990 baseline inventory. The population growth factors used in the point and area source projections were derived from census population forecasts from Ohio's Data Users Center. The projected emissions for each county were then added together to arrive at the total projected emissions for the point and area source sectors for the year 2010.

B. NO_X Point and Area Source Emission Changes for the 2010 Budget

In developing the area's 2010 emissions projections for NO_X, the state took credit for reductions from the point and area source sectors. Projected NO_X reductions in point sources were obtained from the shutdown of the Columbus Trashburning Power Plant (3.04 tons/day NO_X) and the installation of a pure oxygen combustion system at Techniglass Inc. (1.43 tons/day NO_X). These point sources were included in Ohio's point source emissions inventory that was submitted to EPA. The point source NO_X emission reductions were subtracted from the total projected 2010 point source emission tonnage.

Projected reductions in area sources were obtained by considering the new federal ''Emission Standards for Locomotives and Locomotive Engines; Final Rule'' (63 FR 18977; April 16, 1998) for new and remanufactured diesel-powered locomotives. The federal locomotive standards are expected to achieve a 41% reduction in NO_X by the year 2010. To be on the conservative side, Ohio calculated its' projected NO_X reductions from locomotives assuming 20% NO_X reductions by 2010 instead of 41% for the 2010 budget (total reduction of 16.07 tons/day NO_X from area sources). The 16.07 tons/day NO_X reduction was subtracted from the total projected 2010 area source emission tonnage.

The 2010 emission projections reflect the point and area source reductions and are illustrated in Table 1.

TABLE 1.—NO_X AND VOC EMISSIONS BUDGET; AND SAFETY MARGIN DETERMINATIONS, COLUMBUS (TONS/DAY)

Source category	1990	1996	2005	2010
VOC Emissions				
Point	16.44	17.52	19.33	20.27
Mobile (on-road)	94.73	63.36	61.38	61.72
Area	101.18	107.47	117.30	123.94
Totals	212.35	188.35	198.01	205.93

TABLE 1.—NO_X AND VOC EMISSIONS BUDGET; AND SAFETY MARGIN DETERMINATIONS, COLUMBUS (TONS/DAY)—Continued

Source category	1990	1996	2005	2010
Safety Margin = 1990 total emissions—2010 total emissions = 6.42 tons/day VOC				
NO_X Emissions				
Point	13.79	14.35	15.27	12.17
Mobile (on-road)	78.65	68.85	61.24	61.08
Area	96.68	102.62	111.82	101.99
Totals	189.12	185.82	188.33	175.24
Safety Margin = 1990 total emissions − 2010 total emissions = 13.88 tons/day NO_X				

C. Safety Margin Allocations and 2010 Mobile Source Emissions Budget

In the submittal Ohio requested to allocate to the mobile source emissions budget part of the area's safety margin. The Columbus area's safety margin is the difference between the 1990 attainment inventory year and the 2010 projected emissions inventory (6.42 tons/day VOC safety margin, and 13.88 tons/day NO_X safety margin) as shown in Table 1. The SIP revision requests the allocation of 6.27 tons/day VOC, and 9.91 tons/day NO_X, into the area's mobile source emissions budget from the safety margin. The 2010 mobile source emissions budget showing the safety margin allocations are outlined in Table 2. The mobile source emissions budget in Table 2 will be used for transportation conformity purposes.

TABLE 2.—ALLOCATION OF SAFETY MARGIN TO THE 2010 MOBILE SOURCE EMISSIONS BUDGET, COLUMBUS (TONS/DAY)

Source category	1990	1996	2005	2010
VOC Emissions				
Point	16.44	17.52	19.33	20.27
Mobile (on-road)	94.73	63.36	61.38	67.99
Area	101.18	107.47	117.30	123.94
Totals	212.35	188.35	198.01	212.20
Remaining Safety Margin = 1990 total emissions − 2010 total emissions = 0.15 tons/day VOC				
NO_X Emissions				
Point	13.79	14.35	15.27	12.17
Mobile (on-road)	78.65	68.85	61.24	70.99
Area	96.68	102.62	111.82	101.99
Totals	189.12	185.82	188.33	185.15
Remaining Safety Margin = 1990 total emissions − 2010 total emissions = 3.97 tons/day NO_X				

Table 2 illustrates that the requested portion of the safety margins can be allocated to the 2010 mobile source budget and still remain at or below the 1990 attainment level of total emissions for the Columbus maintenance area. This allocation is allowed by the conformity rule since the area would still be at or below the 1990 attainment level for the total emissions.

III. EPA Action

After review of the SIP revision request, EPA finds that the requested allocation of the safety margin for the Columbus area is approvable since the approval of the new mobile source emissions budgets for NO_X and VOCs illustrates that the total emissions for the area will be at or below the attainment year inventory level as required by the transportation conformity regulations. Therefore, EPA is approving the requested allocation of the safety margin to the mobile source budget for the Columbus area.

The EPA is publishing this action without prior proposal because EPA views this as a noncontroversial revision and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing to approve the SIP revision should specified written adverse or critical comments be filed. This action will become effective without further notice unless the Agency receives relevant adverse written comments within 30 days from the date of publication, as indicated above. Should the Agency receive such comments, it will publish a final rule informing the public that this action did not take effect. Any parties interested in commenting on this action should do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866 review.

B. Executive Order 13045

The Final rule is not subject to Executive Order 13045, titled ''Protection of Children from Environmental Health Risks and Safety Risks,'' because it is not an ''economically significant'' action under Executive Order 12866.

C. Future Requests

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

factors and in relation to relevant statutory and regulatory requirements.

D. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because 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 create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, 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).

E. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must undertake various actions in association with 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. 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 the private sector, result from this action.

F. Audit Privilege and Immunity Law

Nothing in this action should be construed as making any determination or expressing any position regarding Ohio's audit privilege and immunity law (sections 3745.70—3745.73 of the Ohio Revised Code). EPA will be reviewing the effect of the Ohio audit privilege and immunity law on various Ohio environmental programs, including those under the Clean Air Act, and taking appropriate action(s), if any, after thorough analysis and opportunity for Ohio to state and explain its views and positions on the issues raised by the law. The action taken herein does not express or imply any viewpoint on the question of whether there are legal deficiencies in this or any Ohio Clean Air Act program resulting from the effect of the audit privilege and immunity law. As a consequence of the review process, the regulations subject to the action taken herein may be disapproved, federal approval for the Clean Air Act program under which they are implemented may be withdrawn, or other appropriate action may be taken, as necessary.

G. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by September 8, 1998. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

V. List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen oxides, Transportation conformity.

Dated: July 1, 1998.

David A. Ullrich,

Acting Regional Administrator.

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

PART 52—[AMENDED]

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

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

Subpart KK—Ohio

2. Section 52.1885 is amended by adding paragraph (a)(9) to read as follows:

§ 52.1885 Control Strategy: Ozone

(a) * * *

(9) Approval—On March 13, 1998, Ohio submitted a revision to the maintenance plan for the Columbus area. The revision consists of establishing a new out year for the area's emissions budget. The new out year emissions projections include reductions from point and area sources; the revision also defines new safety margins according to the difference between the areas 1990 baseline inventory and the out year projection. Additionally, the revision consists of allocating a portion of the Columbus area's safety margins to the transportation conformity mobile source emissions budget. The mobile source budgets for transportation conformity purposes for the Columbus area are now: 67.99 tons per day of volatile organic compound emissions for the year 2010 and 70.99 tons per day of oxides of nitrogen emissions for the year 2010.

[FR Doc. 98–18420 Filed 7–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–008–BU, FRL–6120–4]

Designation of Areas for Air Quality Planning Purposes; State of California; Redesignation of the San Francisco Bay Area to Nonattainment for Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to redesignate the San Francisco Bay Area (Bay Area) as a nonattainment area for the 1-hour ozone National Ambient Air Quality Standard (NAAQS). The Clean

Air Act (CAA or Act) provides that EPA may at any time revise the designation of an area on the basis of air quality, planning and control considerations, following notification to the Governor. On August 21, 1997, EPA notified the Governor of California that the Agency intended to propose to redesignate the Bay Area from attainment to nonattainment of the federal 1-hour ozone standard, based on a total of 43 exceedances and 17 violations of the standard since the June 1995 redesignation to attainment.

EFFECTIVE DATE: This action is effective on August 10, 1998.

ADDRESSES: A copy of this document and related information are available in the air programs section of EPA Region 9's website, http://www.epa.gov/region09/air. The docket for this rulemaking is available for inspection during normal business hours at EPA Region 9, Planning Office, Air Division, 17th Floor, 75 Hawthorne Street, San Francisco, California 94105. A reasonable fee may be charged for copying parts of the docket. Please call (415) 744–1249 or 744–1251 for assistance.

FOR FURTHER INFORMATION CONTACT: Regina Spindler (415) 744–1251 or Celia Bloomfield (415) 744–1249, Planning Office (AIR–2), Air Division, EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

Outline

I. Executive Summary
II. Background
A. Original Nonattainment Designation and Redesignation and Redesignation to Attainment
B. Subsequent Violations and Petitions to Redesignate the Bay Area to Nonattainment
C. Applicable Statutory Provisions
D. Notification to the Governor and Governor's Response
E. Proposed Action
III. Summary of Public Comments and EPA Response
A. Introduction
B. Response of the State
C. Overview of Public Comments
D. Specific Comments and EPA Response
1. Comments Relating to the Basis of EPA's Proposal to Redesignate the Bay Area to Nonattainment
a. Air Quality and Emissions
b. Legal Authority
i. General Comments on Mandatory and Discretionary Authorities to Redesignate
ii. Authority to Redesignate without Classification
c. Policy Issues
i. Public Notification and Public Perception
ii. Impact of the Bay Area Emissions on Downwind Nonattainment Areas and Issues of Equity
iii. Effect of Redesignation on Limited Air Pollution Control Resources
iv. Alternatives to Redesignation
2. Comments Relating to EPA's Proposed SIP Requirements
a. Emissions Inventory
b. Attainment Assessment
c. Control Measures
i. Suggested Measures
ii. NO_X Waiver and Efficacy of NO_X Controls
d. Attainment Deadline
e. Planning Schedule
3. Comments on Miscellaneous Issues
a. Conformity
b. Congestion Mitigation and Air Quality (CMAQ) Funding
c. Unfunded Mandates Reform Act (UMRA)
d. Procedural Obligations under CAA, Section 107 and the Administrative Procedures Act (APA)
IV. Final Action
A. Overview
B. SIP Requirements and Deadlines
C. Changes from Proposal
V. Emission Reduction Opportunities
A. Stationary Sources
B. Transportation Control Measures
C. Voluntary Measures
D. Enhanced Inspection and Maintenance
E. Mitigating Emissions Increases from Oakland Seaport and Airport Expansion Projects
VI. Administrative Requirements
A. Executive Order (E.O.) 12866
B. Regulatory Flexibility
C. Unfunded Mandates Reform Act
D. Executive Order 13045: Protection of Children from Environmental Health Risks and Safety Risks
E. Submission to Congress and the General Accounting Office

I. Executive Summary

On December 19, 1997 EPA published a Notice of Proposed Rulemaking to redesignate the Bay Area to nonattainment of the federal 1-hour ozone standard. During the 60-day public comment period that followed publication, EPA received comments both in support of and in opposition to our proposed action. All commenters, regardless of their views on the proposed redesignation or the proposed requirements associated with redesignation, expressed strong support for clean air progress in the Bay Area. EPA appreciates the thoughtful comments on the proposal and greatly values the commenters' commitment to improved air quality and public health protection in the Bay Area. EPA has made significant changes and clarifications in response to the comments and EPA believes the final action recognizes the innovation and collaborative efforts that can contribute to clean air in the Bay Area.

After carefully considering all of the comments received, EPA has decided to finalize the redesignation of the Bay Area to nonattainment of the 1-hour ozone standard while clarifying and streamlining the actions necessary to reach attainment. Although the Bay Area Air Quality Management District (BAAQMD), the California Air Resources Board (CARB), other regulatory agencies, businesses, and the community as a whole have made great strides in improving air quality in the Bay Area, there is still more work to be done. Redesignation is the most appropriate course of action to assure further air quality improvements and protection of public health and should place minimal burdens on the local economy, residents, industry and regulators.

When the federal ozone standard is exceeded, people, and in particular children, the elderly, and those with respiratory diseases, may experience ozone's ill effects, such as chest pain, cough, lung inflammation, respiratory infection, and chronic bronchitis. In light of these significant public health concerns, EPA believes that it is important to provide the public with accurate information and the correct message that ozone pollution is still a problem.

EPA is compelled to redesignate the Bay Area to nonattainment because of the numerous and widespread violations of the 1-hour ozone standard, a standard that was designed to protect public health. The Bay Area's air quality during 1996 ranked as the 6th worst in the nation and for the three-year period 1995–1997, it was the 8th smoggiest of the major metropolitan areas in the country. The absence of violations in 1997 is a positive sign but the Agency does not feel that the clean smog season last year proves that the serious ozone problem revealed in 1995 and 1996 has been solved. Compliance with the standard is measured over a three-year period so as to account for the effects of weather and other meteorological conditions that can work to either the advantage or disadvantage of air quality. This is particularly relevant to the Bay Area's case since the meteorological conditions prevailing on the West Coast during 1997 were unusually favorable to good air quality and, according to an October 1997 report by the BAAQMD, the ozone-conducive meteorology that occurred in 1995 and 1996 is likely to recur. The BAAQMD report also revealed that during the 1990s ''progress appears to have lapsed; there appears to have been an increase in ozone potential, after accounting for meteorology.''

The number of violations of this public health standard that occurred in the Bay Area during 1995 and 1996 is

especially significant when compared to the air quality in other parts of the country and the nonattainment designation and requirements applicable to those areas. For example, EPA recently reclassified or ''bumped-up'' the Phoenix and Santa Barbara areas from ''moderate'' to ''serious'' nonattainment areas for failure to attain the ozone standard by 1996. This ''bump-up'' to the ''serious'' nonattainment classification means that these areas must comply with additional planning and control requirements (e.g. attainment demonstration, reasonable further progress demonstration, enhanced vehicle inspection and maintenance program, Photochemical Assessment Monitoring) and must attain the ozone standard by 1999 or face ''bump-up'' to the severe classification, which would impose still more requirements. Phoenix monitored 13 violations of the ozone standard, and Santa Barbara recorded 7 violations, during the three-year period 1994–1996. The Bay Area experienced 17 violations during that same three-year period. Such a comparison reinforces the appropriateness of a nonattainment designation for the Bay Area.

EPA concluded that a redesignation to nonattainment not only accurately describes air quality in the Bay Area, but also provides an opportunity for reevaluating the causes of the Bay Area's ozone violations, the quantity of emission reductions needed to attain the health-based standard, and the measures that will achieve those reductions quickly. Some believe that EPA should not proceed with redesignation under the 1-hour standard, and that the BAAQMD should instead focus all its energies on planning for the revised 8-hour ozone standard. EPA is convinced, however, that some near-term action is essential to protecting the health and welfare of the Bay Area residents. Emission reduction strategies will be evaluated and put in place much sooner through a redesignation under the 1-hour standard than under a plan to meet the revised 8-hour ozone standard. In addition, everything that the Bay Area does to meet the 1-hour standard will help in meeting the more protective 8-hour standard. The Bay Area won't have to complete its planning for the 8-hour standard until 2003 or comply with the new standard until 2005 at the earliest. That is five years during which Bay Area residents would be breathing dirtier air than they should be. It is the public's right, and EPA's obligation, to be assured that current health standards are met now.

EPA is redesignating the Bay Area to nonattainment without assigning it a specific classification. The classification system (marginal, moderate, serious, severe, or extreme) associated with other current ozone nonattainment areas was created as part of the 1990 Clean Air Act amendments to match a nonattainment area's planning and control requirements with the severity of the area's ozone problem. The Bay Area is in a unique position. It was designated nonattainment under the 1990 amendments, redesignated to attainment after implementing most of the moderate nonattainment area requirements, and is now being returned to nonattainment. The existing Clean Air Act classification system does not specifically apply to the Bay Area. In order to allow maximum flexibility and in keeping with the best legal reading of the Act, EPA is redesignating the Bay Area under the longstanding general nonattainment provisions of the Act, which have no associated classifications. During public comment, the flexibility allowed by this approach generated uncertainty as to the planning and control requirements for the Bay Area. In response to this concern, and to make sure the Air District's time and energy are spent on control measures, not unnecessary paperwork, EPA has been more specific in the final rulemaking notice describing what is required of the Bay Area.

Redesignation should not result in a burdensome and duplicative planning effort. EPA wants the District and its co-lead agencies to focus on emission reductions, not paperwork. EPA is asking for only three plan elements: the existing 1995 emissions inventory for Volatile Organic Compounds (VOC) and Nitrogen Oxides (NO_X); an assessment of emission reductions, using available data and technical analyses, needed to attain the federal standard; and control measures to achieve those reductions. EPA will accept, in addition to or in lieu of adopted regulations, control measures with enforceable commitments to adopt in regulatory form and implement by specified dates sufficient to attain the 1-hour ozone standard by the attainment date. It is an additional public safeguard to make the control measures in this plan federally enforceable elements of the State Implementation Plan (SIP), since only in this way can the EPA and the public ensure that the commitments in the plan are fully implemented and the plan's promised air quality benefits are realized.

In response to public comment, EPA has modified both the schedule and content for State submissions and the attainment date. First, EPA is requiring only one formal State Implementation Plan (SIP) submittal instead of two. The one formal SIP submittal will include the emissions inventory, attainment assessment, and control measures so that the District can avoid having to undergo two public hearing and adoption processes, one for the inventory and assessment and a second for the control measures. EPA is allowing the BAAQMD to make a single SIP submittal with the understanding, pursuant to a letter of commitment from the Air District and co-lead agencies dated June 23, 1998, that the emissions inventory and attainment assessment will be made available to the public and submitted informally to EPA within 5 months after signature of the final redesignation by the Regional Administrator. This early, informal submittal will allow EPA to review the draft inventory and assessment and work with the District to address any deficiencies.

Second, EPA has extended the deadlines for the formal SIP submittal from May 1998 for the emissions inventory and attainment assessment, and from September 1998 for the adopted control measures and/or enforceable commitments, to June 15, 1999 for both. This extension gives the BAAQMD and its co-lead agencies more time to address the substantive requirements of the redesignation and carry out their formal adoption and submittal processes.

Third, EPA has extended the attainment deadline from November 15, 1999 to November 15, 2000 in order to allow additional time for the emission reduction strategies to take effect on air quality in the Bay Area.

Fourth, both CARB and the BAAQMD submitted compelling arguments that a weekend emissions inventory was too difficult and resource intensive to complete at this time, and so EPA has streamlined the SIP requirements still further by eliminating that obligation.

Finally, in response to public comment, EPA has eliminated the requirement to submit an emissions inventory for carbon monoxide (CO).

The above changes from the proposed redesignation are summarized as follows:

Proposal—weekend emissions inventory and CO inventory required	Final—weekend emissions inventory and CO inventory not required
Emissions inventory and attainment assessment due 5/1/98	Final emissions inventory and attainment assessment due 6/15/99. (Commitment to make draft available to EPA and the public by 11/25/98.)
Adopted regulations and/or control measures with enforceable commitments due 9/1/98.	Adopted regulations and/or control measures with enforceable commitments and final emissions inventory and attainment assessment due 6/15/99.
Attainment date of 11/15/99	Attainment date of 11/15/2000.

EPA recognizes that innovative methods, including voluntary measures, have the potential to contribute in a cost-effective manner to emission reductions needed for progress toward attainment. To promote the creation and expansion of effective voluntary mobile source programs, the Agency has developed a new policy that allows SIP credit for such programs.[1] The Bay Area has already demonstrated leadership in crafting innovative approaches to air quality problems through the ''Spare-the-Air'' and Silicon Valley ECOPASS programs. EPA is eager to work with the local government agencies and members of the business and environmental communities, who are critical to building public support for voluntary programs, to explore opportunities for innovation and to ensure that the voluntary measures stand the test of public accountability.

II. Background

A. Original Nonattainment Designation and Redesignation to Attainment

For more detailed information on the Bay Area's original ozone nonattainment designation, classification under the 1990 Clean Air Act Amendments, and redesignation to attainment, the reader is directed to EPA's proposed redesignation, published on December 19, 1997 (62 FR 66578–66583).

The Bay Area was initially designated under section 107 of the 1977 CAA as nonattainment for ozone on March 3, 1978 (40 CFR part 81.305). The Bay Area consists of the following counties: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano (part), and Sonoma (part).[2] Following the 1990 amendments to the Act, the area was classified by operation of law, under section 181(a), as a ''moderate'' ozone nonattainment area. (56 FR 56694, Nov. 6, 1991). On May 22, 1995 (60 FR 27028), EPA approved the maintenance plan adopted by BAAQMD, the Metropolitan Transportation Commission (MTC), and the Association of Bay Area Governments (ABAG) and submitted to EPA by CARB. In the same document, EPA redesignated the area to attainment for ozone, based on 3 violation-free years of data from the Bay Area's official monitoring network.

B. Subsequent Violations and Petitions to Redesignate the Bay Area to Nonattainment

Despite implementation of most of the measures in the Bay Area's maintenance plan, the monitoring network has recorded 43 exceedances and 17 violations of the federal 1-hour ozone standard over the years 1995–1996.[3]

EPA has received 2 petitions requesting that the Administrator redesignate the Bay Area to nonattainment with the federal 1-hour ozone standard. On March 31, 1997, the Sierra Club and Communities for a Better Environment (CBE) requested that EPA withdraw the 1995 redesignation action, or alternatively redesignate the area to nonattainment. The Sierra Club also requested that EPA issue a CAA section 110(k)(5) SIP call based on the inadequacy of the current SIP. On July 14, 1997, U.S. Congressman Gary Condit and a coalition of federal, state and local elected officials and public interest and industry groups from downwind areas (primarily the San Joaquin Valley) petitioned EPA to withdraw the 1995 redesignation to attainment, or alternatively redesignate the area to nonattainment, and issue a SIP call. Congressman Condit incorporated this petition in his public comment on the proposed action, and the petition is summarized in more detail in section III.C., Overview of Public Comments.

C. Applicable Statutory Provisions

Section 107(d)(3) of the Act gives the Administrator the authority to redesignate areas. Under this provision, the Administrator may ''(O)n the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate, * * * at any time notify the Governor of any State that available information indicates that the designation of any area * * * should be revised.'' Section 107(d)(3)(A). The Governor then has 120 days to submit the redesignation, as the Governor considers appropriate. Section 107(d)(3)(B). The Administrator must promulgate the redesignation within 120 days of the Governor's response. The Administrator may make any modifications to the Governor's redesignation which she deems necessary, but must notify the Governor of such changes 60 days before promulgating a final redesignation. If the Governor does not submit the redesignation, the Administrator shall promulgate the redesignation which she deems appropriate. Section 107(d)(3)(C).

D. Notification to the Governor and the Governor's Response

EPA notified the Governor of California by letter dated August 21, 1997, that EPA believes that the Bay Area should be redesignated to nonattainment, based on repeated violations of the ozone NAAQS. In the letter to the Governor, EPA proposed that the Bay Area be classified as a ''moderate'' nonattainment area, and that the area be required to submit by March 1, 1998, an emissions inventory and an attainment assessment; submit by May 1, 1998, a schedule and plan for completing a field study and modeling; and submit by September 1, 1998, rules and/or control measures sufficient to attain the 1-hour ozone NAAQS by 1999.

The Governor responded to this letter on December 10, 1997. Noting that the Bay Area had recorded no exceedances of the 1-hour ozone NAAQS in 1997, the

[1] Memorandum dated October 23, 1997 entitled, ''Guidance on Incorporating Voluntary Mobile Sourve Emission Reduction Programs in State Implementation Plans (SIPs).''

[2] For a description of those portions of Solano and Sonoma County that are included in the Bay Area, the reader is directed to 40 CFR part 81.21.

[3] An exceedance of the 1-hour ozone standard occurs when the hourly average ozone concentration at a given monitoring site is greater than or equal to .125 parts per million (ppm). A violation of the standard occurs when the expected number of days per calendar year with maximum hourly average ozone concentrations at or above .125 ppm is greater than one. 40 CFR part 50.9. The average number of days is calculated for a 3-year period. 40 CFR part 50, Appendix H. This 3-year period was established to reduce the impact of yearly fluctuations in ozone levels. Table 1 in EPA's proposed redesignation (62 FR 66579) lists both the exceedances and the 3-year average number of days over the 1-hour ozone standard for the period 1994–1996 at Bay Area monitoring sites in the official State and Local Monitoring (SLAMS) network.

Governor opposed the redesignation, preferring that EPA allow the BAAQMD maintenance plan, subsequent BAAQMD measures, and CARB measures to ensure that the area would not violate the ozone NAAQS in the future. See sections III.B. and III.D. below for a more detailed summary of the Governor's comments and EPA's response.

E. Proposed Action

On December 11, 1997, EPA issued its proposal to redesignate the San Francisco Bay Area to nonattainment for the 1-hour ozone NAAQS because ozone levels have violated the federal standard 17 times over the 3-year period 1994–1996. The proposal was published on December 19, 1997, and invited public comment through February 17, 1998.

After summarizing applicable CAA provisions and the Bay Area's record of exceedances and violations, EPA proposed to require the BAAQMD and its co-lead agencies to develop and submit a SIP revision designed to provide for attainment of the 1-hour ozone NAAQS by 1999. EPA's proposal set forth the Agency's reasons for concluding that the Bay Area should not be classified under subpart 2 of the CAA, but should rather be subject to the basic SIP requirements of section 110 and the general nonattainment plan requirements of section 172 (62 FR 66580). Finally, EPA proposed that the State be required to submit SIP revisions on the schedule in the table reproduced below, labeled ''Proposed Schedule of Submittal of Revisions to the State Implementation Plan for Ozone for the San Francisco Bay Area.''

PROPOSED SCHEDULE OF SUBMITTAL OF REVISIONS TO THE STATE IMPLEMENTATION PLAN FOR OZONE FOR THE SAN FRANCISCO BAY AREA (62 FR 66578, December 19, 1997)

Action/SIP submittal	Date
Current and complete baseline annual average and summer weekday and weekend day emissions inventory for volatile organic compounds (VOC), nitrogen oxides (NO_X), and carbon monoxide.	5/1/98
Assessment, employing available modeling information, of the level of emission reductions needed to attain the current 1-hour ozone National Ambient Air Quality Standard (NAAQS). This assessment should take into account the meteorological conditions and ambient concentrations associated with the violations of the ozone NAAQS in the period 1995–6, and should be based on likely control measures for reducing VOC and NO_X emissions.	5/1/98
Adopted regulations and/or control measures, with enforceable commitments to adopt and implement the control measures in regulatory form by specified dates, sufficient to meet reasonable further progress and attain the 1-hour NAAQS expeditiously.	9/1/98

III. Summary of Public Comments and EPA Response

A. Introduction

EPA received 127 comments between EPA's notification to the Governor on August 21, 1997, and the close of the public comment period on February 17, 1998. The docket for this notice includes the public comments. Of the comments, 68 supported the redesignation and 59 opposed the redesignation. In section III.D. below, EPA summarizes and responds to each of the substantive comments.

B. Response of the State

On the day EPA issued its proposed redesignation, EPA received an extensive response from the Governor, dated December 10, 1997. This was supplemented by a letter dated February 17, 1998, from Peter M. Rooney, Secretary for Environmental Protection, California Environmental Protection Agency. The Governor's letter was timely, in that it was received 7 days before the expiration of the 120-day period for the Governor to respond to EPA's notification letter.

This section provides a general summary of the State's comments, expressed in the two letters. EPA's response to the State's comments appears in section III.D., which organizes by subject matter all of the public comments and EPA's responses.

The State opposed the redesignation as an inefficient use of resources, in view of the forthcoming planning responsibilities to address the new, more stringent 8-hour ozone NAAQS.[4] The State preferred that EPA allow the region to pursue additional emission reductions through the air quality maintenance process and through implementation of the Bay Area's 1997 Clean Air Plan, rather than force the Bay Area to divert resources to an unnecessary planning process triggered by redesignation.[5] The State noted that EPA had followed a similar, flexible approach by not redesignating other areas that have violated the ozone standard.

Both letters from the State attached two legal opinions (CARB memorandum dated December 8, 1997, from Kathleen Walsh to Michael P. Kenny; BAAQMD memorandum dated December 4, 1997, from Robert N. Kwong to Ellen Garvey). These legal analyses concluded that, while EPA has the authority to redesignate the Bay Area to nonattainment even if the Governor does not submit a redesignation request, the Act also gives EPA other preferable options. The BAAQMD memorandum discusses 3 options: federal maintenance plan, SIP call, and Clinton Administration's common sense plan. The CARB memorandum argues that EPA should issue a call for a revision to the Bay Area's maintenance plan under CAA section 110(k)(5) if the Administrator determines that a SIP revision is necessary to correct a violation, since this approach would allow a more targeted effort to correct the problem. The BAAQMD memorandum adds that a maintenance plan is the means Congress established for addressing exceedances following redesignation to attainment, and both memoranda conclude that the existing maintenance plan and the Bay Area's 1997 Clean Air Plan are already at work toward returning the District to attainment, as indicated by the absence of any exceedances of the 1-hour ozone NAAQS in the Bay Area during 1997.

The State argued that there is no technical basis for determining a specific emission reduction target by EPA's proposed deadline of May 1, 1998, and that a quasi-technical assessment would not be accepted by the public or the business community. The State contended that modeling information is outdated and inadequate for purposes of determining an emissions reduction target.

The State argued that redesignation would hurt attainment efforts in the Central Valley, since it would distract the Bay Area from achieving real

[4] EPA promulgated a revised 8-hour ozone NAAQS on July 18, 1997 (62 FR 38856).

[5] This plan was adopted by the BAAQMD on December 17, 1997, to address requirements of the California Clean Air Act, including a triennial update to the area's comprehensive strategy for attaining the State's air quality standards. The plan was not adopted to address Federal CAA requirements and it has not been submitted to EPA as a SIP revision.

emissions reductions.[6] The Governor stated that he has directed the Chairman of CARB to work with involved districts to ensure that the BAAQMD develops additional measures to address the needs of the Central Valley.

The State concluded that EPA's proposed schedule does not provide sufficient time for planning or attainment, and that accomplishment of the proposed SIP requirements would be too costly. The State noted that the BAAQMD had estimated that EPA's proposed planning process, although streamlined, would still cost in the range of one million dollars or more, and would require significant investments of staff time, advisory committee time, and governing board time for all 3 co-lead agencies. The State specifically argued against EPA's proposed requirements for a weekend emissions inventory, which would require several person-years of effort and associated costs in the range of a half-million dollars. As an additional financial burden, the State asserted that EPA's proposed redesignation of the Bay Area without a classification jeopardizes the region's Congestion Mitigation and Air Quality Improvement Program (CMAQ) funding.

Finally, the State cited the President's directive that accompanied the promulgation of the new federal standards for ozone and particulate matter.[7] The State encouraged EPA to comply with the spirit of the directive, which emphasizes that ''implementation of the air quality standards is to be carried out to maximize common sense, flexibility, and cost effectiveness.'' The State concluded that EPA withdrawal of the redesignation proposal would be most consistent with this directive.

C. Overview of Public Comments

EPA's proposed redesignation elicited a very large number of comments, offering strong arguments either in support of, or in opposition to, redesignation. Many of the letters also provided helpful information regarding the impacts, beneficial or adverse, expected to result from redesignation. Regardless of whether or not the writer favored redesignation, every commenter strongly supported clean air progress in the Bay Area. It is notable, for example, that many commenters from the Bay Area business community wished to do their part to improve air quality and maintain a sound economy, based on their conviction that investments in air quality directly enhance the area's economic vitality and their employees' quality of life. EPA appreciates each comment and greatly values the commenters' commitment to improved air quality and public health protection.

As previously noted, well over 100 individuals or organizations submitted comments on the proposed redesignation.

Included among the comments were letters supporting redesignation from Congressman Gary Condit (Fresno) and from 6 Members of Congress from the Bay Area (Representatives George Miller, Lynn Woolsey, Nancy Pelosi, Pete Stark, Anna Eshoo, and Tom Lantos). Four Northern California Members of Congress (Representatives Ellen Tauscher, Tom Campbell, Frank Riggs, and Vic Fazio) signed a letter in opposition to the redesignation.

The Bay Area Members of Congress opposing the redesignation believed that such an action is neither consistent with the CAA nor in the spirit of the President's 1997 directive on implementing the ozone and particulate matter NAAQS. These Representatives noted that the CAA does not mandate redesignation but allows EPA to recognize the Bay Area's track record and overall quality of air. The Members felt that redesignation will trigger a costly, duplicative planning process that will detract from collaborative efforts to improve air quality and prepare for compliance with the 8-hour NAAQS. The Representatives indicated that sources informed them that EPA's proposed action would provide no new authority, funding and technology. The legislators felt that declining Bay Area emissions and the clean 1997 ozone season prove that a region can quickly return to attainment without the economic, political, and administrative complexities of redesignation. The Representatives indicated that they are not opposed to the new 8-hour ozone NAAQS but wish an efficient, common sense transition to achieve the NAAQS. Finally, if EPA redesignates the Bay Area, the legislators wanted assurance that the CMAQ funding for the Bay Area will not be jeopardized by EPA's action.

Congressman Condit fully supported the proposed redesignation and referenced scientific data relating to Bay Area's exceedances and to the impact of transported pollutants to downwind areas, such as the San Joaquin Valley. Congressman Condit asked that a July 14, 1997 petition to EPA be incorporated in his comment. This petition was signed by 4 Congressmen in addition to Congressman Condit (Representatives George Radanovich, Richard Pombo, John Doolittle, and Sam Farr), 4 state legislators, local elected officials, and officials representing farm and manufacturing organizations, environmental groups, and the San Joaquin Valley Unified Air Pollution Control District.

The petition summarizes the adverse impacts of elevated ozone levels on public health, health care costs, and crops. The petition also notes reasons why the years during the early 1990's when the Bay Area recorded no violations were exceptional: A severe drought limited biogenic emissions, summer peak temperatures were lower than normal, the area was experiencing an economic recession, and the 55 mph speed limit was in effect, reducing emissions of ozone precursors from cars and trucks.

The petition notes that no modeling supported the redesignation of the Bay Area to attainment, and that contingency measures in the maintenance plan yielded no additional air quality benefit, particularly in light of EPA's decision to waive certain NO_X control requirements. Thus, the maintenance plan failed to comply with the requirement in CAA section 175A(d) that the plan contain contingency measures sufficient to assure that the State will promptly correct any violation of the standard which occurs after the redesignation. The petition adds that it is now apparent that the maintenance plan failed to comply with the even more fundamental requirement of section 175(A)(a) that such plans contain additional measures, if any, as may be necessary to ensure maintenance of the NAAQS.

The petition recounts the Bay Area's ozone NAAQS violations immediately following redesignation, some lasting up to 7 hours on 11 different days, with the worst exceedance in excess of .150 ppm, and 13 exceedances at or above .140 ppm. The petition concludes that prompt action is necessary to achieve the overriding purpose of the Act, since the SIP controls have been shown to be insufficient for attainment or maintenance.

The petition asks EPA either to withdraw the redesignation or redesignate the Bay Area to nonattainment, and further asks EPA to find that the current Bay Area SIP is inadequate and require the State to

[6] California's Central Valley comprises the Sacramento Valley to the northeast of the Bay Area and the San Joaquin Valley to the southeast. CARB has concluded that the Sacramento Valley, the San Joaquin Valley, and the North Central Coast (to the south of the Bay Area) are affected by transport of ozone and ozone precursors from the Bay Area.

[7] Memorandum from the President to the Administrator of the Environmental Protection Agency, dated July 16, 1997, entitled ''Implementation of Revised Air Quality Standards for Ozone and Particulate Matter,'' and attaching ''Implementation Plan for Revised Air Quality Standards.'' 62 FR 38421 (July 18, 1997).

revise the SIP to attain the NAAQS expeditiously.

The petition states that there is no longer a defensible basis to believe that the Bay Area has attained or that the approved maintenance plan is still adequate. The petition continues: ''The existing attainment designation sends a false signal to the public, the regulated community, local agencies and the District itself that ozone pollution is no longer a problem. The complacency created by that message will hinder rather than help solve the problem within the Bay Area and the San Joaquin Valley * * *.''

The petitioners requested EPA to establish a SIP requirement that the State perform a comprehensive analysis of all factors affecting the ozone precursor ''carrying capacity'' for maintenance of the NAAQS in the Bay Area, and provide accurate estimates of emission reductions anticipated to be achieved from additional measures to be included in the plan, based upon an updated emissions inventory. While the nonattainment SIP is being prepared, a SIP call should allow the State 1 year to submit a maintenance revision that includes adopted additional measures to ensure the earliest practicable attainment and maintenance of the ozone NAAQS. The petitioners stated that, ''Given history, the submittal should demonstrate the reliability and adequacy of those measures convincingly.'' The subsequent SIP offers an opportunity to fine tune the maintenance SIP revision and address any problems that may surface in implementation.

The 6 Bay Area Members of Congress supporting the redesignation stressed that protecting the health of their constituents is one of their highest responsibilities as lawmakers. After careful consideration, these Representatives concluded that the specific proposed redesignation presented by EPA is the best course of action to provide the greatest assurance of improving Bay Area air quality and protecting public health, while placing the fewest burdens on the local economy, residents, industry and regulators.

The legislators noted as significant a recent BAAQMD report showing a worsening trend in ozone pollution in the 1990s. While acknowledging the BAAQMD's new plan for future actions, the Members of Congress expressed concern that the plan, adopted to meet California Clean Air Act requirements, is inadequate since it contains only proposals, not binding commitments, and can be changed at any time. Since the plan is not enforceable by EPA or the public, the Representatives were unable to verify that the plan would achieve attainment or genuinely improve air quality.

The Representatives' letter went on to stress that there is no way to know whether Bay Area actions are sufficient for attainment until federal and local regulators have a common understanding of the extent of local air pollution problems. These Members of Congress considered that EPA's redesignation proposal allows the maximum flexibility to the BAAQMD to reach attainment by building on its existing plan and avoiding redundancy, specifically with respect to emissions inventory and modeling. The Members stated that it is incumbent upon the BAAQMD to work with EPA to find common ground on credible and binding actions and timetables.

While aware of arguments against redesignation based on EPA's recent adoption of a more stringent 8-hour ozone NAAQS, the Members of Congress still favored redesignation and action now to address the 1-hour standard, since 10 years may pass before the Bay Area must comply with the revised ozone standard, and any steps taken to comply with the current standard will only help, not hinder, the area's ability to meet the 8-hour standard when it is officially in place. In the meantime, Bay Area residents are likely to be exposed to harmful pollution levels if there is no action.

Finally, these 6 Representatives noted that the Department of Transportation has concluded that EPA's proposed redesignation would not jeopardize the Bay Area's eligibility for CMAQ funds under either the existing Intermodal Surface Transportation and Efficiency Act (ISTEA) or pending revisions to the Act.

EPA received numerous letters from State legislators, mayors, and boards of supervisors, in almost equal number supporting and opposing the redesignation. Fifteen city councils or county boards of supervisors in the San Joaquin Valley adopted resolutions supporting the redesignation and Federal actions to mandate additional controls in the Bay Area to reduce pollution levels exported into the Valley.

Five California air pollution control districts (Monterey, San Joaquin, Sacramento, Yolo-Solano, and Placer) wrote to support further emission reductions in the Bay Area, while the BAAQMD opposed the redesignation. EPA summarizes and responds to the BAAQMD's extensive comments in section III.D., below.

EPA received letters from over 20 Bay Area businesses and business organizations arguing against the proposed redesignation, as well as several letters from San Joaquin Valley businesses supporting the redesignation.

Letters supporting the redesignation and encouraging adoption of specific additional controls were sent by Northern California environmental groups. These commenters generally perceived a contrast between the major threat to public health reflected in the recent ozone violations and the lack of political will shown by State and Bay Area officials. The commenters supported a stringent timetable for SIP revisions and attainment, agreeing with EPA that the urgent priority is to actually adopt measures to ensure that the Bay Area ozone violations will not recur.

Nineteen public interest groups representing the Bay Area Environmental Justice Community signed a letter in support of the redesignation, emphasizing the need to stem job flight to the suburbs and to increase public transit within the Bay Area. The environmental justice groups noted that these changes would benefit poor people and communities of color both by improving their health and by increasing their access to jobs and essential services.

All letters from downwind areas (including, notably, the San Joaquin Valley) strongly urged EPA to finalize the redesignation, on the grounds that the Bay Area exports ozone or ozone precursors to their region, thus jeopardizing public health, prosperity, and scenic and resource values. These letters typically noted that the Bay Area, as an attainment area, does not confront Federal control responsibilities, and that this double standard unfairly penalizes downwind nonattainment areas, which face specific CAA mandates associated with their ''serious'' or ''severe'' ozone classifications.

Letters from Bay Area local officials and businesses generally pointed to unusual weather during 1995 and 1996 as the cause of the ozone exceedances; the Bay Area's continuing efforts to reduce emissions and the BAAQMD's projections that emission levels will decline significantly in future years; the fact that the Bay Area recorded no exceedances in 1997; and the importance of not diverting resources from implementation of existing measures and planning for the more protective 8-hour ozone NAAQS. The commenters frequently observed that EPA's proposed SIP timetable was too hasty to allow for good decision making.

D. Specific Comments and EPA Response

1. Comments Relating to the Basis of EPA's Proposal to Redesignate the Bay Area to Nonattainment

a. Air Quality and Emissions

Comment: The primary cause of the recent ozone exceedances is the very unusual weather patterns of 1995 and 1996. There were fewer exceedances of the 1-hour ozone NAAQS in 1996 and no exceedances in 1997. The Bay Area should therefore continue to be considered an attainment area.

Response: The Bay Area is not in compliance with the federal ozone standard, a standard that was designed to protect public health. The absence of violations in 1997 is a positive sign, but compliance with the federal ozone standard is measured over a 3-year period, not on an annual basis. The primary reason for the 3-year time frame is to account for the effects of weather and other meteorological conditions that can work to either the advantage or disadvantage of air quality. This is particularly relevant in the Bay Area's case, since the meteorological conditions prevailing on the West Coast during 1997 were unusually favorable to good air quality. Furthermore, according to a recent technical analysis by the BAAQMD, the ozone-conducive meteorology that occurred in 1995 and 1996 is likely to recur (BAAQMD *Evaluation of the 1995 and 1996 Ozone Seasons in the San Francisco Bay Area*, October 1997, attached to Governor Wilson's December 10, 1997 letter to EPA Administrator Browner). Bay Area residents must be assured of clean air under all weather conditions.

The Bay Area recorded 17 violations of the 1-hour standard over the 3-year period 1994–1996. During that period, exceedances of the ozone standard were measured at 15 official network monitoring locations throughout the Bay Area. Although air quality improved between 1995 and 1996, the Bay Area's ranking in 1996 was the 6th worst in the nation for number of days when ozone levels exceeded the federal standard. Over the period 1995–1997, the Bay Area recorded 15 violations and had significantly worse air quality than most other metropolitan areas designated as nonattainment for ozone (see response to the following comment). Many of these areas are classified as ''serious'' or higher under the Clean Air Act, and are subject to specific mandatory requirements which would not apply to the Bay Area in EPA's redesignation proposal.

These high ozone levels are harmful to public health in the Bay Area. Exposure to ambient ozone concentrations, even at relatively low levels and for brief periods of time, can cause respiratory symptoms such as a reduction in lung function, chest pain, and cough. Repeated exposure can make people more susceptible to respiratory infection and lung inflammation, and can aggravate preexisting respiratory diseases such as asthma. In consideration of these significant public health concerns associated with the Bay Area's elevated ozone levels, EPA continues to believe that redesignation to nonattainment is warranted.

Comment: The Bay Area has the cleanest air of any metropolitan region in the nation. Since 1990, the Bay Area has been in attainment 99.995% of the time.

Response: There is no question that air quality in the Bay Area has improved over the last 40 years. However, the Bay Area is not currently attaining the federal 1-hour ozone standard, a standard that was designed to protect public health and which has been made more protective by adoption of a new, 8-hour standard. The magnitude of the problem is significant as demonstrated by the number of violations (17 since redesignation to attainment in 1995) and the number of days when the standard was exceeded (19 days between 1995–1997). When comparing air quality in the Bay Area to other major metropolitan areas, there are a number of large metropolitan areas, such as Chicago and Detroit, with fewer violations and exceedance days than experienced in the Bay Area. Furthermore, the Bay Area ranks among the worst of the 243 Air Quality Control Regions in the country, based on data from the most recent 3-year period. Finally, in contrast to most areas of the Country, there is not a significant downward trend in the number of ozone exceedances in the Bay Area since 1989.

Comment: EPA's reliance on a statistic ranking the Bay Area the 6th worst in the nation in number of days over the ozone standard is misplaced. EPA's simplistic characterization of the number of exceedances fails to realistically depict the situation. A more realistic characterization is based on a review of the exceedances in terms of hours over the standard relative to hours in the ozone season for six or seven years. Following this approach, the number of hours over the standard is less than $^{2}/_{100}$ of a percent for 1990–1996. This analysis properly focuses on long-term trends rather than short-term data.

Response: When EPA establishes an ambient air quality standard, it sets not only the level of the standard (in this case, .12 ppm) but also the averaging time of the standard (1-hour) and the form of the standard (how compliance is measured). Each of these components of the NAAQS is set based on EPA's review of the available health effects data. When EPA set the 1-hour ozone NAAQS, EPA specified that the form be based on the number of exceedance days per year averaged over 3 years. Therefore, EPA's characterization of the Bay Area air quality in terms of number of days over the standard is appropriate. The form of the standard is not based on the number of hours over the standard relative to hours in the ozone season for 6 or 7 years, so an examination of the Bay Area's air quality on this basis would not be appropriate.

Comment: Some commenters concluded that the absence of violations in 1997, in conjunction with predicted further declines in emissions, proves that the Bay Area's ozone problem has been solved. Other commenters noted that the West Coast's extraordinary meteorology in 1997 kept ozone concentrations unusually low, and that emissions in the Bay Area may in fact not be decreasing as much as predicted, given the strong economic growth in the area and other factors.

Response: The October 1997 BAAQMD report referenced above identifies a downtrend in ozone precursor emissions from 1979 through the early 1990s, but notes that during the 1990s ''progress appears to have lapsed; there appears to have been an increase in ozone potential, after accounting for meteorology'' (page v). The report further notes that the ozone violations in 1995 and 1996 cannot be attributed solely to unusual circumstances. It identifies possible explanations for increased emissions over this time period (e.g., increased speed limits, increased congestion levels, and increased employment levels in East Bay communities).

EPA believes that a redesignation to nonattainment not only accurately describes air quality in the Bay Area, but also provides an opportunity for reevaluating the causes of the Bay Area's ozone violations, the quantity of emission reductions needed to attain the health-based standard, and the measures that will achieve those reductions expeditiously. This may involve not only CARB and BAAQMD but also MTC and ABAG in cooperative efforts to reduce the motor vehicle contribution to the Bay Area's continuing smog problem.

Comment: EPA has not demonstrated that contingency measures in the Bay Area's maintenance plan in conjunction with other projected reductions will fail to bring the region back into attainment.

Response: EPA acknowledges that additional emission reductions are likely to be achieved from measures already in the SIP or submitted for SIP approval. No commenter, however, has provided any evidence that these reductions will be sufficient to avoid violations in the future. Indeed, many commenters, including the BAAQMD and the State, emphasized that recently adopted control measure commitments in the Bay Area's 1997 Clean Air Plan are important in order to ensure continued air quality progress.

The Clean Air Act places the burden on the State to demonstrate that its plan, at all times, provides for attainment and maintenance of the NAAQS, through federally enforceable emission reductions sufficient to avoid violations of the NAAQS. The Federal CAA also provides protections to the public in the event that State plans are not fully and successfully implemented to achieve the scheduled emission reductions and air quality improvements. These protections include federally imposed nonimplementation sanctions and opportunities for citizens to sue to compel implementation.

EPA believes, therefore, that redesignation and new SIP obligations for the Bay Area are consistent with the overall structure and intent of the CAA, and provide key public health benefits. The State and BAAQMD will assess, using available data and technical analyses, the amount of emission reductions needed to ensure that violations of the 1-hour ozone NAAQS do not recur. The State, BAAQMD, and other responsible local agencies must then identify control measures that will achieve these reductions. EPA expects that the agencies will analyze which control measures from the 1997 Clean Air Plan are needed to attain the standard and which measures beyond those contained in the plan are also needed. The State, BAAQMD, and other responsible agencies will be subject to a schedule for adopting and implementing the necessary controls. The public will have increased protections as a result of making control measures needed to attain the standard part of the SIP, thus providing insurance that the measures will be carried out, if necessary, through federal enforcement or citizen suit.

Comment: EPA received a number of comments related to the continued applicability of the 1-hour ozone NAAQS in light of the new 8-hour standard.

Response: EPA is responding to these comments at length below to further the public's understanding of this issue. However, EPA's decisions that (1) the 1-hour standard will remain in effect in an area until it is attained, and (2) that the standard continues to apply in the Bay Area because the area is not attaining the standard, are not at issue in this rulemaking action and are not appropriately challenged here. EPA's views regarding these issues are set forth in 63 FR 31013, June 5, 1998.

Comment: The Bay Area had attained the 1-hour ozone NAAQS and, therefore, rather than being redesignated to nonattainment, the area was entitled to revocation of the 1-hour NAAQS in conformance with the President's directive.

Response: The President's ''Implementation Plan for Revised Air Quality Standards'' (''Implementation Plan'') (62 FR 38424) called for EPA to revoke the 1-hour ozone NAAQS in all areas that attain the standard. The President did not direct EPA to revoke the 1-hour ozone standard in all areas currently designated as maintenance or attainment areas. The President clearly intended that current air quality be the basis of EPA's determination of which areas attain. The Implementation Plan states that ''[f]or areas *where the air quality does not currently attain* the 1-hour standard, the 1-hour standard will continue in effect'' (emphasis added). Moreover, the controlling regulatory provision, 40 CFR section 50.9(b), specifies that an area must have air quality that meets the standard at the time of the decision. EPA's rulemaking action to determine that the 1-hour standard no longer applies in areas that are not currently violating the standard is therefore consistent with the Presidential memorandum. 63 FR 31013 (June 5, 1998). Because the Bay Area is currently violating the 1-hour ozone standard, the area is not currently eligible for this determination.

Comment: EPA has indicated that if the Agency's review of recent monitoring data finds that an attainment or maintenance area now violates the 1-hour standard, EPA will not redesignate these areas to nonattainment under the 1-hour standard.

Response: Both EPA's final regulation promulgating the new ozone regulation (62 FR 38873) and the Presidential memorandum regarding implementation of the standards (62 FR 38424) explain that in order to ensure a smooth transition to the implementation of the 8-hour ozone standard, the 1-hour standard will remain applicable to an area until it has attained the 1-hour standard. As long as the 1-hour standard remains in effect in an area, so does EPA's authority under CAA section 107(d)(3) to redesignate that area as a nonattainment area. EPA's ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM_{10} NAAQS'' (December 29, 1997 Memorandum from Richard D. Wilson, to EPA Regional Administrators) clarifies that ''in certain cases where air quality data through 1997 show nonattainment, EPA may be redesignating areas from attainment to nonattainment for the 1-hour standard.''

Comment: EPA should treat the Bay Area like other maintenance areas in the Country, where the 1-hour NAAQS is not being revoked because the areas have had recent violations of the NAAQS. These areas are not being reclassified to nonattainment.

Response: The Bay Area's number of exceedances and violations and the Bay Area's peak concentrations (highest monitored value and design concentration) far exceed those in all other maintenance areas that have had exceedances since 1994. There are 5 other ozone maintenance areas in addition to the Bay Area that have experienced violations of the 1-hour ozone standard after redesignation: Kansas City, Detroit-Ann Arbor, Dayton-Springfield, Grand Rapids and Memphis. Three of these maintenance areas (Detroit-Ann Arbor, Grand Rapids, and Dayton-Springfield) already meet the test for attainment of the 1-hour ozone NAAQS based on 1995–1997 data and are therefore proposed for revocation of the 1-hour ozone standard (63 FR 27247, May 18, 1998). The remaining 2 areas, Kansas City and Memphis, could meet that test at the end of 1998, assuming that no more than 2 exceedances are recorded at the peak monitor during 1998. Because the peak monitor in the Bay Area recorded 8 exceedances in 1996, the Bay Area would still violate the 1-hour ozone NAAQS even if no exceedances occur in 1998, since the average number of exceedances for the 3-year period 1996–1998 would exceed 1 per year.

b. Legal Authority

(i) General Comments on Mandatory and Discretionary Authorities To Redesignate

Comment: A number of commenters felt that EPA should not redesignate the Bay Area to nonattainment because the Clean Air Act contains no mandatory duty to do so.

Response: EPA agrees that section 107(d)(3)(A) does not require EPA to redesignate the Bay Area. However,

section 107(d)(3) of the Act grants the Administrator broad discretion to redesignate areas when she determines that it is appropriate. For the reasons discussed at length in the proposal and in today's final notice, the Administrator believes that it is necessary to redesignate the Bay Area.

(ii) Authority To Redesignate Without Classification

Comment: The BAAQMD commented that it disagrees with EPA's interpretation of section 181(b)(1) of the Act, and believes that the ambiguity contained in the language of this section argues in favor of a SIP call to strengthen the maintenance plan, rather than redesignation without classification.

Response: As EPA explained at length in its proposal, section 181(b)(1), which provides for new designations to nonattainment, does not on its face apply to the Bay Area. (Please refer to 62 FR 66580, December 19, 1997, for EPA's analysis of the applicability of section 181.) Section 181(b)(1) explicitly sets forth which areas it governs. Specifically, section 181(b)(1) covers only those areas that were originally designated attainment or unclassifiable pursuant to section 107(d)(4) of the 1990 amendments. This section is silent with regard to areas, like the Bay Area, that were designated nonattainment under the 1990 amendments, redesignated to attainment, and that subsequently returned to nonattainment.

In its comments on the proposal, the BAAQMD cautions EPA against inferring anything from Congress' silence with regard to areas like the Bay Area. However, because Congress *was* silent on this point, some inference must be made in order to decide how an area like the Bay Area is to be treated under the Act. The BAAQMD would like us to infer that we cannot redesignate an area back to nonattainment once it has attained the standard, but must instead issue a SIP call to address the inadequacies in the maintenance plan and contingency measures. While a SIP call is one possible option, it is clearly not the only option authorized by the Act. There is no ambiguity in the language of section 107(d)(3), which grants the Administrator the authority to redesignate an area ''any time'' she deems it is appropriate based on air quality data, planning and control considerations, or any other air quality-related considerations.[8] EPA continues to believe that redesignation, rather than a SIP call, is the appropriate action in this instance. Given the broad discretion granted the Administrator under section 107(d)(3), EPA is exercising that discretion today to redesignate the area to nonattainment. Moreover, we also continue to believe that the ambiguity contained in the language of section 181(b)(1) is best interpreted as placing the Bay Area under subpart 1 of the Act for the following reasons. The plain language of section 181(b)(1) applies only to areas designated attainment under section 107(d)(4) and excludes areas like the Bay Area. Second, as an area that was previously designated nonattainment, the Bay Area has already done much of the work required for a nonattainment area SIP and should not need the lengthy time period granted to new nonattainment areas to complete its planning process. The Bay Area has already implemented the section 181 requirements applicable to its previous moderate classification. Finally, sections 172(a)(1) and (2) contain express statements that they do not apply to nonattainment areas that are specifically covered by other provisions of Part D of the Act, thereby demonstrating that the Act contemplates that some areas will fall under subpart 1, rather than subpart 2.

c. Policy Issues

(i) Public Notification and Public Perception

Comment: Some commenters considered redesignation to be simply a labeling exercise that will have a negative impact on public support for existing air quality programs by emphasizing redundant and counterproductive procedural and paperwork tasks above real progress in emission reductions.

Other commenters noted that the redesignation debate in the Bay Area shows that labels are significant, and that ''nonattainment'' accurately conveys the message that making the Bay Area's air safe to breathe is a task still unfinished; there needs to be a clear and consistent signal to the affected sources and the public about why new measures are necessary. These commenters concluded that, to win approval of additional reductions in air pollution, the public needs to know the actual status of air quality in the Bay Area. The broader public will not support efforts to reduce pollution if air quality is deemed to be in attainment of health standards. If local regulators maintain that air quality is fine and if there is no public accountability through EPA oversight or the right of public interest groups to enforce attainment plans, the regulators will not take on the difficult task of requiring polluters to invest further in pollution prevention or control technology.

Response: The large number of Bay Area exceedances in 1995 and 1996 indicates that we do not have a convincing basis for predicting an end to ozone violations without further reductions. Designations of attainment are intended to apply to areas that have demonstrated clean air over a 3-year period.

Moreover, EPA does not believe that the Bay Area's current attainment designation is appropriate since it tells the affected public, the regulated community, local agencies, and the District that ozone pollution is no longer a problem. This inaccurate message tends to undercut collaborative and progressive actions in the near term, and contributes to confusion and dissension both within the Bay Area and in downwind populations.

EPA remains convinced that near-term action is needed to protect the health and welfare of the State's residents. Emission reduction strategies will be evaluated and put in place 4–5 years sooner through a redesignation under the 1-hour standard than is expected under a plan to meet the revised ozone standard (new plans are not expected to be due under the revised standard until 2003 and the attainment date for an area such as the Bay Area for the 8-hour standard is expected to be 2005 at the earliest). That is at least 4–5 years during which Californians would be breathing dirtier air than they should be.

Finally, EPA continues to believe that a redesignation to nonattainment not only accurately describes air quality in the Bay Area but also provides an opportunity for reevaluating the causes

[8] The Bay Area recorded 43 exceedances of the ozone standard in the two-year period 1995–1996. The standard allows no more than three exceedances at any one monitor over three years. In addition, the area recorded violations at special purpose monitors (SPMs) from 1992–1993, prior to being redesignated to attainment. While these violations were not considered in EPA's original decision to redesignate the area to attainment because the monitors were not part of the official monitoring network, the Agency has since issued a policy that requires that any reliable monitoring data be relied upon in such decisions. (August 22, 1997 memorandum entitled, ''Agency Policy on the Use of Special Purpose Monitoring Data,'' from John Seitz, Director of the Office of Air Quality Planning and Standards.) As we noted in the proposal (62 FR 66579, December 19, 1997), EPA has determined that the SPMs data should have been considered in the 1995 redesignation action. With the advantage of hindsight, these violations can be viewed as an indicator that the air quality problem in the Bay Area has not been solved at the time the area was redesignated, as was borne out by the high number of exceedances during 1995–1996. As we have discussed at length herein and in the notice of proposed rulemaking, the severity of the air quality problem makes redesignation the appropriate action in this case.

of the Bay Area's ozone violations, the quantity of emission reductions needed to attain the health-based standard, and the measures that will achieve those reductions expeditiously.

(ii) Impact of Bay Area Emissions on Downwind Nonattainment Areas and Issues of Equity

Comment: Commenters from downwind areas and environmental groups referenced a CARB study indicating that pollution transported from the Bay Area produces up to 27% of the smog in the Central Valley. Monterey Bay Unified Air Pollution Control District noted that CARB has found that half of the exceedances of the State 1-hour ozone standard in the North Central Coast Air Basin result from overwhelming transport from the Bay Area (i.e., the exceedances would have occurred even in the absence of local emissions). Commenters expressed the belief that continued Bay Area progress toward meeting federal requirements is key to achieving air quality in these downwind areas, and that further NO_X reductions in the Bay Area are especially important. Commenters noted high pollution levels in areas downwind of the Bay Area, and argued that redesignation would help ensure that the Bay Area pays the price of controlling its pollution rather than passing it on in the form of health impacts and added regulatory requirements for downwind areas. Downwind areas stated that enhanced motor vehicle inspection and maintenance (or enhanced I/M, which is known in California as Smog Check 2) should be required in the Bay Area, just as it is in urbanized portions of the Central Valley.

The BAAQMD argued that redesignation without classification would not ensure implementation of Smog Check 2 in the Bay Area under existing State law. The State argued that redesignation would hurt attainment efforts in the Central Valley, since it would distract the Bay Area from achieving real emissions reductions. Bay Area industry commented that redesignation will not solve pollution transport issues in California and that any reliance on pollutant transport concerns to support redesignation is unfounded and legally impermissible.

Response: The basis for the nonattainment designation is the large number of recent violations of the 1-hour ozone NAAQS in the Bay Area, not any new evidence regarding the impact of Bay Area pollution on downwind areas within the State. EPA believes that primary responsibility for addressing transport to and from the Bay Area resides with the State.

With respect to the importance of Smog Check 2 in the Bay Area, EPA strongly endorses enhanced I/M as one of the most cost-effective measures that could be added to the Bay Area's existing controls, since the program has the potential to achieve substantial emissions reductions in the near term and to ensure that the benefits of California's stringent motor vehicle standards are not diminished because of poorly maintained vehicles.

(iii) Effect of Redesignation on Limited Air Pollution Control Resources

Comment: Redesignation will trigger an expensive, duplicative planning process that will detract from effective collaborative efforts to improve air quality. Redesignation provides no new funds, authority, or technology but simply imposes paperwork and process requirements.

Response: Redesignation should not result in a burdensome and duplicative planning effort. EPA wants the District and its co-lead agencies to focus on emission reductions, not paperwork.

EPA is asking, in fact, for only three plan elements: the existing 1995 emissions inventory for VOC and NO_X, an assessment of emissions reductions needed to attain the federal standard, and control measures to achieve those reductions. EPA is allowing the District to use available data and technical analyses to establish the emission reduction targets. Finally, EPA expects that most of the work to identify potential control measures has also been completed for the District's recently adopted 1997 Clean Air Plan. EPA expects that the District will analyze which control measures from this plan are needed to attain the standard and which measures beyond those contained in the plan are also needed. Making these control measures federally enforceable elements of the SIP provides an important public safeguard since only in this way can EPA and the public ensure that the commitments in the plan are fully implemented and the plan's promised air quality benefits are realized. This streamlined planning effort also provides an opportunity for the Bay Area to quickly determine whether additional reductions from transportation sources are appropriate, in the event that attainment requires more near-term reductions than the Clean Air Plan currently identifies.

While EPA concedes that redesignation may provide no new funds, authority, or technology, the Agency does not agree that the redesignation, as finalized in this action, simply imposes burdensome paperwork and process requirements on the Bay Area. EPA's proposed streamlined and flexible set of requirements contrasts with extensive and prescriptive planning and control requirements that apply to ozone nonattainment areas with 1999 attainment deadlines. Most of these areas, which were classified as ''serious'' under the Clean Air Act, have far fewer ozone exceedances and far fewer planning resources than does the Bay Area. The following are examples of ''serious'' ozone nonattainment area mandates, which EPA does *not* propose to require in the Bay Area: (1) A more stringent definition of major stationary source for purposes of Title V operating permit requirements; (2) more stringent applicability thresholds and offset ratios for purposes of permitting new and modified stationary sources; (3) a more stringent definition of major stationary source for purposes of applying reasonably available control technology requirements to existing stationary sources; (4) specific, detailed plan elements addressing rate-of-progress; (5) an enhanced vehicle inspection and maintenance program; and (6) specific, detailed provisions relating to transportation control.

Comment: Redesignation is inconsistent with the President's directive that the new federal air quality standards be implemented in a flexible, cost-effective and common-sense manner; that EPA respect agreements already made by States, communities, and businesses to clean up the air; and that EPA implement the standards with the minimum amount of paperwork necessary. Redesignation also fails to promote the ideals of the President's and Vice President's reinvention report which calls for the building of partnerships, the reduction of red tape, and the use of sound science to set priorities.

Response: A key component of the President's implementation plan for the new federal air quality standards is that continued progress toward meeting the 1-hour standard will ensure a smooth and effective transition to the 8-hour standard. EPA's action to redesignate the Bay Area as a nonattainment area for the 1-hour ozone standard and the simplified set of planning objectives that accompany this action are consistent with continuing progress towards meeting the 1-hour standard. They are also consistent with other elements of the implementation plan pertaining to respecting existing agreements, reducing paperwork, and maximizing common sense flexibility, and cost-effectiveness. As discussed above, EPA is asking for only 3 plan

elements: the existing 1995 emissions inventory for VOC and NO_X, an assessment of emissions reductions needed to attain the federal standard, and control measures to achieve those reductions, without requiring expensive new modeling or unnecessary paperwork. The District has already identified additional control measures in its 1997 California Clean Air Act plan that could be used for a new federal plan. In addition, partnerships between the private sector, environmental groups, and regulators to promote innovative methods for addressing the air quality problem could be an important part of the Bay Area's response to the redesignation.

(iv) Alternatives to Redesignation

Comment: EPA should allow the Bay Area to implement and supplement, if necessary, the contingency measures in the Bay Area's Maintenance Plan, as the remedy to violations. The CAA recognizes that attainment areas will experience violations from time to time and that contingency provisions should be adequate to cure the problem. If EPA determines that the existing Bay Area Maintenance Plan is inadequate, the CAA provides a remedy: EPA may issue a SIP call under section 110(k)(5) to strengthen the maintenance plan.

Response: EPA hoped and expected that the Bay Area's maintenance plan would be the means to prevent future exceedances of the ozone standard. Unfortunately, almost all of the emission reductions from the Bay Area's maintenance and contingency measures were in effect at the time that the Bay Area experienced so many violations of the ozone standard in 1995 and 1996. After completing a stakeholder process over the past several years, EPA concluded that additional public health protections are needed beyond current Bay Area plans. EPA evaluated all of the options available under the Clean Air Act to address the public health problem and continues to believe that redesignation is the most direct and sensible outcome.

The proposal that EPA rely only on a ''SIP Call'' would apparently involve EPA using the authority of CAA section 110(k)(5) to mandate submission of a strengthened maintenance plan. For the reasons discussed above, EPA believes that redesignation to nonattainment is a more appropriate course under the framework of the Act. While EPA considered the ''SIP Call'' option, the Agency concluded that a federal nonattainment designation for the Bay Area was important to provide the public with accurate information and the correct message: Pollution levels must be reduced quickly in order to eliminate unhealthy air quality within the Bay Area. Since the amount of reductions necessary to attain the federal 1-hour ozone standard has not yet been established, EPA believes that the proper SIP remedy is twofold. First, the BAAQMD must submit its existing 1995 emissions inventory for VOC and NO_X and an assessment, using available data and technical analyses, of the emissions reductions needed to attain the standard. Second, the BAAQMD and its co-lead agencies must identify, adopt, and submit for incorporation in the SIP all of those control measures that are needed to meet the reduction target expeditiously. EPA proposed and is now finalizing this simplified SIP remedy, which does not substantively differ from the planning requirements that would need to be addressed by the State in revising the Bay Area's maintenance plan so that it provides for attainment.

Comment: The BAAQMD commented that if redesignation is finalized EPA should classify the Bay Area as a ''marginal'' ozone nonattainment area, subject to the requirements specifically delineated in CAA section 182(a). This certainty would provide a more specific and defensible foundation for the responsibilities of the co-lead agencies, CARB, and EPA. The BAAQMD expressed the belief that areas designated as ''marginal'' would have 3 years to develop a SIP submittal and 5 years to reach attainment. Other commenters recommended a ''moderate'' classification as more appropriate to the Bay Area's air quality.

Response: As discussed above and in the proposal, EPA concluded that subpart 2 of the Clean Air Act (which includes the ozone classifications and specific requirements for each classification) applies, on its face, only to: (1) Areas designated nonattainment under 107(d)(4) at the time the 1990 amendments were passed, and (2) areas designated nonattainment under 107(d)(3) for the first time after passage of the 1990 amendments. See CAA 181(b)(1). Thus, the subpart 2 provisions would not seem to apply to the Bay Area, which was initially nonattainment, redesignated to attainment, and then redesignated back to nonattainment.

In the proposed redesignation (62 FR 66580), EPA also presented two policy reasons for not classifying the Bay Area or requiring the District to meet all of the subpart 2 requirements for a ''moderate'' ozone nonattainment area:

(1) Many of the classification requirements served no purpose for the Bay Area, because the requirements had already been addressed previously when the area was nonattainment or because the requirements would contribute no specific emission reductions. For example, ''moderate'' area requirements include the gasoline vapor recovery program (which has been approved as part of the Bay Area SIP for many years) and the rate-of-progress plan (which would be superfluous given the compressed attainment schedule for the Bay Area). EPA's proposal stressed the Agency's determination to eliminate paperwork and focus the Bay Area's energies on achieving the emission reductions needed to attain the 1-hour NAAQS quickly.

(2) It did not seem appropriate to allow the Bay Area as much time as subpart 2 gives to newly designated and classified nonattainment areas. The CAA allows newly designated nonattainment areas the same amount of time to meet subpart 2 requirements as was given to areas initially nonattainment under the 1990 CAA amendments. This would mean that the Bay Area would have either 3 years or 4 years from the effective date of the final designation to make a ''moderate'' SIP submittal, depending upon whether sophisticated photochemical modeling was employed (approximately 6/2001 or 6/2002, instead of the 6/1999 date for SIP submittal set in this action). The Bay Area would also have 6 years to attain the 1-hour ozone NAAQS (2004, instead of the 2000 date in this action).

The same analysis applies to an even greater extent with respect to a ''marginal'' classification. The Bay Area has previously addressed the CAA ''marginal'' area requirements for corrections to RACT rules, NSR rules, basic I/M, and rules requiring sources to report on their emissions. If EPA were to classify the area as ''marginal,'' in fact, the Bay Area would only need to submit a single new SIP element—an updated emissions inventory—which would not be due until 2 years from the effective date of the final designation (approximately 6/2000, instead of the 11/1998 informal submittal date agreed to by the BAAQMD, and the 6/1999 SIP deadline set in this action). The CAA does not require ''marginal'' areas to submit attainment assessments, but sets an attainment deadline 3 years after the effective date of the nonattainment designation (i.e., 2001).

EPA does not believe that either the ''moderate'' or ''marginal'' classification requirements and schedule represent an efficient, common-sense, or adequate response to the urgent public health concerns associated with the Bay Area's large number of recent ozone NAAQS

violations. EPA continues to conclude that the proposed approach of redesignation without classification, setting near-term deadlines for SIP revision and attainment, is not only better supported by the terms of the CAA but also better fits the goals of this action: To provide the Act's clean air protections to Bay Area residents as quickly as possible, with minimal process and paper, and with the greatest flexibility afforded to the State and local agencies.

Comment: The BAAQMD proposed that, in lieu of redesignation, the BAAQMD, EPA, CARB, the Metropolitan Transportation Commission, the Association of Bay Area Governments, the San Joaquin Valley Unified Air Pollution Control District, CBE, Earth Justice, and the Sierra Club could enter into a binding memorandum of understanding or agreement that would result in additional stationary and mobile source control measures, with their concomitant emission reductions, being added to the BAAQMD's Maintenance Plan or SIP. The BAAQMD argued that this approach was supported by the President's emphasis on regulatory flexibility.

Response: EPA strongly supports collaborative efforts between all involved parties, and particularly encourages consultation with downwind air districts and environmental groups. EPA does not view broad cooperative efforts such as the BAAQMD proposes as incompatible with redesignation to nonattainment, and notes that half of the parties named by the BAAQMD support EPA's proposed redesignation action. EPA is unclear, however, regarding the scope of the BAAQMD's proposed binding MOU or MOA, whether all of the parties would have the authority to enter into a binding MOU or MOA, and whether all necessary parties would be bound. There are significant statutory constraints, for example, on EPA's authority to enter into binding agreements. Nevertheless, EPA would be pleased to participate in any process established by the BAAQMD.

Comment: EPA should follow the Clinton Administration's ''Common Sense'' option, and allow the Bay Area simply to focus on the 8-hour ozone standard on the schedule established for new ozone SIPs.

Response: This option apparently involves no near-term actions by State and local Bay Area agencies, since most substantive requirements and deadlines for SIPs addressing the 8-hour ozone NAAQS will not come due for approximately 5 years. The commenter appears to conclude that we should abandon efforts to reach a less stringent ozone standard on our way to achieving a more stringent ozone standard.

EPA's final promulgation of the revised 8-hour ozone NAAQS and final interim implementation policy, ''Guidance for Implementing the 1-Hour Ozone and Pre-Existing PM10 NAAQS'' (December 29, 1997), responded to commenters on the proposals, who argued that abandonment of SIP obligations to provide attainment plans for the 1-hour ozone NAAQS would be inconsistent with national public health goals, in view of the fact that new plans addressing the 8-hour ozone NAAQS will not be due until mid-2003. In order to ensure that momentum is maintained by state and local agencies, the final policy provides that the 1-hour standard and applicable Clean Air Act requirements will continue to apply to an area until EPA makes a determination that the area has met the 1-hour standard. As discussed elsewhere in response to comments, EPA believes that a compressed and streamlined planning process is necessary for the Bay Area to expedite efforts to protect public health. EPA agrees with commenters who concluded that this process will benefit rather than detract from eventual preparation of a SIP addressing the 8-hour ozone NAAQS.

2. Comments Relating to EPA's Proposed SIP Requirements

a. Emissions Inventory

Comment: While the BAAQMD has been maintaining and updating a weekday inventory for many decades, preparing a weekend day inventory, as EPA proposes to require, would demand extensive new data gathering and compilation, several person-years of effort, and one half-million dollars or more. Although assumptions could be made and best-judgment factors could be applied to weekday data to generate an estimate of weekend day data, the resulting uncertainties would hamper planning efforts based on their use. Such an extensive new requirement would be more appropriate for a SIP submittal focused on the new 8-hour NAAQS.

Response: Based on these comments from the State and the BAAQMD, EPA has decided to amend the proposed SIP submittal schedule to delete the weekend day emission inventory requirement. Nevertheless, EPA encourages BAAQMD and CARB to work together with State and regional planning and transportation agencies to assess weekend emissions and develop appropriate additional control measures as may be necessary and appropriate to ensure that weekend violations do not persist.

Comment: EPA proposed to require an updated carbon monoxide (CO) emissions inventory. A commenter noted that, although a CO inventory may help shed light on sources of ozone precursors, the CO inventory has no direct bearing on ozone attainment status and EPA should delete the requirement from the final redesignation.

Response: In order to minimize still further the scope of the Bay Area SIP obligation, EPA agrees to eliminate this requirement. Consequently, EPA finalizes in this action a SIP requirement for the existing 1995 inventory for VOC and NO_X emissions only.

b. Attainment Assessment

Comment: Bay Area industry, the State, and the BAAQMD argued that a credible attainment assessment, particularly one that takes into account the 1995–6 meteorological conditions and ambient concentrations, cannot be performed by May 1, 1998, due to data gaps and lack of modeling capability. If the BAAQMD should attempt an assessment, it would not be technically defensible and would not be accepted by the public or business community. Reliable modeling cannot be performed until the results of a new field study (conducted in 1999 or 2000) are available. Bay Area industry expressed concern that EPA's unrealistic schedule may lead the BAAQMD to prematurely ''lock in'' a control strategy that emphasizes counterproductive NO_X reductions.

On the other hand, environmental groups and other commenters felt that EPA's proposed schedule struck an appropriate balance between the competing concerns for acting quickly and acting knowledgeably. These commenters emphasized that the BAAQMD cannot assure compliance with the 1-hour NAAQS without first knowing what emissions are and what reductions are needed, and any extra time and effort spent to understand the problem now will pay double dividends in the future, in helping the regulatory agencies and affected industry comply with the Federal 8-hour NAAQS and the California 1-hour standard.

Response: EPA continues to believe that available data and technical analyses can be used to provide, within a very short period of time, a reasonable estimate of emission reductions needed to attain. The BAAQMD's October 1997 report, *Evaluation of the 1995 and 1996*

Ozone Seasons in the San Francisco Bay Area, recommended such an assessment. EPA remains willing to work with the BAAQMD to ensure that the exercise can be completed within the established time limits and resource constraints, and that the analysis will comply with applicable federal requirements. EPA notes that there is no CAA requirement that the Bay Area use Urban Airshed Modeling, and that other approaches may be appropriate to target the amount of emission reductions needed to attain the NAAQS expeditiously. The quality of technical data and analyses techniques will continually improve, but it does not make sense to wait for the ''perfect'' science to take action. Regulatory agencies need to use the best information available now to make reasonable decisions about how to protect public health. In order to allow more time to assess the reductions needed for attainment, EPA is extending the formal SIP submittal deadline for the attainment assessment from May 1, 1998 to June 15, 1999. The District has committed to submit a draft attainment assessment informally to EPA, and make it available to the public, by November 25, 1998. (Letter from BAAQMD, ABAG, and MTC dated June 23, 1998.) This early informal submittal will allow EPA to review the draft inventory and assessment and work with the District to address any deficiencies. Finally, with respect to industry's contention that EPA's schedule may lead the District to ''lock in'' allegedly counterproductive NO_X controls, EPA does intend to allow CARB and BAAQMD the flexibility to select the appropriate mix of ozone precursor controls to ensure attainment. This issue is also discussed below in the context of the NO_X waiver.

c. Control Measures

(i) Suggested Measures

Comment: Several of the commenters recommended particular control measures that could be adopted to speed Bay Area attainment. The most frequently mentioned new measure was the Smog Check 2 program. Sacramento Valley air pollution control districts and environmental groups also urged implementation of two additional reduction programs: (1) A heavy duty mobile source NO_X control strategy that includes incentives for early introduction of clean engine and fuel technologies; and (2) a requirement for permits and controls on smaller stationary sources, including natural gas fired boilers and internal combustion engines, and regulation of stationary diesel internal combustion engines, which are now exempt. The Sierra Club attached to their comment an extensive list of control measures for inclusion into the SIP, particularly suggestions for specific improvements to the Bay Area transportation control measures. CBE provided detailed recommendations for a variety of specific additional controls at Bay Area refineries and chemical plants. CBE also endorsed a public comment on the proposed redesignation from Chesapeake Environmental Group, Inc., advocating further reductions in VOC emissions from land fills by prohibitions on the use of petroleum-contaminated soil as a landfill cover. The Bay Area Environmental Justice Community recommended tough rules on oil refining and other polluting manufacturing processes, control on the movement of jobs to the outer suburbs, and commitments to redirect public funds to transit instead of highway building.

Response: EPA believes that the suggested control measures merit serious attention by the responsible agencies. EPA has forwarded the comments to CARB, BAAQMD, MTC and ABAG with encouragements to these agencies to consider the suggestions for incorporation into the SIP, as appropriate. In order to allow more time for evaluation of additional control measures, EPA is extending the SIP submittal deadline for adopted regulations or enforceable commitments to adopt regulations, from September 1, 1998, to June 15, 1999.

Comment: The Association of International Automobile Manufacturers, Inc., the New United Motor Manufacturing, Inc. (NUMMI), and Toyota Motor Manufacturing North America, Inc., commented that the adoption and implementation schedule of rules in the Bay Area's 1997 Clean Air Plan was coordinated with the implementation schedule of CAA section 183(e) rules for reducing VOC emissions and the Federal schedule for implementation of the maximum achievable control technology (MACT) standards for automobiles and light duty trucks. The commenters noted that the respective deadlines for these Federal rules are 2003 and 2000, respectively. The commenters emphasized that any acceleration of the BAAQMD's current schedule to meet EPA's proposed 1999 attainment deadline would likely result in duplicative efforts and inconsistent requirements, and thus increased costs to affected industry.

Response: EPA has asked the State to perform an assessment of reductions needed to attain the 1-hour ozone NAAQS expeditiously, in order to prevent recurrence of the violations experienced following the redesignation to attainment. EPA wishes the State to use its good judgment to determine which new controls should be adopted or expedited to meet attainment requirements, assuming that the attainment assessment identifies the need for more reductions to prevent exceedances by the attainment year 2000. EPA encourages the BAAQMD and other responsible agencies to select control approaches that maximize common sense and cost effectiveness.

Comment: Industry commenters questioned whether controls adopted to meet the 1-hour ozone NAAQS would necessarily be helpful in meeting the new 8-hour ozone NAAQS. Other commenters, however, noted that controls adopted to meet the Federal 1-hour ozone standard would contribute to eventual attainment of California's more stringent 1-hour ozone standard and could be generally presumed to benefit attainment of the new 8-hour ozone NAAQS.

Response: While EPA believes that the great majority of control possibilities for meeting the 1-hour ozone NAAQS will also advance attainment of the 8-hour ozone NAAQS in the Bay Area, EPA encourages CARB, BAAQMD, MTC, and ABAG to assess any new control measures that may be considered for expeditious attainment of the 1-hour ozone NAAQS, in order to ensure that the measures will also promote attainment of the 8-hour ozone NAAQS.

Comment: The BAAQMD proposed that new contingency measures be added to the SIP to augment the ones currently implemented. The BAAQMD stated that the process for identifying these measures ''can occur quickly through consultation among EPA, CARB, and the co-lead agencies. Through this process, we can commit our energies and our limited resources to pursuing our real shared goal—clean air for all people all the time—through common sense, flexible, cost-effective, and coordinated actions.''

In its comment letter, the BAAQMD identified the following options for supplementing the existing SIP controls:

(1) already adopted measures which have not been submitted into the SIP, such as controls on refinery fugitive emissions and pressure relief valves, NO_X Best Available Retrofit Control Technology (BARCT) controls on refineries and utilities, $1 increase in bridge tolls;

(2) measures that the BAAQMD will be pursuing in the near term, such as an aqueous solvents rule, new CMAQ-funded projects);

(3) State measures, such as further improvements to the I/M program.

Response: EPA shares completely the BAAQMD's goal statement to provide ''clean air for all people all the time—through common sense, flexible, cost effective, and coordinated actions.'' EPA also appreciates the BAAQMD's point that additional control measures can be identified quickly through consultation with EPA, CARB, and the co-lead agencies; and EPA would be happy to consult on appropriate measures.

In terms of supplementing the current SIP with additional control measures, EPA agrees the example measures are feasible. Depending on the outcome of the attainment assessment, however, additional controls may be needed. The Bay Area has already identified several feasible control measures in response to the State requirement for a 1997 Clean Air Plan. Upon review of the Bay Area's 1997 Clean Air Plan, CARB suggested a number of modifications to existing Bay Area regulations and transportation control measures that could result in additional emission reductions (See letter from Lynn Terry, Assistant Executive Officer, CARB to Ellen Garvey, Air Pollution Control Officer, BAAQMD, dated December 1, 1997.) In addition, EPA's Office of Air Quality Planning and Standards identified 42 cost effective control measures that may be appropriate for the Bay Area. (E.H. Pechan & Associates, Inc., ''Control Measure Analysis of Ozone and PM Alternatives: Methodology and Results,'' prepared for Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. EPA, RTP, NC July 17, 1997.) Whatever additional SIP measures are pursued, they must provide sufficient emission reductions to ensure expeditious attainment of the 1-hour ozone NAAQS in the Bay Area.

(ii) NO_X Waiver and the Efficacy of NO_X Controls

Comment: Industry commenters stated that EPA provided no adequate notice of its retroactive revocation of the NO_X waiver and the waiver remains appropriate to avoid requirements for expensive and counterproductive NO_X controls, since modeling evidence shows that NO_X reductions may elevate ozone concentrations at locations within the Bay Area under certain meteorological conditions, and thus could detract from attaining the ozone NAAQS.

Earthjustice, on behalf of Sierra Club and CBE, agreed with EPA's position that no waiver of NO_X control requirements now applies, but contended that the waiver continued during the maintenance period. Earthjustice considered that the waiver expired by its own terms, however, because it was explicitly conditional, lasting only as long as the area's monitoring data continue to demonstrate attainment. Finally, Earthjustice concluded that the Bay Area is therefore now subject to CAA section 182 requirements for NO_X control.

Response: Section 182(f) of the Act extends the ozone nonattainment area VOC requirements of subpart 2 of the Act to emissions of NO_X. This section also provides that the Administrator may, either on her own or in response to a petition, waive these subpart 2 NO_X requirements if, for nonattainment areas outside an ozone transport region, either of 2 tests are met. The section 182(f) NO_X requirements would not apply if the Administrator determines that (1) for the sources concerned, net air quality benefits are greater in the absence of the NO_X reductions, or (2) additional NO_X reductions would not contribute to attainment of the ozone NAAQS. Additionally, the NO_X control requirements, under the same tests, could be relieved as to any portion of the controls that are shown to result in excess emissions reductions. On December 16, 1993, EPA issued guidance on obtaining NO_X waivers.[9] This guidance was subsequently revised on May 27, 1994.[10]

At the time the Bay Area submitted its redesignation request, EPA guidance governing redesignations required, pursuant to section 107 of the Act, that an area must meet all applicable requirements of section 110 and part D prior to redesignation. Thus, before EPA could redesignate the Bay Area to attainment, the Bay Area had to adopt all required NO_X RACT rules. However, based on air quality data from official SLAMS monitors, EPA determined that the Bay Area had attained the NAAQS without adopting all of these rules. Based on the determination that the area was attaining without benefit of additional NO_X reductions, it was apparent that such reductions would not contribute to attainment of the ozone NAAQS. Thus, the Bay Area qualified for a waiver under the test provided in subsection 182(f)(1)(A). Therefore, the Bay Area requested, and EPA approved, a NO_X waiver under that subsection. One commenter points out that the waiver was granted in the same notice as the redesignation to attainment, arguing that this fact supports the position that the waiver must remain in effect. However, the waiver was acted on in the same notice so that the area could be redesignated without first meeting any remaining part D NO_X requirements. Because the Agency was ready to act on both requests at the same time, it saw no reason to hold up the redesignation so that it could grant the NO_X waiver first.

The NO_X waiver acts only to relieve an ozone nonattainment area from subpart 2 nonattainment area NO_X requirements. Once an area is redesignated to attainment these requirements no longer apply and a NO_X waiver is irrelevant. Moreover, as the May 27, 1994 John Seitz guidance memo cited above points out, the NO_X exemption test set forth in section 182(f)(1)(A) asks only if additional reductions of NO_X would contribute to attainment of the ozone NAAQS, not whether they would contribute to maintenance of the standard once attainment is confirmed through redesignation to attainment. Recognition of this by both the BAAQMD and EPA is inherent in the fact that the Bay Area's maintenance plan contingency measures, approved as part of the redesignation to attainment, are nearly all NO_X measures.

The commenters cite language in the May 27, 1994, guidance to support their position that EPA must notify the state and provide notice in the **Federal Register** in order to revoke NO_X exemptions. However, this language deals with a situation where a nonattainment area is granted a NO_X waiver based upon clean air quality data, the area is not redesignated to attainment, and the area subsequently violates the ozone NAAQS. In this situation the exemption must be revoked because the area remains a nonattainment area and, unless revoked, the exemption would continue, inappropriately, to apply. Such is not the case with an area, such as the Bay Area, which is redesignated to attainment and thereby becomes a maintenance area. In such areas the exemption, which applies to nonattainment areas, by its terms no longer applies.[11]

The commenters argue that EPA should not take any action to revoke the NO_X exemption because it remains appropriate due to the commenters'

[9] ''Guideline for Determining the Applicability of Nitrogen Oxide Requirements under Section 182(f),'' John Seitz, Director, Office of Air Quality Planning and Standards.

[10] ''Section 182(f) Nitrogen Oxides (No) Exemptions—Revised Process and Criteria,'' John Seitz, Director, Office of Air Quality Planning and Standards.

[11] Sections I.C. and II.A. of a later guidance document entitled ''Conformity: General Preamble for Exemption from Nitrogen Oxides Provisions expands on this point.'' See 59 FR at 31239–40, including note 1 (June 17, 1994).

position that the Bay Area is ''hydrocarbon limited, and * * * NO_X reduction measures may elevate ozone concentrations * * *.'' Even assuming that this is true, there is no legal basis for retaining the NO_X exemption. The Bay Area's exemption was granted based on three years of clean air quality data. After 43 exceedances and 17 violations of the ozone NAAQS in two years, the basis for the exemption no longer exists.

The commenters' concerns regarding the relationship between NO_X emissions and ozone formation in the Bay Area are appropriately addressed through the District's SIP revision process. Because the Bay Area is being redesignated under subpart 1 of the Act, there are no mandatory NO_X measures which must be adopted. On the other hand, the Bay Area may not eliminate from the SIP any existing NO_X controls without a demonstration that such revision would not interfere with progress, attainment, or other applicable requirements of the Act (CAA section 110(l)). In response to the redesignation, EPA expects CARB and BAAQMD to pursue whatever combination of VOC and NO_X reductions is most consistent both with expeditious attainment in the Bay Area and with the State's determination of appropriate and necessary emissions levels in the Bay Area consistent with the attainment and maintenance requirements of downwind areas. In view of the fact that nitrates appear to constitute more than one third of the Bay Area's fine particulate matter, EPA also recommends that the Bay Area take into account the role of NO_X emissions reductions in the control of fine particulates.

d. Attainment Deadline

Comment: The 1999 attainment deadline (assuming that attainment is to be based on 1997–99 air quality) is unrealistic, since most of the 1998 season will have passed before the control measure SIP submittal to EPA; consequently the plan will affect emissions only for 1999.

Response: The commenters appear to have misunderstood EPA's proposal. In accordance with the Agency's interpretation of the CAA requirement that plans ''provide for attainment,'' under a 1999 attainment deadline, the State would need only show that its SIP includes sufficient emission reductions in effect by the start of the 1999 smog season to ensure that no more than one exceedance at any monitor will occur in 1999. Moreover, EPA's proposal noted that, under the terms of CAA section 172(a)(2)(C), the area may be eligible for up to 2 1-year extensions of the attainment deadline if no more than 1 exceedance occurred in the year preceding the extension and the SIP is fully implemented. Finally, EPA notes that the same commenters arguing against a 1999 attainment deadline also claim that there is already strong evidence that the Bay Area will not experience future violations, since no exceedances were recorded in 1997 and both CARB and BAAQMD project that the emissions inventory will continue to decline. EPA recognizes that the proposed 1999 deadline may be difficult to meet if the attainment assessment demonstrates that substantial additional control measures are needed. In an effort to balance the time constraints associated with SIP adoption and submittal with the goal of protecting public health as quickly as possible, EPA has decided to extend the attainment deadline by one year to November 15, 2000.

Comment: Redesignation of the Bay Area will have no effect on air quality within the time frame proposed by EPA. The time from the start of rule development to achievement of the reductions is generally well over 18 months. Consequently, implementation of control measures would not occur until after the end of the 1999 ozone season. If EPA is seeking only to add federal enforceability to existing state air quality control requirements, then redesignation is clearly nothing more than a paperwork exercise since those control requirements are already in place.

Response: As discussed earlier, EPA wants the District to focus on near-term emission reductions, not paperwork. Because the District has already identified additional control measures in its 1997 California Clean Air Act plan, these measures could be used for a new federal plan and implemented sooner than initially planned to achieve near term emission reductions. Otherwise, under the California Clean Air Act plan, the Bay Area would not implement these measures until 2000 or later. EPA also believes that it is important to make federally enforceable all of the control measures needed to bring the Bay Area into attainment. This provides further assurance to the public that the control measures will be implemented and the emission reductions needed to protect public health achieved.

e. Planning Schedule

Comment: EPA's SIP schedule provides insufficient time to complete planning processes, public involvement, and adoption, since the co-lead agency planning process normally requires 15 months, California Environmental Quality Act (CEQA) requirements for public review must be satisfied under State law, at least 2 months are required for CARB review prior to submittal, and the regulated community needs adequate lead time to change or install new controls. The BAAQMD also concluded that more time to prepare a plan for the 1-hour ozone NAAQS would not result in a better plan, better air quality, or better health. The prudent course, according to the BAAQMD, is to focus on the new 8-hour NAAQS.

Response: EPA acknowledges the time constraints associated with SIP development, adoption, and submittal. On the other hand, EPA does not expect that the agencies will launch a wholly new planning exercise but rather that they will continue the 1997 Clean Air Plan planning effort, adding only an attainment assessment using available data and technical analyses and adjustments to the control measures that may be necessary to ensure expeditious attainment. In an effort to be responsive to the District's scheduling concerns without sacrificing near term public health protections, EPA has agreed to allow the State to submit only one official SIP revision on June 15, 1999 based on the District's commitment to submit a draft of the emissions inventory and attainment assessment to EPA by November 25, 1998. In committing to submit a draft inventory and assessment within 5 months after signature of the final redesignation by the Regional Administrator, the District also agreed to hold an early public workshop on the inventory and assessment. (Letter from Ellen Garvey, BAAQMD; Eugene Leong, ABAG; and Lawrence Dahms, MTC to Felicia Marcus dated June 23, 1998.) These changes not only extend the time frames contained in the proposal but also enable the District to hold one public hearing for all three elements of the SIP revision.

3. Comments on Miscellaneous Issues

a. Conformity

Comment: Several commenters questioned the effect of Bay Area redesignation on transportation conformity. One commenter argued that it would be inconsistent with CAA section 176(c) if EPA were to determine that the emissions budget from a new Bay Area SIP submittal applied simultaneously with the emissions budget in the currently-approved Bay Area maintenance plan.

Response: Today's action does not have an immediate effect on transportation conformity in the Bay

Area. The Bay Area currently has an approved ozone maintenance plan and the budgets in this plan continue to apply. Any EPA action with potential effects on transportation conformity will take place in the context of EPA's review of the Bay Area's June 15, 1999 SIP submittal.

The transportation conformity rule does not directly address a situation, like that in the Bay Area, where an approved maintenance plan proves to be inadequate and the area is redesignated and required to submit a new plan. However, EPA believes the correct interpretation of the conformity rule would require any new budgets contained in the June 15, 1999 submittal to become effective after a 45-day review period unless EPA finds them inadequate. EPA will continue to work with the US Department of Transportation (DOT) to resolve DOT's concerns regarding the interpretation of the rule and simultaneous applicability of budgets and will make a final policy decision in the future.

b. Congestion Mitigation and Air Quality (CMAQ) Funding

Comment: Redesignation of the Bay Area to nonattainment without a classification could jeopardize the Bay Area's continued eligibility for CMAQ funding pursuant to either current law or the pending bills for reauthorization of the Intermodal Surface Transportation Efficiency Act (ISTEA).

Response: Under the Transportation Equity Act for the 21st Century (TEA–21), the new transportation funding legislation, signed recently by the President, redesignation of the Bay Area to nonattainment for ozone will not affect CMAQ eligibility. In fact, the Bay Area will be eligible for more CMAQ funding than they were allocated under ISTEA, the previous transportation funding legislation.

c. Unfunded Mandates Reform Act (UMRA)

Comment: Some commenters asserted that EPA failed to comply with the Unfunded Mandates Reform Act (UMRA), and should have prepared a statement in accordance with section 202 of UMRA. In the proposal, EPA stated that the redesignation did not trigger section 202, as it did not contain any federal mandate because it did not impose any enforceable duties, and that even if it did contain a federal mandate, the resulting expenditures would not exceed $100 million in any one year. Commenters argued that the redesignation does impose an enforceable duty upon California and the BAAQMD, because failure to adopt a SIP would result in loss of highway funds and, in addition, result in more stringent emissions offset requirements for new and modified stationary sources, result in loss of grants, and trigger a duty for EPA to issue a federal implementation plan (FIP).

One commenter also argued that the redesignation constitutes a private sector mandate under UMRA, because it requires the District to submit regulations or enforceable commitments to adopt regulations imposing duties on emissions sources. However, the test for a private sector mandate under UMRA is whether it ''would impose an enforceable duty upon the private sector.'' Clearly the redesignation has created no duty enforceable against any private party. The commenter also states that EPA is requiring that new source review permitting requirements, applicability thresholds and offset ratios be set ''by analogy'' at the levels otherwise applicable to moderate nonattainment areas. These are the levels currently in effect in the Bay Area as a result of the area's previous status as a moderate nonattainment area and therefore present no new burdens on private parties in any event.

Some commenters also asserted that the redesignation will impose costs in excess of $100 million. This estimate was based on projected costs of complying with the types of requirements the commenter believes would be imposed if the state were to adopt a SIP.

Response: EPA does not believe that it is necessary to resolve the issues of whether the redesignation constitutes a ''federal mandate'' or requires consideration of costs to private parties, as well as costs to the state, under UMRA.

EPA believes that even if it were construed as a federal mandate, with costs to private parties to be considered as well as costs to the state, those costs could not reasonably be expected to exceed $100 million in any one year. EPA has conducted an analysis of potential costs to private parties. In terms of the impact on the private sector, the BAAQMD has yet to determine the amount of needed reductions and the mix of VOC and NO_X measures to achieve the needed reductions. EPA used cost data developed for the July 1997 ''Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule,'' as the basis of its analysis. This data shows that the national average cost for reasonably available VOC control measures is higher than the national average cost for reasonably available NO_X control measures ($2,652 per ton per year for VOC; $1,937 per ton per year for NO_X, expressed in 1990 dollars). EPA assumes that reductions of both VOC and NO_X will be necessary to bring the Bay Area back into attainment. However, for the purpose of this analysis EPA assumed that all the needed reductions would come from VOC measures because this approach would over-estimate the actual costs. In addition, EPA assumed that VOC emissions may need to be reduced by as much as 80 tons per day (approximately 28,800 tons per year) above and beyond measures currently underway at the State and local levels. This amount of reductions is significantly greater than that assumed to be needed by the various interested parties. During the extensive stakeholder process EPA has heard that anywhere from 0 to 50 tons per day in additional reductions will be necessary. Thus, by assuming 80 tons per day for the purposes of this analysis, EPA believes that it is significantly overestimating the costs. Even by employing cost numbers and tons to be reduced that are significantly higher than what EPA believes the actual results will be, the impacts would still be less than $100 million (i.e., $76,377,600).

As previously discussed in Section III.D.3.b. of this notice, one commenter indicated that the redesignation without classification under the Clean Air Act would result in loss of highway funds in excess of $100 million under ISTEA and that this should be viewed as the cost of the ''mandate''. The interplay of these two distinct statutes, were it to result in a significant decrease in highway funding to the Bay Area, would not be a mandate as it is defined in UMRA, as it would impose no enforceable duty on State, local or tribal governments. Moreover, as discussed above in section III.D.3.b., EPA, in consultation with the Department of Transportation, has determined that the redesignation will not result in any significant loss of highway funding to the Bay Area under the recently passed reauthorization of ISTEA.

d. Procedural Obligations Under CAA Section 107 and the Administrative Procedures Act (APA)

Comment: EPA has failed to follow the procedure set forth in section 107(d)(3) of the Act for redesignating areas, and consequently has failed to follow procedural requirements of the Administrative Procedure Act.

Response: The commenters misinterpret both the plain language of sections 107(d)(3) (A), (B) and (C), and

the intent of these sections. As described more fully below, the exchange of correspondence between EPA and a State provided for by section 107(d)(3) is intended to address situations where there is agreement that a redesignation is necessary, but differing opinions concerning the boundaries of the area, or portion thereof, to be redesignated.

Section 107(d)(3) of the Act sets forth the procedure for redesignation of areas and provides that the Administrator may at any time notify the Governor of any state that available information indicates that the designation of any area should be revised. Section 107(d)(3)(B) provides that the Governor has 120 days from receipt of this letter to submit to the Administrator such redesignation, if any, of the appropriate area (or areas) or portion thereof as the Governor considers appropriate.

Section 107(d)(3)(C) contemplates four potential outcomes which flow from a Governor's response to notification from EPA that an area should be redesignated:

(1) The Governor concurs with EPA's notification and submits a redesignation of the same area, or portion thereof, that was proposed by EPA. In this event, section 107(d)(3)(C) provides that EPA must promulgate the redesignation no later than 120 days after receipt of the Governor's redesignation submittal. No further correspondence with the Governor is required.

(2) The Governor concurs with EPA's notification that a redesignation is necessary, but submits a redesignation of the area with different boundaries, or submits a redesignation of only a portion of the area that was proposed by EPA. If EPA agrees with the Governor's redesignation submittal, section 107(d)(3)(C) provides that EPA must promulgate the redesignation no later than 120 days after receipt of the Governor's redesignation submittal. No further correspondence with the Governor is required.

(3) The Governor concurs with EPA's notification that a redesignation is necessary, but submits a redesignation of the area with different boundaries, or submits a redesignation of only a portion of the area that was proposed by EPA. If EPA disagrees with the Governor's submittal, section 107(d)(3)(C) provides that EPA may make such modifications as it deems necessary, but must notify the State 60 days before promulgation of the redesignation in order to provide the State with an opportunity to demonstrate why any proposed modification is inappropriate.

(4) The Governor does not submit a redesignation for an area, or portion thereof. Section 107(d)(3)(C) provides that EPA ''shall promulgate such redesignation, if any, that the Administrator deems appropriate.'' No further correspondence with the Governor is required.

In the instance at hand, EPA notified the Governor of California by letter dated August 21, 1997, that the Bay Area should be redesignated to nonattainment for ozone, based on available air quality data demonstrating 43 exceedances and 17 violations of the standard in the two-year period from 1995 through 1996. The Governor of California did not submit a redesignation of the Bay Area. Rather, the Governor responded, by letter dated December 10, 1997, that he does not believe any redesignation is appropriate. Thus, EPA's action is governed by the last sentence of section 107(d)(3)(C), which provides that EPA ''shall promulgate such redesignation, if any, that the Administrator deems appropriate.''

EPA has complied with the requirements of both the Clean Air Act and the Administrative Procedure Act in its action to redesignate the Bay Area. EPA has conducted notice and comment rulemaking, fully considering all comments received, including those provided by the Governor. Contrary to the assertions of the commenter, there is nothing in either statute which precludes EPA from proposing a redesignation at any time following notification of the Governor. EPA is free to solicit comment from the general public simultaneously with the Governor's notification, at any time during the 120 day period for the Governor's response, or at any time following the Governor's response, so long as EPA complies with the time periods set forth in section 107(d)(3), and its general duty to consider and respond to all comments.

While it is true that EPA made minor changes to the redesignation requirements set out in the Governor's notification when the Agency published its proposal, the State was in no way prejudiced by this fact. The changes did not relate to area boundaries, or portions thereof, and therefore did not invoke the notification procedures. EPA's proposed rulemaking provided a 60 day public comment period and the State was provided with a copy of the proposal on December 11, 1997, 8 days before it was published in the **Federal Register**. The State provided EPA with comments on its proposal on February 17, 1998. These comments, as well as the Governor's response letter, have been fully considered in EPA's decision to redesignate the Bay Area.

IV. Final Action

A. Overview

As discussed in the response to comments, EPA remains convinced that the Agency's appropriate action, in the face of numerous and widespread violations of the 1-hour ozone standard in the Bay Area, is to finalize the redesignation of the San Francisco Bay Area to nonattainment for the 1-hour ozone NAAQS. EPA takes this action under CAA section 107(d), based specifically on the Bay Area's 17 violations of the 1-hour ozone NAAQS over the 3-year period, 1994–1996.

EPA also finalizes the Agency's determination that the Bay Area should not be classified under subpart 2 of the CAA, but rather should be required to meet applicable requirements of CAA subpart 1.

B. SIP Requirements and Deadlines

In accordance with CAA sections 110 and 172, the State must submit by June 15, 1999 a SIP revision containing: (1) The existing 1995 emissions inventory for NO_X and VOC in the Bay Area; (2) an assessment, using available data and technical analyses, of the emission reductions needed to attain the federal 1-hour ozone standard; and (3) adopted regulations and/or control measures with enforceable commitments to adopt and implement the control measures in regulatory form by specified dates. The extension for the emissions inventory and attainment assessment submittal is being granted in response to a commitment made by the Air District (Letter from Ellen Garvey, BAAQMD et al. to Felicia Marcus, EPA Region IX, dated June 23, 1998) to provide the inventory and assessment to EPA in draft within 5 months of the final redesignation. This early, informal submittal will allow EPA to review the draft inventory and assessment and work with the District to address any deficiencies. The District also agreed to hold an early public workshop on the draft inventory and assessment. The adopted regulations and control measures, and the schedule for adoption and implementation of such measures, must be sufficient to meet reasonable further progress and attain the 1-hour NAAQS expeditiously but no later than November 15, 2000. EPA emphasizes that the submittal due on June 15, 1999 must include contingency measures that go into effect if the Bay Area does not attain the NAAQS by the prescribed deadline in order to address the specific requirement of CAA section 172(c)(9).

For a more complete discussion of subpart 1 elements applicable to these SIP submittals, the reader is referred to the proposal (62 FR 66580–66581).

SCHEDULE OF SUBMITTALS STATE IMPLEMENTATION PLAN FOR OZONE FOR THE SAN FRANCISCO BAY AREA

Action/SIP submittal	Date
1995 emissions inventory for VOC and NO_X	Draft—11/25/98 Final—6/15/99
Assessment, employing available data and technical analyses, of the level of emission reductions needed to attain the current 1-hour ozone National Ambient Air Quality Standard (NAAQS). This assessment should take into account the meteorological conditions and ambient concentrations associated with the violations of the ozone NAAQS in the period 1995–6, and should be based on likely control measures for reducing VOC and NO_X emissions.	Draft—11/25/98 Final—6/15/99
Adopted regulations and/or control measures, with enforceable commitments to adopt and implement the control measures in regulatory form by specified dates, sufficient to meet reasonable further progress and attain the 1-hour NAAQS expeditiously but no later than November 15, 2000.	6/15/99

C. Changes from Proposal

In this final action, EPA has amended both the schedule and content of the proposed SIP requirements in response to public comments, as discussed above in section III.D.2. The changes are as follows:

Proposal—weekend emissions inventory and CO inventory required	Final—weekend emissions inventory and CO inventory not required.
Emissions inventory and attainment assessment due to EPA 5/1/98	Emissions inventory and attainment assessment due to EPA 6/15/99. (Commitment to submit draft by 11/25/98.)
Adopted regulations and/or control measures with enforceable commitments due 9/1/98.	Adopted regulations and/or control measures with enforceable commitments, and final emissions inventory and attainment assessment due 6/15/99.
Attainment date of 11/15/99	Attainment date of 11/15/2000.

V. Emission Reduction Opportunities

Under EPA's final redesignation, the Air District and its co-lead agencies are responsible for determining the appropriate mix of control measures that will most effectively bring the Bay Area into attainment with the 1-hour ozone standard. The Bay Area, like other major metropolitan areas, is experiencing rapid economic growth and an increasing population that may lead to emission increases from both the stationary and mobile source sectors. Given these circumstances, the Air District may wish to explore new and innovative approaches for achieving reductions from both source sectors. EPA believes that traditional control strategies aimed at reducing emissions from stationary sources are essential to any air pollution control program. At the same time, EPA supports efforts to develop alternative emission reduction methods. Mobile source emissions, for example, make up the majority of the ozone precursor inventory in many urban areas, including the Bay Area, but air pollution control agencies often have difficulty regulating these emissions. Mobile sources are therefore good candidates for non-traditional approaches. EPA encourages the BAAQMD and its co-lead agencies to identify opportunities for innovation, in addition to traditional control strategies, as they develop measures to bring the Bay Area into attainment of the ozone standard.

A. Stationary Sources

Stationary sources in the Bay Area emit approximately 152 tons of VOC and 157 tons of NO_X per day (Bay Area Clean Air Plan, Volume 1, p.21). This current level of emissions reflects tremendous progress in stationary source reductions over the past 20 years. Nonetheless, BAAQMD will need to assess whether additional stationary source measures are needed to help the Bay Area attain the federal 1-hour ozone standard. Recently, BAAQMD proposed in its 1997 Clean Air Plan several stationary source measures believed to be both feasible to implement and effective at reducing emissions. EPA expects that the District will analyze which control measures from this plan are needed to attain the standard and assess whether any measures beyond those contained in the plan are also needed. If additional measures are needed, the District may want to consider stationary source measures suggested by public commenters on the redesignation proposal such as improving tank and flare design, eliminating exemptions from certain District rules, and improving controls on energy sources (e.g., natural gas fired boilers and privately owned and operated power plants). However, EPA is not requiring adoption of these or any other specific controls; it is the BAAQMD's authority and responsibility to determine the appropriate mix of Bay Area measures.

B. Transportation Control Measures

Given that on-road motor vehicles emit 43% of the total VOC and 47% of the total NO_X emissions in the Bay Area (Bay Area 1997 Clean Air Plan, Volume 1, p.7), that vehicle travel has been steadily increasing, and that the Metropolitan Transportation Commission (MTC) directs the allocation of billions of dollars of transit funds, MTC plays an important role in the Bay Area's overall strategy to attain the 1-hour ozone standard. MTC is currently updating its 20-year plan and will continue to revise this plan every two years. MTC's planning process offers a good opportunity to incorporate air quality goals into both long term planning and short term projects. In addition, MTC is required to identify possible transportation control measures (TCMs) as part of the California Clean Air Plan (CAP). The Bay Area's 1997 CAP contained an estimated 7 tons per day (3 tpd VOC, 4 tpd NO_X) worth of potential reductions from TCMs for the year 2000 and even more for later years (Bay Area 1997 Clean Air Plan, Volume 1, p.49). If these measures were adopted and submitted for SIP approval, they could make a measurable contribution toward attainment of the 1-hour ozone standard. Finally, MTC may be able to help reduce emissions by reevaluating

the way it distributes transportation funds, the way it finances transportation projects, its policies with respect to land use and transportation and giving priority to the most cost-effective (i.e., tons of emission reduction per dollar spent) investments.

C. Voluntary Measures

EPA encourages the State, District and co-lead agencies to explore innovative approaches to achieving their air quality goals. One possible area for innovation is the mobile source arena. Mobile sources emit 75% of the total NO_X emissions and 58% of the total VOC emissions in the Bay Area (Bay Area 1997 Clean Air Plan, Volume 1, p. 7). Though there have been great strides in reducing vehicle emission rates, transportation emissions continue to be a problem due to large increases in vehicle miles travelled (VMT). Regulatory agencies and others are therefore developing voluntary mobile source strategies that promote changes in local transportation sector activity levels and changes in in-use vehicle and engine fleet composition to complement regulatory programs.

Voluntary mobile source control measures have the potential to contribute to, in a cost-effective manner, emission reductions needed for attainment of the NAAQS. EPA believes, therefore, that SIP credit is appropriate for voluntary mobile source emission reduction programs (VMEPs) where we have confidence that the measures can achieve emission reductions. Consistent with that belief, EPA issued its October 23, 1997 ''Guidance on Incorporating Voluntary Mobile Source Emission Reduction Programs in State Implementation Programs'' (signed by Richard Wilson, Acting Assistant Administrator for Air and Radiation). The guidance lays out the terms and conditions for establishing and implementing VMEPs and the guidelines for SIP approval. In light of the innovative nature of voluntary measures and EPA's inexperience with quantifying their emission reductions, EPA's guidance limits the amount of emission reductions allowed for VMEPs in a SIP to 3% of the total projected future year emission reductions required to attain the appropriate NAAQS. In addition, the guidance requires that a state or local agency track on an annual basis the resulting emissions effect of the voluntary measure and also commit to remedy any shortfall if the VMEP does not achieve projected emission reductions.

The BAAQMD and co-lead agencies may wish to take advantage of the flexibility provided by EPA's voluntary mobile source measures policy as they develop their SIP control strategies in response to the redesignation. EPA encourages the three co-lead agencies to work with the business and environmental communities that may have an interest in developing or participating in such innovative strategies, as stakeholder involvement is a critical factor in building community acceptance and ultimate success. For example, the Silicon Valley Manufacturing Group has worked with businesses to develop the ECOPASS program; this is an employer-sponsored alternative commute program that is designed to get employees out of their cars and onto public transit. Another example is the BAAQMD's ''Spare-the-Air'' Program, a public education campaign that encourages citizens to refrain from or reduce activities that produce emissions of ozone precursors. The program currently enjoys the participation of 475 businesses and is continuing to grow with the help of the Bay Area business community. EPA applauds BAAQMD and the business community for successfully implementing these innovative and important programs. The BAAQMD has not yet submitted to EPA its plan for quantifying and tracking the impacts of these programs on an on-going basis, and therefore EPA has not yet evaluated how the District will ensure that the criteria presented in the VMEP guidance will be met. However, EPA is currently consulting with the BAAQMD regarding quantification and tracking of emissions associated with these programs and will continue to work with the District to clarify the VMEP policy. We encourage the District and its co-lead agencies to consider and pursue other innovative approaches as they evaluate measures needed to attain the ozone standard.

D. Enhanced Inspection and Maintenance

While the Bay Area has both the flexibility and the responsibility to determine the appropriate mix of control measures that are needed to attain the federal 1-hour ozone standard, EPA believes that emission reductions from implementation of an enhanced inspection and maintenance program would make a substantial contribution to attainment in the Bay Area. The California Bureau of Automotive Repair has indicated that implementation of the California Smog Check 2 program (California's enhanced I/M program) would result in an incremental benefit of 12 tons per day VOC and 14 tons per day NO_X. EPA is hopeful that Bay Area leaders will work together to pursue authorization and expeditious implementation of an enhanced I/M program. Furthermore, implementation of an enhanced I/M program in the Bay Area would address some of the equity concerns raised by Bay Area's downwind neighbors who are impacted by pollution from the Bay Area and are required under federal and State law to implement an enhanced I/M program. EPA does not believe, however, that enhanced I/M is the complete answer to Bay Area's ozone nonattainment problem. EPA believes that the BAAQMD should evaluate measures aimed at both the stationary and mobile source sectors that will work together to achieve healthy air in the Bay Area.

E. Mitigating Emissions Increases From Oakland Seaport and Airport Expansion Projects

The Port of Oakland is planning to expand its operations over the next several years. Dredging operations, which will provide larger vessels with access to the Port, will begin in February 2000. Emissions of CO and VOCs from dredging and related construction activities are not expected to be significant. Gas or diesel powered dredging equipment, however, emits significant quantities of NO_X; the draft EIS/EIR prepared by the U.S. Army Corps of Engineers (COE) for the port expansion estimates that total construction-related NO_X emissions, gas or diesel powered dredging equipment, would be in the range of 1500 to 1700 tons over the four-year period (2000–2004) during which dredging will occur. The COE, however, has subsequently indicated that it plans to use electric dredging equipment which would reduce the potential construction-related NO_X emissions to 330 tons over four years, or an average of 83.5 tons per year. The dredging and related construction activities performed by the COE are subject to the General Conformity regulations (40 CFR 93.150), which require federal agencies to demonstrate that emissions from federal projects conform to the approved State Implementation Plan if the emissions are above ''de minimis'' levels defined in 40 CFR 93.153. Because the Corps of Engineers will be employing electric dredging equipment in its construction activities, and limiting the number of disposal trips per year, the emissions will be below the 100 ton per year NO_X de minimis level established in the conformity regulations and a conformity determination is therefore not required. The Corps' plan to use electric dredging equipment will help to ensure cleaner air for the surrounding community and the Bay Area as a whole and contribute

to efforts to achieve attainment with the ozone standard.

Once construction of the Port expansion project is complete, operational emissions increases are projected to be significant. Because the long-term emissions from new vessels, trucks, trains, terminal operations, and employee vehicles are considered to be indirect emissions that cannot be practicably controlled by and are not under a continuing program responsibility of the COE, these activities are exempt from the conformity requirements. EPA believes however, that mitigation of these long-term emissions may be an important part of the Bay Area's strategy for attaining and maintaining not only the 1-hour ozone NAAQS, but the revised 8-hour and PM2.5 NAAQS as well. For this reason, EPA encourages the Port to work with BAAQMD and MTC to identify opportunities to mitigate long-term emission increases from the project. EPA also welcomes opportunities to share information regarding mitigation techniques that have been identified during discussions with the South Coast AQMD on ports and airports.

Plans to expand the Oakland Airport are also underway and EPA believes that the project will be subject to the General Conformity requirements. EPA believes that there are opportunities to mitigate emissions increases associated with the expansion and again welcomes the opportunity to share information resulting from discussions with the South Coast regarding reducing airport emissions.

VI. Administrative Requirements

A. Executive Order (E.O.) 12866

Under E.O. 12866, (58 FR 51735, October 4, 1993), EPA is required to determine whether today's action is a ''significant regulatory action'' within the meaning of the E.O., and therefore should be subject to OMB review, economic analysis, and the requirements of the E.O. See E.O. 12866, sec. 6(a)(3). The E.O. defines, in sec. 3(f), a ''significant regulatory action'' as a regulatory action that is likely to result in a rule that may meet at least one of four criteria identified in section 3(f), including,

(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.

EPA has determined that the redesignation to nonattainment finalized today, as well as the establishment of SIP submittal schedules, would result in none of the effects identified in E.O. 12866 sec. 3(f). Under section 107(d)(3) of the Act, redesignations to nonattainment are based upon air quality considerations. The finding, based on air quality data, that the Bay Area is not attaining the ozone NAAQS and should be redesignated to nonattainment does not, in and of itself, impose any new requirements on any sectors of the economy. Similarly, the establishment of new SIP submittal schedules merely establishes the dates by which SIPs must be submitted, and does not adversely affect entities.

B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. section 601 et. seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. sections 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.

A redesignation to nonattainment under section 107(d)(3), and the establishment of a SIP submittal schedule for a reclassified area, do not, in and of themselves, directly impose any new requirements on small entities. See *Mid-Tex Electric Cooperative, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985) (agency's certification need only consider the rule's impact on entities subject to the requirements of the rule). Instead, this rulemaking simply makes a factual determination and to establish a schedule to require the State to submit SIP revisions, and does not directly regulate any entities. Because EPA is applying the same permitting applicability thresholds and offset ratios applicable to moderate areas, no additional sources will be subject to these requirements as a result of EPA's action. Therefore, pursuant to 5 U.S.C. 605(b), EPA certifies that today's action does not have a significant impact on a substantial number of small entities within the meaning of those terms for RFA purposes.

C. Unfunded Mandates Reform Act

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. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, when EPA promulgates ''any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more'' in any one year. A ''Federal mandate'' is defined, under section 101 of UMRA, as a provision that ''would impose an enforceable duty'' upon the private sector or State, local, or tribal governments,'' with certain exceptions not here relevant. Under section 203 of UMRA, EPA must develop a small government agency plan before EPA ''establish[es] any regulatory requirements that might significantly or uniquely affect small governments.'' Under section 204 of UMRA, EPA is required to develop a process to facilitate input by elected officers of State, local, and tribal governments for EPA's ''regulatory proposals'' that contain significant Federal intergovernmental mandates. Under section 205 of UMRA, before EPA promulgates ''any rule for which a written statement is required under [UMRA sec.] 202,'' EPA must identify and consider a reasonable number of regulatory alternatives and either adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, or explain why a different alternative was selected.

EPA has concluded that this rule is not likely to result in the promulgation of any Federal mandate that may result in expenditures of $100 million or more for State, local or tribal governments in the aggregate, or for the private sector, in any one year. It is not necessary to resolve here whether a redesignation would constitute a federal mandate.

Even assuming that a redesignation were considered a Federal mandate, and it were appropriate to consider both private and public sector costs, the anticipated annual costs resulting from the mandate would not exceed $100 million to the private sector, State, local

and tribal governments. In terms of the impact on the private sector, the BAAQMD has yet to determine the amount of needed reductions and the mix of VOC and NO_X measures to achieve the needed reductions. EPA used cost data developed for the July 1997 ''Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule,'' as the basis of its analysis. This data shows that the national average cost for reasonably available VOC control measures is higher than the national average cost for reasonably available NO_X control measures ($2,652 per ton per year for VOC; $1,937 per ton per year for NO_X, expressed in 1990 dollars). EPA assumes that reductions of both VOC and NO_X will be necessary to bring the Bay Area back into attainment. However, for the purpose of this analysis EPA assumed that all the needed reductions would come from VOC measures because this approach would over-estimate the actual costs. In addition, EPA assumed that VOC emissions may need to be reduced by as much as 80 tons per day (approximately 28,800 tons per year) above and beyond measures currently underway at the State and local levels. This amount of reductions is significantly greater than that assumed to be needed by the various interested parties. During the extensive stakeholder process EPA has heard that anywhere from 0 to 50 tons per day in additional reductions will be necessary. Thus, by assuming 80 tons per day for the purposes of this analysis, EPA believes that it is significantly overestimating the costs. Even by employing cost numbers and tons to be reduced that are significantly higher than what EPA believes the actual results will be, the impacts would still be less than $100 million (i.e., $76,377,600).

The cost to the State of California is the cost of developing, adopting and submitting any necessary SIP revision. Because that cost, taken in combination with private sector costs, will not exceed $100 million, this action (even assuming it is a federal mandate) is not subject to the requirements of sections 202 and 205 of UMRA (2 U.S.C. 1532 and 1535). EPA has also determined that this action would not result in regulatory requirements that might significantly or uniquely affect small governments because only the State would take any action as result of today's rule, and thus the requirements of section 203 (2 U.S.C. 1533) do not apply.

D. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

This final rule is not subject to E.O. 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997) because this is not an economically significant regulatory action as defined by E.O. 12866, and because it does not involve decisions on environmental health risks or safety risks that may disproportionately affect children.

E. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major'' rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, National parks.

Dated: June 25, 1998.

Felicia Marcus,

Regional Administrator, Region IX.

Part 81, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

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

2. In § 81.305, the table for California—Ozone, is amended by revising the entry for the San Francisco Bay Area to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA-OZONE

Designated Area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
San Francisco—Bay Area:				
Alameda County	August 10, 1998	Nonattainment.		
Contra Costa County	.....do	.....do		
Marin County	.....do	.....do		
Napa County	.....do	.....do		
San Francisco County	.....do	.....do		
Santa Clara County	.....do	.....do		
San Mateo County	.....do	.....do		
Solano County (part)	.....do	.....do		
Sonoma County (part)	.....do			

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 98–18272 Filed 7–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300677; FRL–5797–7]

RIN 2070–AB78

Bifenthrin; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for residues of bifenthrin in or on raspberries. 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 raspberries. This regulation establishes maximum permissible levels for residues of bifenthrin in this food commodity pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerance will expire and is revoked on December 31, 1999.

DATES: This regulation is effective July 10, 1998. Objections and requests for hearings must be received by EPA on or before September 8, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300677], 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–300677], 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. 119, 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–300677]. 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 insecticide bifenthrin, in or on raspberries at 3.0 parts per million (ppm). This tolerance will expire and is revoked on December 31, 1999. 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 Bifenthrin on Raspberries and FFDCA Tolerances

The Applicants state that an emergency situation is present due to these pests developing resistance to available alternatives, and the low tolerance for weevil contamination in raspberries. Rejection by the processors of contaminated raspberries can lead to significant losses in revenue for the growers. EPA has authorized under FIFRA section 18 the use of bifenthrin on raspberries for control of weevils in Washington and Oregon. After having reviewed the submission, EPA concurs

that emergency conditions exist for these states.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of bifenthrin in or on raspberries. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and EPA decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. Consistent with the need to move quickly on the emergency exemption in order to address an urgent non-routine situation and to ensure that the resulting food is safe and lawful, EPA is issuing this tolerance without notice and opportunity for public comment under section 408(e), as provided in section 408(l)(6). Although this tolerance will expire and is revoked on December 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on raspberries 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 bifenthrin meets EPA's registration requirements for use on raspberries 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 bifenthrin 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 Washington and Oregon to use this pesticide on this crop under section 18 of FIFRA without following all provisions of section 18 as identified in 40 CFR part 166. For additional information regarding the emergency exemption for bifenthrin, 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 inresidential 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 three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive 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, less than 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 bifenthrin and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for residues of bifenthrin on raspberries at 3.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity*. The maternal NOEL of 1 milligram/kilogram/day (mg/kg/day) from the oral developmental toxicity study in rats is used for acute dietary risk assessments. The maternal lowest observable effect level (LOEL) of this study of 2 mg/kg/day was based on tremors from day 7-17 of dosing. This acute dietary endpoint is used to estimate dietary risks to all population subgroups.

2. *Short - and intermediate - term toxicity*. The maternal NOEL of 1 mg/kg/day from the oral developmental toxicity study in rats is also used for short- and intermediate-term MOE calculations (as well as acute, discussed in (1) above).

3. *Chronic toxicity*. EPA has established the RfD for bifenthrin at 0.015 mg/kg/day. This RfD is based on a 1-year oral feeding study in dogs with a NOEL of 1.5 mg/kg/day, based on intermittent tremors at the LOEL of 3 mg/kg/day; an uncertainty factor of 100 is used.

4. *Carcinogenicity*. OPP has classified bifenthrin as a Group C chemical (possible human carcinogen) based upon urinary bladder tumors in mice, but did not recommend assignment of a Q^*.

B. Exposures and Risks

1. *From food and feed uses*. Tolerances have been established (40 CFR 180.442) for the residues of bifenthrin, in or on a variety of raw agricultural commodities. Tolerances, in support of registrations, currently exist for residues of bifenthrin on hops; strawberries; corn grain, forage, and fodder; cotton seed; and livestock commodities of cattle, goats, hogs, horses, sheep, and poultry. Additionally, time-limited tolerances associated with emergency exemptions have been established for broccoli, cauliflower, raspberries, cucurbits, and canola. Risk assessments were conducted by Novigen Sciences, Inc., and reviewed by EPA, to assess dietary exposures and risks from bifenthrin 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 1 day or single exposure. The acute risk assessment used Monte Carlo methodology. This methodology incorporates distributions of residues and refined percent of crop treated estimates, and thus results in highly refined risk estimates. For the most highly exposed population subgroup, children 1-6 years old, the resulting high-end exposure (at the 99.9th percentile) results in a dietary (food only) MOE of 193; at the 99th percentile the MOE is 1018. For non-nursing infants <1 Year Old, the high-end exposure (at the 99.9th percentile) MOE is 590; at the 99th percentile it is 880. For the Overall U.S. population, the high-end exposure (99.9th percentile) MOE is 466; at the 99th percentile it is 1768. The MOE estimates are all well within acceptable limits (>100) for all population subgroups.

ii. *Short- and intermediate-term risk*. The short- and intermediate-term risk assessment used maximum anticipated residue levels for cotton, extrapolated residue levels for meat/milk/poultry/eggs, and air monitoring data collected from 15 homes in four states. Based on this data, the MOEs for children are calculated to be 280 for the average consumer and 250 for the high-end consumer. The MOEs for adults are

calculated to be 450 for the average consumer and 390 for the high-end consumer. EPA generally has no concern for MOEs greater than 100, and thus these do not exceed EPA's level of concern.

iii. *Chronic exposure and risk.* The chronic dietary (food only) risk assessment for bifenthrin was conducted using Monte Carlo methodology, and thus these risk estimates are highly refined. This risk assessment estimated that dietary exposure to bifenthrin will utilize 0.1% of the RfD for the overall U.S. population. The major identifiable subgroup with the highest exposure is non-nursing infants <1 year old, at 0.3% of the RfD. This is further discussed below in the section on infants and children. EPA generally has no concern for exposure below 100 percent 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.

2. *From drinking water.* A Tier II drinking water assessment of bifenthrin was conducted, using computer models which simulate the fate in a surface water body. The estimated environmental concentrations (EECs) are generated for high exposure agricultural scenarios and represent one in ten years EECs in a stagnant pond with no outlet that receives pesticide loading from an adjacent 100% cropped, 100% treated field. As such, these computer generated EECs represent conservative screening levels for ponds and lakes and are used only for screening. The EECs for surface water ranged from a peak of 0.260 part per billion (ppb), to a 90-days average of 0.018 ppb. In conducting both the acute and chronic risk assessments, Monte Carlo methodology was again used, and thus these risk estimates are considered to be highly refined.

i. *Acute exposure and risk.* The MOEs for the acute risk estimate from drinking water for bifenthrin ranged from 29,035 for the most highly exposed population subgroup, non-nursing infants (<1 yr old), to 131,980 for the overall U.S. population. EPA generally has no concern for MOEs greater than 100, and thus these risk estimates are well within acceptable limits.

ii. *Chronic exposure and risk.* For the chronic risk estimates, the percentage of RfD utilized by contribution through drinking water was estimated to be well below 0.0% for all population subgroups.

3. *From non-dietary exposure.* Bifenthrin is currently only registered for residential non-food use as a termiticide. Based on information referred to above regarding short- and intermediate-term exposure, this use is not expected to result in risks that exceed levels of concern. Therefore, reasonable certainty of no harm is expected from exposure through non-dietary, non-occupational routes.

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

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

EPA does not have, at this time, available data to determine whether bifenthrin 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, bifenthrin 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 bifenthrin 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 overall U.S. population, the calculated MOE value (for food only) is 466; for food plus drinking water, this estimate is 464. For the most highly exposed subgroup, children 1 - 6 years old, the MOE for food is 193; from food plus drinking water, this estimate is 192. As stated above, EPA generally has no concern for MOEs greater than 100, and thus these are within acceptable limits. Therefore, EPA concludes that there is reasonable certainty that no harm will result from acute exposure to bifenthrin.

2. *Chronic risk.* Using the Monte Carlo methodology described above, EPA has concluded that aggregate exposure to bifenthrin from food will utilize 0.1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants <1 year old, with 0.3% of the RfD utilized, further 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. The risk estimates from drinking water exposure are calculated to be well below 0.0% of the RfD for all population subgroups, and thus do not add appreciably to the estimates for food alone. Therefore, EPA concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to bifenthrin residues.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Based on bifenthrin not being registered for indoor residential or pet uses, EPA concludes that the aggregate short- and intermediate-term risks do

not exceed levels of concern, and that there is reasonable certainty that no harm will result.

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 bifenthrin, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

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

ii. *Developmental toxicity studies.* In the rabbit developmental study, there were no developmental effects observed in the fetuses exposed to bifenthrin. The maternal NOEL was 2.67 mg/kg/day based on head and forelimb twitching at the LOEL of 4 mg/kg/day.

In the rat developmental study, the maternal NOEL was 1 mg/kg/day, based on tremors at the LOEL of 2 mg/kg/day. The developmental (pup) NOEL was also 1 mg/kg/day, based upon increased incidence of hydroureter at the LOEL of 2 mg/kg/day. There were 5/23 (22%) of the litters affected (5/141 fetuses since each litter only had one affected fetus) in the 2 mg/kg/day group, compared with zero in the control, 1, and 0.5 mg/kg/day groups. According to recent historical data (1992-1994) for this strain of rat, background incidence of distended ureter averaged 11% with a maximum incidence of 90%.

iii. *Reproductive toxicity study.* In the rat reproduction study, parental toxicity occurred as decreased body weight and tremors at 5.0 mg/kg/day with a NOEL of 3.0 mg/kg/day. There were no developmental (pup) or reproductive effects up to 5.0 mg/kg/day (highest dose tested).

iv. *Pre- and post-natal sensitivity*— a. *Pre-natal.* Since there was not a dose-related finding of hydroureter in the rat developmental study and in the presence of similar incidences in the recent historical control data, the marginal finding of hydroureter in rat fetuses at 2 mg/kg/day (in the presence of maternal toxicity) is not considered a significant developmental finding. Nor does it provide sufficient evidence of a special dietary risk (either acute or chronic) for infants and children which would require an additional safety factor.

b. *Post-natal.* Based on the absence of pup toxicity up to dose levels which produced toxicity in the parental animals, there is no evidence of special post-natal sensitivity to infants and children in the rat reproduction study.

v. *Conclusion.* Based on the above, EPA concludes that reliable data support use of the standard 100-fold uncertainty factor, and that an additional uncertainty factor is not needed to protect the safety of infants and children.

2. *Acute risk.* EPA believes that residential exposures are more appropriately included in the short-term exposure scenario, and thus estimates acute risk from dietary exposure only. EPA concluded that aggregate dietary acute risk (food plus water) would not exceed levels of concern. This is discussed in greater detail above.

3. *Chronic risk.* Using the Monte Carlo methodology described above, EPA has concluded that aggregate exposure estimates to bifenthrin from food will utilize from 0.1 to 0.3% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to bifenthrin residues.

4. *Short- or intermediate-term risk.* The estimated short- and intermediate-term risks do not exceed EPA's levels of concern for children. MOEs for children are calculated to be 280 for the average consumer and 250 for the high-end consumer, discussed in greater detail above. There is generally no concern for MOEs which are greater than 100.

V. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of bifenthrin in raspberries is adequately understood for the purposes of this tolerance. The residue of concern is the parent compound only.

B. Analytical Enforcement Methodology

There is a practical analytical method for detecting and measuring levels of bifenthrin in or on food with a limit of detection that allows monitoring of food with residues at or above the levels set in this tolerance document (Gas chromatography with Electron Capture Detection, analytical method P-2132M, PP# 0E3921; MRID#41658601). EPA has provided information on this method to FDA. The method is available to anyone who is interested from OPP's Health Effects Division (7509C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

C. Magnitude of Residues

Residues of bifenthrin are not likely to exceed 3.0 ppm in or on raspberries as a result of the proposed use. Secondary residues are not expected to occur in animal commodities.

D. International Residue Limits

There are no Codex, Canadian, or Mexican residue limits for residues of bifenthrin in or on raspberries.

E. Rotational Crop Restrictions

The confined rotational crop data requirements for bifenthrin have been satisfied. The following rotation instructions are required: (1) Leafy vegetables and root crops may be rotated 30 days following the final application of bifenthrin; (2) Crops for which bifenthrin tolerances exist may be rotated at any time; and (3) All other crops may be rotated seven months following the final application of bifenthrin. There are no rotational crop considerations associated with raspberries.

VI. Conclusion

Therefore, the tolerance is established for residues of bifenthrin in or on raspberries at 3.0 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 September 8, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VIII. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300677] (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 119 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 time-limited tolerance under FFDCA section 408(l)(6). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled Regulatory Planning and Review (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled Enhancing the Intergovernmental Partnership (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997).

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

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: June 24, 1998.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR Chapter I is amended as follows:

PART 180–[AMENDED]

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

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

2. In § 180.442, by amending the table under paragraph (b) by revising the entry for ''Raspberries'' to read as follows:

§ 180.442 Bifenthrin; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* * *	* *	* *
Raspberries	3.0	12/31/99
* * *	* *	* *

* * * * *

[FR Doc. 98–18279 Filed 7–9–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300665; FRL–5794–3]

RIN 2070–AB78

Gliocladium Catenulatum Strain J1446; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule establishes an exemption from the requirement of a tolerance for residues of the biological pesticide *Gliocladium catenulatum* strain J1446 in or on all agricultural commodities. Kemira Agro Oy submitted a petition to EPA under the Federal Food, Drug and Cosmetic Act as amended by the Food Quality Protection Act of 1996 requesting the tolerance exemption. This regulation eliminates the need to establish a maximum permissible level for residues of *Gliocladium catenulatum* strain J1446.

DATES: This regulation is effective July 10, 1998. Objections and requests for hearings must be received by EPA on or before September 8, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300665], 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 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–300665], 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. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket number [OPP–300665]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Susanne Cerrelli, c/o Product Manager (PM) 90, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Office location and telephone number, and e-mail address: CM #2 Rm. 902 W48, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 308–8077, e-mail address: cerrelli.susanne@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 25, 1997 (62 FR 34271)(FRL–5721–7), EPA issued a notice pursuant to section 408(d), of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), announcing the filing of a pesticide tolerance petition by Kemira Agro Oy (PP 7F4137). The notice contained a summary of the petition prepared by the petitioner and this summary contained conclusions and arguments to support its conclusion that the petition complied with the Food Quality Protection Act (FQPA) of 1996. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the biological pest control agent *Gliocladium catenulatum* strain J1446. There were no comments received in response to the notice of filing.

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

I. Risk Assessment and Statutory Findings

New section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(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 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...'' Additionally, section 408(b)(2)(D)(v) requires that 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.''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

II. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the

available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

All available information indicates that *Gliocladium catenulatum* strain J1446 is of low toxicity. Acute oral toxicity/pathogenicity, dermal irritation and eye irritation were classified toxicity category IV. Acute oral toxicity/pathogenicity limit test and acute pulmonary toxicity/pathogenicity tests were classified category III. *Gliocladium catenulatum* strain J1446 did not survive, replicate, infect, or produce disease in test animals injected with a single high dose of this microbial agent. No mechanism of toxicity was identified for *Gliocladium catenulatum*, therefore a common mechanism of human toxicity with other agents is not indicated, so no cumulative effects are considered.

III. Aggregate Exposures

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

1. *Dietary exposure.* (a) *Food.* The use of *Gliocladium catenulatum* strain J1446 is not expected to result in any new dietary exposure to this organism. Fungi such as *Gliocladium catenulatum* strain J1446 are ubiquitous in the agricultural environment. It is anticipated that the concentrations of *Gliocladium catenulatum* on treated plants may be elevated immediately after application but will rapidly decline to environmental background levels. The risks anticipated for dietary exposure are considered minimal because no signs of toxicity were observed in the acute oral toxicity/pathogenicity studies (Toxicity Category IV).

(b) *Drinking water. Gliocladium catenulatum* strain J1446 is a naturally-occurring fungus and is widespread in the environment throughout the world. *Gliocladium catenulatum* is not known as an aquatic fungus, and therefore is not expected to proliferate in aquatic habitats. Moreover, *Gliocladium catenulatum* is not considered to be a risk to drinking water. Drinking water is accordingly not being screened for *Gliocladium catenulatum* as a potential indicator of microbial contamination or as a direct pathogenic contaminant. Both percolation through soil and municipal treatment of drinking water would reduce the possibility of exposure to *Gliocladium catenulatum* through drinking water. Therefore, the potential of significant transfer to drinking water is minimal to non-existent.

2. *Other non-occupational exposure.* Other non-occupational exposure of *Gliocladium catenulatum* strain J1446 via residential and indoor uses of it as a pesticide, e.g., uses around homes, parks, recreation areas, will be minimal to non-existent. The risk from non-occupational exposure is considered minimal as there is no evidence of adverse effects from oral, dermal or inhalation exposure to this microbial agent.

(a) *Dermal exposure.* The risks anticipated for this route of exposure are considered minimal because no signs of dermal toxicity or irritation were observed in the acute dermal toxicity and irritation studies (Toxicity Category IV).

(b) *Inhalation exposure.* The risks anticipated for this route of exposure are considered minimal because this microbial agent did not exhibit toxicity and pathogenicity in the acute pulmonary toxicity/pathogenicity studies. (Toxicity Category III) The anticipated risks from aggregate exposure via dermal and inhalation are a compilation of two low risk exposure scenarios and are considered negligible.

IV. Other Considerations

1. *Endocrine disrupters.* The Agency has no information to suggest that *Gliocladium catenulatum* has an effect on the immune and endocrine systems. No specific tests have been conducted with *Gliocladium catenulatum* strain J1446 to determine such effects. However, as is expected from a non-pathogenic microorganism, the submitted toxicity/pathogenicity studies in rodents indicated that following several routes of exposure, the immune system is still intact and able to process and clear the active ingredient. There are no reports indicating that *Gliocladium catenulatum* strain J1446 produces any toxins or antibiotics. Therefore, it is unlikely that this organism would have estrogenic or endocrine effects because it has demonstrated low mammalian toxicity. The Agency is not requiring information on the endocrine effects of this biological pesticide at this time; Congress has allowed 3 years after August 3, 1996, for the Agency to implement a screening program with respect to endocrine effects.

2. *Analytical method.* The Agency proposes to establish an exemption from the requirement of a tolerance without any numerical limitation; therefore, the Agency has concluded that an analytical method is not required for enforcement purposes for *Gliocladium catenulatum*.

3. *Codex Maximum Residue Level.* There are no CODEX tolerances nor international tolerance exemptions established for *Gliocladium catenulatum* strain J1446 at this time.

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

Based on all available information, the Agency concludes that *Gliocladium catenulatum* strain J1446 has no significant toxicity. Further, there is no evidence which suggests that aggregate exposure of either adults or infants and children to *Gliocladium catenulatum* leads to any harm. Accordingly, EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population or any significant subpopulation, including infants and children, from aggregate exposure under this exemption.

FFDCA section 408 provides that EPA shall apply an additional ten-fold margin of exposure (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 exposure will be safe for infants and children. Margins of exposure are often referred to as uncertainty (safety) factors. In this instance, the Agency believes there is reliable data to support the conclusion that this microbial agent is practically non-toxic to mammals, including infants and children, and, thus, there are no threshold effects; therefore, EPA has not used a margin of exposure approach to assess the safety of *Gliocladium catenulatum* strain J1446. As a result, the provision requiring an additional margin of exposure does not apply.

VI. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d) as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These

regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by September 8, 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 under the ''ADDRESSES'' section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the hearing clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VII. Public Docket and Electronic Submissions

A record has been established for this rulemaking under docket control number [OPP–300665]. A public version of this record, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 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 22202.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

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

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

VIII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the *Paperwork Reduction Act* (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the *Unfunded Mandates Reform Act of 1995* (UMRA) (Pub. L. 104–4). Nor does it require and prior consultation as specified by Executive Order 12875, 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 additions, since tolerance exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business.

IX. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: June 24, 1998.

Stephen L. Johnson,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

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

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

2. Section 180.1198 is added to read as follows:

§ 180.1198 Gliocladium catenulatum strain J1446; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of the microbial pesticide, *Gliocladium*

catenulatum strain J1446 when used in or on all food commodities.

[FR Doc. 98–18277 Filed 7–9–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300678; FRL–5798–6]

RIN 2070–AB78

Myclobutanil; Pesticide Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a time-limited tolerance for combined residues of myclobutanil in or on caneberries, and in or on dried hop cones. 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 caneberries in Oregon, and use of the pesticide on hops in Idaho, Oregon, and Washington. This regulation establishes a maximum permissible level for residues of myclobutanil in these food commodities pursuant to section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and be revoked on December 31, 1999.

DATES: This regulation is effective July 10, 1998. Objections and requests for hearings must be received by EPA on or before September 8, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300678], 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–300678], 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. 119, 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–300678]. 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: David Deegan, 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) 308–9358, e-mail: deegan.dave@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA, on its own initiative, pursuant to section 408(e) and (l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), is establishing a tolerance for combined residues of the fungicide myclobutanil α-butyl-α-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile plus its alcohol metabolite α-(3-hydroxybutyl)-α-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound), in or on caneberries at 1.0 part per million (ppm), and in or on dried hop cones at 5.0 ppm. These tolerances will expire and be revoked on December 31, 1999. 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 Exemptions for Myclobutanil on Caneberries and Hops and FFDCA Tolerances

On March 25, 1998, EPA received a request from the state of Oregon for an exemption, as allowed under provisions of FIFRA section 18, to authorize the use of the fungicide myclobutanil [Rally 40W Fungicide, manufactured by Rohm & Haas Company] to control orange rust on caneberries (blackberries, Boysenberries, and black raspberries). The basis of the claimed emergency situation is that orange rust is a new pest for growers of caneberries in the Willamette Valley of Oregon, and that without use of this chemical (in combination with other, non-chemical control measures) this disease would be likely to become widespread throughout the Willamette Valley and other agricultural areas of Oregon and potentially neighboring states. Under FIFRA section 18 provisions, on May 22, 1998 EPA authorized the use of myclobutanil on caneberries for control of orange rust in Oregon. EPA's authorization allows up to five ground applications of the product at a rate of 0.125 lbs. active ingredient (5 oz. product) on 730 acres. The exemption expires on November 1, 1998.

On January 9, 1998, EPA received a regional request from the states of Idaho, Oregon, and Washington for an exemption, as allowed under provisions of FIFRA section 18, to authorize the use of the fungicide myclobutanil [Rally 40WSP, Manufactured by Rohm & Haas Company] to control powdery mildew on hops. The emergency situation described was that powdery mildew is a new pest for hops in the applicant states, and the disease has very rapidly become established and has not been controlled adequately by non-chemical measures, and that there are no other products registered for use on hops to control powdery mildew. On May 5, 1998 EPA authorized the use of myclobutanil on hops for control of powdery mildew in Idaho, Oregon, and Washington. EPA's authorization allows up to eight ground or aerial applications of the product at a rate of 0.05 – 0.25 lbs. active ingredient (2 – 10 oz. product) on 44,730 acres within the three states. These exemptions expire on October 1, 1998.

As part of its assessment of this emergency exemption, EPA assessed the potential risks presented by residues of myclobutanil in or on caneberries and in or on hops. 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 these tolerances will expire and be revoked on December 31, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on caneberries or dried hop cones after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA, and the residues do not exceed a level that was authorized by this tolerance at the time of that application. 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 myclobutanil meets EPA's registration requirements for use on caneberries or hops, or whether permanent tolerances for these uses would be appropriate. Under these circumstances, EPA does not believe that this tolerance serves as a basis for registration of myclobutanil 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 those listed above to use this pesticide on these crops 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 myclobutanil, 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 hundredfold MOE is based on the same rationale as the hundredfold 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 three sources are not typically added because of the very low probability of this occurring in most cases, and because the other conservative assumptions built into the assessment assure adequate protection of public health. However, for cases in which high-end exposure can reasonably be expected from multiple sources (e.g. frequent and widespread homeowner use in a specific geographical area), multiple high-end risks will be aggregated and presented as part of the comprehensive 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 myclobutanil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a time-limited tolerance for combined residues of myclobutanil on caneberries at 1.0 ppm and for combined residues of myclobutanil on dried hop cones at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity.* None. For acute dietary risk assessment, EPA has not recommended an acute dietary endpoint.

2. *Chronic toxicity.* EPA has established the RfD for myclobutanil at 0.025 milligrams/kilogram/day (mg/kg/day). This RfD is based on the NOEL from the chronic feeding study in the rat (2.49 mg/kg/day) and a safety factor of 100 (10 for intraspecies and 10 for interspecies). The LOEL for the chronic rat feeding study is 9.84 mg/kg/day based on decreased testicular weight and increased testicular atrophy. EPA's assessment notes that the dose of 2.49 mg/kg/day established in the above study is supported by the Parental Systemic Toxicity NOEL and LOEL established in the Two-Generation reproduction study in rats. In that study the NOEL was 2.5 mg/kg/day and the LOEL was 10 mg/kg/day. EPA has determined that the 10X factor to

account for enhanced sensitivity of infants and children (as required by FQPA) should be removed. A safety factor of 100 is adequate because of the following:

i. Developmental toxicity studies showed no increased sensitivity in fetuses as compared to maternal animals following *in utero* exposures in rats and rabbits.

ii. A two generation reproduction toxicity study in rats showed no increased sensitivity in pups that were compared to adults.

iii. The toxicology data base is complete and there are no data gaps.

3. *Carcinogenicity*. Myclobutanil is classified as Category E: not carcinogenic in two acceptable animal studies. Q_1* is not applicable.

B. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.443) for the combined residues of myclobutanil, in or on a variety of raw agricultural commodities. Tolerances have been established for the residues of myclobutanil α-butyl-α-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile and its metabolite α-(3-hydroxybutyl)-α-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile (free and bound), expressed as myclobutanil, in or on a variety of raw agricultural commodities and processed commodities at levels ranging from 0.02 ppm in cottonseed to 25.0 ppm in raisin waste. Meat, milk, poultry and egg tolerances have been established at levels ranging from 0.02 ppm to 1.0 ppm. Risk assessments were conducted by EPA to assess dietary exposures and risks from myclobutanil as follows:

i. *Acute exposure and risk.* If applicable. 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. In performing its assessment of the risks from residues of myclobutanil, EPA has not recommended an acute dietary toxicological endpoint, so an acute dietary risk assessment is not required.

ii. *Chronic exposure and risk.* In conducting this chronic dietary (food only) risk assessment, EPA has made somewhat conservative assumptions. This results in an overestimate of human dietary exposure. Percent crop-treated estimates were utilized for selected commodities included in the assessment. Thus, in making a safety determination for this tolerance, EPA is taking into account this partially refined exposure assessment.

The existing myclobutanil tolerances (published, pending, and including the necessary section 18 tolerances) result in an Anticipated Residue Contribution (ARC) that is equivalent to the following percentages of the RfD, ranging from 17% (U.S. population, 48 states) to 75% (non-nursing infants, < 1 year old).

2. *From drinking water—chronic exposure and risk.* Based on information available to EPA, myclobutanil is persistent and not considered mobile in soils with the exception of sandy soils. Data are not available for its metabolite alpha-(3-hydroxybutyl)-alpha-(4-chlorophenyl)-1*H*-1,2,4-triazole-1-propanenitrile. There is no established Maximum Contaminant Level for residues of myclobutanil in drinking water. No Health Advisory Levels for myclobutanil in drinking water have been established. The ''Pesticides in Groundwater Database'' (EPA 734–12–92–001, September 1992) has no information concerning myclobutanil.

EPA has estimated ground and surface water concentrations for myclobutanil based on the label rate of 0.65 lbs a.i./acre and assuming 15 applications per season. (These numbers were based on turf uses.)

Surface water EEC: Acute = 145.96 ppb (0.14596 ppm or milligrams/liter (mg/l))(maximum initial concentration)

Chronic = 118.6 ppb (0.1186 ppm or mg/l)(average 56–day concentration)

Ground water EEC: 3.6 ppb (0.0036 ppm or mg/l) (use for both acute and chronic)

EPA has calculated drinking water levels of concern (DWLOCs) for chronic (non-cancer) exposure to be 0.7 ppm for U.S. population, 0.6 ppm for Hispanics, and 0.06 ppm for non-nursing infants (< 1 year old).

The estimated average concentration of myclobutanil in surface water is 0.04 ppm. Chronic concentrations in ground water are not expected to be higher than the acute concentrations. The estimated average concentrations of myclobutanil in surface water are less than EPA's levels of concern for myclobutanil in drinking water as a contribution to chronic aggregate exposure. Therefore, taking into account the present uses and uses proposed in this action, EPA concludes with reasonable certainty that residues of myclobutanil in drinking water (when considered along with other sources of exposure for which EPA has reliable data) would not result in unacceptable levels of aggregate human health risk at this time.

EPA bases this determination on a comparison of estimated concentrations of myclobutanil in surface waters and ground waters to back-calculated ''levels of concern'' for myclobutanil in drinking water. These levels of concern in drinking water were determined after EPA has considered all other non-occupational human exposures for which it has reliable data, including all current uses, and uses considered in this action. The estimates of myclobutanil in surface waters are derived from water quality models that use conservative assumptions (health-protective) regarding the pesticide transport from the point of application to surface and ground water. Because EPA considers the aggregate risk resulting from multiple exposure pathways associated with a pesticide's uses, levels of concern in drinking water may vary as those uses change. If new uses are added in the future, EPA will reassess the potential impacts of myclobutanil on drinking water as a part of the aggregate risk assessment process.

3. *From non-dietary exposure.* Myclobutanil is currently registered for use on the following residential non-food sites: outdoor residential and greenhouse use on annuals, perennials, turf, shrubs, trees, and flowers.

Short- and intermediate-term exposure and risk. EPA has determined that these uses do not constitute a chronic exposure scenario, but may constitute a short- to intermediate-term exposure scenario. The intermediate-term potential exposure would come from Post-application (dermal for adult; and dermal + ingestion of soil only, due to the persistence of the pesticide in soil, for toddlers). Other intermediate-term exposure scenarios are unlikely as dissipation is strongly influenced by the growth of the grass which needs weekly mowing (more frequently in spring) and most dissipation studies on lawns show considerable tailing off of residues by day 3 or 4; thus, the expectation of significant residues is very unlikely.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' The Agency believes that ''available information'' in this context might include not only toxicity, chemistry, and exposure data, but also scientific policies and methodologies for understanding common mechanisms of toxicity and conducting cumulative risk assessments. For most pesticides, although the Agency has some information in its files that may turn out

to be helpful in eventually determining whether a pesticide shares a common mechanism of toxicity with any other substances, EPA does not at this time have the methodologies to resolve the complex scientific issues concerning common mechanism of toxicity in a meaningful way. EPA has begun a pilot process to study this issue further through the examination of particular classes of pesticides. The Agency hopes that the results of this pilot process will increase the Agency's scientific understanding of this question such that EPA will be able to develop and apply scientific principles for better determining which chemicals have a common mechanism of toxicity and evaluating the cumulative effects of such chemicals. The Agency anticipates, however, that even as its understanding of the science of common mechanisms increases, decisions on specific classes of chemicals will be heavily dependent on chemical specific data, much of which may not be presently available.

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

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

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

1. *Chronic risk.* Using the partially refined exposure assumptions described above, EPA has concluded that aggregate exposure (food, water, and residential) to myclobutanil will not exceed EPA's level of concern. For the U.S. population, 17% of the RfD is occupied by dietary (food) exposure. The estimated average concentrations of myclobutanil in surface and ground water are less than EPA's levels of concern for myclobutanil in drinking water as a contribution to chronic aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of myclobutanil in drinking water do not contribute significantly to the aggregate chronic human health risk at the present time considering the present uses and uses proposed in this action. EPA has determined that the outdoor registered uses of myclobutanil would not fall under a chronic exposure scenario. EPA concludes that there is a reasonable certainty that no harm will result from aggregate chronic exposure to myclobutanil residues.

2. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. The short-term NOEL for dermal exposure is based on a dermal exposure toxicity study. Since the NOEL is based on a dermal study, oral exposures generally cannot be used directly to calculate a short-term aggregate exposure. However, as EPA determined that a dermal absorption factor of 100% should be used for risk assessment, oral exposures need not be multiplied by a modifying factor (converted to dermal equivalents) so that they can be compared to the dermal endpoint. Calculated MOEs were acceptable.

There is a potential for short-term exposure from drinking water. However, as estimated average concentrations of myclobutanil in surface and ground water are less than EPA's levels of concern for drinking water as a contribution to chronic aggregate and acute aggregate exposures, contribution to short-term exposure should not exceed EPA's levels of concern either.

EPA concludes that short-term aggregate MOEs for adults are acceptable considering the default assumptions used in the derivation of exposure estimates and the fact that a LOEL was not identified in the 28–day rat dermal toxicity study [the HDT was the NOEL in this study] used to determine the MOE. Chemical-specific dissipation data and residential use/usage information are required to further refine these post-application exposure estimates.

3. *Intermediate-term aggregate risk.* There is a potential for intermediate-term exposure from drinking water. However, as estimated average concentrations of myclobutanil in surface and ground water are less than EPA's levels of concern for drinking water as a contribution to chronic aggregate and acute aggregate exposures, contribution to intermediate-term exposure should not exceed EPA's levels of concern either.

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 myclobutanil, EPA considered data from developmental toxicity studies in the rat and rabbit and a two-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the database unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a MOE analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard 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*— a. *Rats.* In the developmental study in rats, the maternal (systemic) NOEL was 93.8 mg/kg/day, based on rough hair coat, and salivation at the LOEL of 312.6 mg/kg/day. The developmental (fetal) NOEL was 93.8 mg/kg/day based on incidences of 14th rudimentary and 7th cervical ribs at the LOEL of 312.6 mg/kg/day.

b. *Rabbits.* In the developmental toxicity study in rabbits, the maternal (systemic) NOEL was 60 mg/kg/day, based on reduced weight gain, clinical signs of toxicity and abortions at the

LOEL of 200 mg/kg/day. The developmental (fetal) NOEL was 60 mg/kg/day, based on increases in number of resorptions, decreases in litter size, and a decrease in the viability index at the LOEL of 200 mg/kg/day.

iii. *Reproductive toxicity study—Rats*. In the 2-generation reproductive toxicity study in rats, the parental (systemic) NOEL was 2.5 mg/kg/day, based on increased liver weights and liver cell hypertrophy at the LOEL of 10 mg/kg/day. The developmental (pup) NOEL was 10 mg/kg/day, based on decreased pup body weight during lactation at the LOEL of 50 mg/kg/day. The reproductive (pup) NOEL was 10 mg/kg/day, based on the increased incidence of stillborns, and atrophy of the testes, epididymides, and prostate at the lowest effect level of 50 mg/kg/day.

iv. *Pre- and post-natal sensitivity*. The pre- and post-natal toxicology data base for myclobutanil is complete with respect to current toxicological data requirements. Based on the developmental and reproductive toxicity studies discussed above, for myclobutanil there does not appear to be an extra sensitivity for pre- or post-natal effects.

v. *Conclusion*. Based on the above, EPA concludes that reliable data support use of a hundredfold margin of exposure/uncertainty factor, rather than the standard thousandfold margin/factor, to protect infants and children.

2. *Chronic risk*. Using the partially refined exposure assumptions described above, EPA has concluded that the percent of the RfD that will be utilized by dietary (food only) exposure to residues of myclobutanil ranges from 25% for nursing infants (< 1 year old) up to 75% for non-nursing infants (< 1 year old). Despite the potential for exposure to myclobutanil in drinking water, HED does not expect the chronic aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to myclobutanil residues.

3. *Short-term aggregate risk*. The short-term NOEL for dermal exposure is based on a dermal exposure toxicity study. Since the NOEL is based on a dermal study, oral exposures generally cannot be used directly to calculate a short-term aggregate exposure. However, as EPA determined that a dermal absorption factor of 100% should be used for risk assessment, oral exposures need not be multiplied by a modifying factor (converted to dermal equivalents) so that they can be compared to the dermal endpoint.

The chronic dietary exposure and calculated dietary MOE for infants (non-nursing, < 1 year old) was acceptable. For the short-term aggregate risk of the most highly exposed subgroup (non-nursing infants (< 1 year old)), the calculated MOE is 120. There is a potential for short-term exposure from drinking water. However, as estimated average concentrations of myclobutanil in surface and ground water are less than EPA's levels of concern for drinking water as a contribution to chronic aggregate and acute aggregate exposures, contribution to short-term exposure should not exceed EPA's levels of concern either. EPA concludes that short-term aggregate MOEs for non-nursing infants (< 1 year old) are acceptable.

4. *Intermediate-term aggregate risk*. The intermediate-term NOEL for dermal exposure is based on an oral exposure toxicity study. EPA has determined that a dermal absorption factor of 100% should be used for this risk assessment. The chronic dietary exposure from myclobutanil is 0.018836 mg/kg/day. The calculated myclobutanil dietary MOE for non-nursing infants (< 1 year old) is 530, which is acceptable. There is a potential for intermediate-term exposure from drinking water. However, as estimated average concentrations of myclobutanil in surface and ground water are less than EPA's levels of concern for drinking water as a contribution to chronic aggregate and acute aggregate exposures, contribution to intermediate-term exposure should not exceed EPA's levels of concern either.

V. Other Considerations

A. Metabolism in Plants and Animals

The nature of the residue in plants is adequately understood. The residue of concern is myclobutanil plus its alcohol metabolite (free and bound), as specified in 40 CFR 180.443(a).

B. Analytical Enforcement Methodology

An adequate enforcement method is available to enforce the established tolerances. Quantitation is by GLC using an Nitrogen/Phosphorus detector for myclobutanil and an Electron Capture detector (Ni^{63}) for residues measured as the alcohol metabolite. A copy of this method is on file within EPA, using the identification code of PP 4E4302.

C. Magnitude of Residues

Six field trials were conducted between 1992 and 1994 in OH (2), WA (1), MS (1), NJ (1), and OR (1). In all but one trial, eight applications of rates ranging from 0.15–1.0 oz. ai/A were made. The one trial had only four applications. Blackberries and raspberries were harvested at 0, 3, and 7 PHI, except in one raspberry trial in which the PHIs were 0, 4, and 8 day. The results at 1X show a range of residues of 0.03–0.39 ppm for parent myclobutanil and < 0.02 for the alcohol metabolite. Residues of myclobutanil and its alcohol metabolite are not expected to exceed 1.0 ppm in/on caneberries as a result of this section 18 use. A time-limited tolerance for the combined residues of myclobutanil and its alcohol metabolite (free and bound) should be established at this level.

Secondary residues are not expected in animal commodities as no feedstuffs are associated with these section 18 uses. Meat/milk/poultry/egg tolerances have been established as a result of other myclobutanil uses.

D. International Residue Limits

There are no Codex, Canadian or Mexican residue limits established for myclobutanil and its metabolites on the commodities included in these section 18 requests. Thus, harmonization is not an issue for these section 18 actions.

E. Rotational Crop Restrictions

Information concerning the likelihood of residues in rotational crops is not available for myclobutanil. As caneberries and hopes are normally not rotated, issues pertaining to rotational crops are not applicable to this petition.

VI. Conclusion

Therefore, the tolerance is established for combined residues of myclobutanil in caneberries at 1.0 ppm; and for combined residues of myblobutanil in/on dried hop cones at 5.0 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 September 8, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections.

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

VIII. Public Docket and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300678] (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 119 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 action finalizes a tolerance under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). In addition, this final rule does not contain any information collections subject to OMB approval under the *Paperwork Reduction Act* (PRA), 44 U.S.C. 3501 et seq., or impose any enforceable duty or contain any unfunded mandate as described under Title II of the *Unfunded Mandates Reform Act of 1995* (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require special 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, under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit 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 United States prior to publication of the rule in the **Federal Register**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

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

Dated: June 25, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

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

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

2. In § 180.443, by adding new entries for caneberries and hop cones, dried in alphabetical order to the table in paragraph (b), to read as follows:

§ 180.443 Myclobutanil; tolerances for residues.

* * * * *

(b) *Section 18 emergency exemptions.*

* * *

Commodity	Parts per million	Expiration/ Revocation Date
Caneberries	1.0	12/31/99
* *	* *	*
Hop cones, dried	5.0	12/31/99
* *	* *	*

* * * * *

[FR Doc. 98–18278 Filed 7–9–98; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 63, No. 132
Friday, July 10, 1998

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 THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 301

[REG–104537–97]

RIN 1545–AV11

Guidance Under Subpart F Relating to Partnerships and Branches; Hearing Cancellation

AGENCY: Internal Revenue Service, Treasury.

ACTION: Cancellation of notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the treatment under subpart F of certain branches of a controlled Foreign Corporation that are treated as separate entities for foreign tax purposes.

DATES: The public hearing originally scheduled for Wednesday, July 15, 1998, beginning at 10:00 a.m. is cancelled.

FOR FURTHER INFORMATION CONTACT: Mike Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7190, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 702, 952, 954, 956, and 7701 of the Internal Revenue Code. A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Thursday, March 26, 1998 (63 FR 14669), announced that the public hearing would be held on Wednesday, July 15, 1998, beginning at 10:00 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW. Washington, D.C.

The public hearing scheduled for Wednesday, July 15, 1998, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 98–18432 Filed 7–9–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 655

Radiation Sources on Army Land

AGENCY: Office of the Director of Army Safety, Department of the Army, DoD.

ACTION: Proposed rule.

SUMMARY: This proposed revision of rules changes the approval authority for Army radiation permits from Commander, U.S. Army Materiel Command (formerly, the U.S. Army Materiel Development and Readiness Command) to local installation commanders. Delegating the approval authority to the local installation commanders will reduce delays in processing permits while enhancing personal safety of military personnel, civilian employees and the public. The proposed revision includes descriptions of ionizing radiation sources that require Army radiation permits and criteria for application approval. The proposed rule adds the requirement for an Army radiation permit whenever a non-Army agency wants to bring onto Army property a machine-produced ionizing radiation source capable of producing a high radiation area.

DATES: Comments must be received by September 8, 1998.

ADDRESSES: Headquarters, Department of the Army, Office of the Director of Army Safety, ATTN: DACS–SF, RM 3D253, Chief of Staff, 200 Army Pentagon, Washington, DC 20310–0200.

FOR FURTHER INFORMATION CONTACT: Colonel Robert Cherry, telephone: (703) 695–7291.

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

This proposed rule contains collection of information requirements in 32 CFR 655.10. Information collection is required in support of issuing an Army Radiation Permit to Non-Army agencies. The permits are required for use, storage, or possession of radioactive material and other radiation on an Army installation. Failure to comply with the collection of information would result in installation commanders not having knowledge of the presence of radioactive materials or other radiation sources on their installations and not provide adequate controls to ensure the safety of the public, civilian employees and military personnel on the installations. The Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d) and 5 CFR 1320.11 require Federal agencies to submit collections of information contained in proposed rules to the Office of Management and Budget (OMB) for review.

To request more details pertaining to the collection of information requirements or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call Department of the Army Reports clearance officer at (703) 614–0454.

Title: Letter Permit for Non-Army Agency Radiation Sources on Army Land.

Needs and Uses: Non-Army agencies (including civilian contractors) are required to obtain Army radiation permits to use, store, or possess radiation sources on Army installation. This proposal changes the approval authority for the permits from Commander, U.S. Army Materiel Command (formerly, the U.S. Army Materiel Development and Readiness Command) to local installation commanders.

Affected Public: Business or other for profit; not-for-profit institutions; state, local or tribal government.

Annual Burden Hours: 470.

Number of Respondents: 235.

Responses Per Respondent: 1.

Average Burden Per Response: 2.

Frequency: On occasion.

The basic information on the use of radioactive sources on Army lands was previously published in the **Federal Register**, 45 FR 26958, dated April 22, 1980.

Executive Order 12866

This proposed rule is not a major rule as defined under Executive Order 12866. The proposed rule does not:

a. Have an annual effect to the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

b. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

c. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

d. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Regulatory Flexibility Act

This proposed rule was reviewed with regard to the requirements of the Regulatory Flexibility Act. The proposal does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the reporting provisions of this proposed rule have been submitted to the Office of Management and Budget for review under Section 3507(d) of the Act.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act, the Office of the Director of Army Safety, DACS–SF, announces the proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (2) the accuracy of the agency's estimates of the burden of the proposed information collection; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, N.W., Washington, DC 20503, marked ''Attention Desk Officer for Department of Defense.'' Copies should be sent to the Office of the Director of Army Safety, ATTN: DACS–SF, RM 3D253, Chief of Staff, 200 Army Pentagon, Washington, DC 20310–0200. When the Department of the Army promulgates the Final Rule, the Department will respond to comments by OMB or the public regarding the information collection provision requirements of the rule.

List of Subjects in 32 CFR Part 655

Environmental protection, Radiation protection, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 655 is proposed to be revised to read as follows:

PART 655—RADIATION SOURCES ON ARMY LAND

Authority: 10 U.S.C. 3012.

§ 655.10 Use of radiation sources by non-Army entities on Army land (AR 385–11).

(a) Army radiation permits are required for use, storage, or possession of radiation sources by non-Army agencies (including civilian contractors) on an Army installation. Approval of the installation commander is required to obtain an Army radiation permit. For the purposes of this section, a radiation source is:

(1) Radioactive material used, stored, or possessed under the authority of a specific license issued by the Nuclear Regulatory Commission (NRC) or an Agreement State (10 CFR);

(2) More than 0.1 microcurie (uCi) [3.7 kilobecquerels] (kBq) of radium, except for electron tubes;

(3) More than 1 uCi (37 kBq) of any naturally occurring or accelerator produced radioactive material (NARM) other than radium, except for electron tubes;

(4) an electron tube containing more than 10 uCi (370 kBq) of any naturally occurring or accelerator produced NARM radioisotope; or

(5) A machine-produced ionizing-radiation source capable of producing an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.1 rem (1 mSv) in 1 hour at 30 centimeters from the radiation source or from any surface that the radiation penetrates.

(b) The non-Army applicant will apply by letter with supporting documentation (paragraph c of this section) through the appropriate tenant commander to the installation commander. Submit the letter so that the installation commander receives the application at least 30 calendar days before the requested start date of the permit.

(c) The Army radiation permit application will specify start and stop dates for the Army radiation permit and describe for what purposes the applicants needs the Army radiation permit. The installation commander will approve the application only if the applicant provides evidence to show that one of the following is true:

(1) The applicant possesses a valid NRC license or Department of Energy (DOE) radiological work permit that allows the applicant to use the source as specified in the Army radiation permit application;

(2) The applicant possesses a valid Agreement State license that allows the applicant to use radioactive material as specified in the Army radiation permit application, and the applicant has filed NRC Form–241, Report of Proposed Activities in Non-Agreement States, with the NRC in accordance with 10 CFR part 150, § 150.20 (an Army radiation permit issued under provisions of this section will be valid for no more than 180 days in any calendar year);

(3) For NARM and machine-produced ionizing radiation sources, the applicant has an appropriate State authorization that allows the applicant to use the source as specified in the Army radiation permit application or has in place a radiation safety program that complies with Army regulations; or

(4) For overseas installations, the applicant has an appropriate host-nation authorization as necessary that allows the applicant to use the source as specified in the Army radiation permit application and has in place a radiation safety program that complies with Army regulations. (Applicants will comply with applicable status-of-forces agreements (SOFAs) and other international agreements.)

(d) All Army radiation permits will require applicants to remove all permitted sources from Army property by the end of the permitted time.

(e) Disposal of radioactive material by non-Army agencies on Army property is prohibited. However, the installation commander may authorize radioactive releases to the atmosphere or to the sanitary sewerage system that are in compliance with all applicable Federal, DoD, and Army regulations. (The installation commander also will give appropriate consideration to State or local restrictions on such releases.)

Raymond J. Fatz,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health) OASA (I, L&E).

[FR Doc. 98–17952 Filed 7–9–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD 97–086]

RIN 2115–AA98

Anchorage Grounds; Hudson River, Hyde Park, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish an anchorage ground in the Hudson River near Hyde Park, NY. This action is necessary to provide an anchorage ground on the Hudson River for vessels awaiting favorable tides and/or daylight for passage to facilities north of New York. This action is intended to increase safety for vessels transiting the Hudson River by providing an anchorage ground away from congested traffic lanes used in New York Harbor.

DATES: Comments must reach the Coast Guard on or before October 8, 1998.

ADDRESSES: You may mail comments to the Waterways Oversight Branch (CGD01–97–086), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) Alma Kenneally, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4195.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 01–97–086) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the Address under **ADDRESSES**. The request should include the 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 later notice in the **Federal Register**.

Background and Purpose

The Hudson River Pilots Association has requested that the Coast Guard establish a federal anchorage ground in the Hudson River near Hyde Park, New York. The closest anchorage to this area is down river to anchorage number 17, the northern boundary of which lies between the Yonkers municipal pier and the pilot station just to the north. The area that the Pilots Association has suggested for consideration is bound by the following coordinates:

NW corner 41° 48′ 35″ N 073° 57′ 00W″
NE corner 41° 48′ 35″ N 073° 56′ 44W″
SE corner 41° 47′ 32″ N 073° 56′ 50W″
SW corner 41° 47′ 32″ N 073° 57′ 10W″

Discussion of Proposed Rule

The proposed anchorage would be valuable to vessels awaiting favorable tides and/or daylight for passage to Albany and other upper river ports. Additionally, the new anchorage could relieve some of the overcrowding in the existing New York Harbor anchorages, thus increasing vessel safety. This new anchorage will only be authorized for use from March 1 through December 15 each year. This is due to ice conditions in the river. No vessel may anchor in Anchorage 19–A from December 16 to the last day of February without permission from the Captain of the Port New York.

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 not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation would not be significant for the following reasons: due to icing of the river in winter months, the anchorage would be seasonal in nature, recreational traffic could still traverse the anchorage when necessary, and the proposed anchorage would still permit unobstructed navigation of the Hudson in that area on the western side.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on the substantial number of small entities. ''Small entities'' include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Therefore, 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. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under Figure 2–1, paragraph 34(f), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded form further environmental documentation. Figure 2–1, paragraph 34(f) only requires an environmental checklist and a ''Categorical Exclusion Determination'' for regulations establishing anchorage grounds. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 110

Anchorage grounds.

Proposed Regulations

For reasons set out in the preamble, the Coast Guard proposed to amend 33 CFR Part 110 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. In § 110.155, add paragraph (c)(6) to read as follows:

§ 110.155 Port of New York.

* * * * *

(c) * * *

(6) *Anchorage No. 19–A.* An area located west of Hyde Park enclosed by the coordinates staring at 41°48′35″ N, 073°57′00″ W; to 41°48′35″ N, 073°56′44″ W; to 41°47′32″ N, 073°56′50″ W; to 41°47′32″ N, 073°57′10″ W; thence back to 41°48′35″ N, 073°57′00″ W.

(i) No vessel may anchor in Anchorage 19–A from December 16 to the last day of February without permission from the Captain of the Port, New York

(ii) [Reserved]

* * * * *

Dated: June 3, 1998.

James D. Garrison,

Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.

[FR Doc. 98–18396 Filed 7–9–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AJI8

Enrollment—Provision of Hospital and Outpatient Care to Veterans

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend VA's medical regulations. The Veterans' Health Care Eligibility Reform Act of 1996 mandates that VA implement a national enrollment system to manage the delivery of healthcare services. Accordingly, the medical regulations are proposed to be amended to establish provisions consistent with this mandate. Starting October 1, 1998, most veterans must be enrolled in the VA healthcare system as a condition of receiving VA hospital and outpatient care. Veterans would be allowed to apply to be enrolled at any time. They would be eligible to be enrolled based on funding availability and their priority status. In accordance with statutory provisions, the proposed rule also states that some categories of veterans would be eligible for VA hospital and outpatient care even if not enrolled. This document further proposes to establish a ''medical benefits package'' setting forth, with certain exceptions, the hospital and outpatient care that would be provided to enrolled veterans and certain other veterans.

DATES: Comments must be received on or before September 8, 1998.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN: 2900–AJ18.'' All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Roscoe Butler, Health Administration Service, (10C3), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8302. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document proposes to amend VA's medical regulations at 38 CFR part 17. Public Law 104–262, the Veterans' Health Care Eligibility Reform Act of 1996, mandated that VA implement a national enrollment system to manage the delivery of healthcare services. Accordingly, the medical regulations are proposed to be amended to establish provisions consistent with this mandate. Starting October 1, 1998, most veterans must be enrolled in the VA healthcare system as a condition for receiving VA hospital and outpatient care. They would be allowed to apply to be enrolled at any time. In accordance with statutory provisions, the proposal also states that some categories of veterans would be eligible for VA hospital and outpatient care even if not enrolled. This document further proposes to establish a ''medical benefits package'' setting forth, with certain exceptions, the hospital and outpatient care that would be provided to enrolled veterans and certain other veterans.

National Enrollment System (Proposed § 17.36)

The proposed rule restates statutory provisions by announcing that certain veterans must be enrolled in the VA healthcare system as a condition for receiving VA hospital and outpatient care. Also, consistent with the mandate of Public Law 104–262, the proposed rule contains a mechanism for determining which categories of veterans are eligible to be enrolled. Moreover, the proposed rule includes procedures for applying for enrollment, continuation of enrollment, and disenrollment; and provides for notification to veterans of determinations regarding their enrollment status.

The proposed rule also contains provisions for automatically enrolling veterans who were enrolled prior to October 1, 1998, in the VA healthcare system under the trial VA voluntary enrollment program that began on October 1, 1997, if they are in a funded priority category as explained below. This would help avoid duplicate decisionmaking and paperwork since the trial VA voluntary enrollment program used essentially the same procedures for enrollment as those set forth in the proposed rule.

Consistent with the statutory mandate, the proposed rule provides that the Secretary will determine which categories of veterans are eligible to be enrolled based on the following order of priority:

(1) Veterans with a singular or combined rating of 50 percent or greater based on one or more service-connected disabilities or unemployability.

(2) Veterans with a singular or combined rating of 30 percent or 40 percent based on one or more service-connected disabilities.

(3) Veterans who are former prisoners of war; veterans with a singular or combined rating of 10 percent or 20 percent based on one or more service-connected disabilities; veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty; veterans who receive disability compensation under 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for hospital and outpatient care is provided for in the judgment or settlement described in 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended because of the receipt of military retired pay; and veterans receiving compensation at the

10 percent rating level based on multiple noncompensable service-connected disabilities that clearly interfere with normal employability

(4) Veterans who receive increased pension based on their need for regular aid and attendance or by reason of being permanently housebound and other veterans who otherwise would be included in paragraphs (5) or (6) of this section but who are determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where they were examined.

(5) Veterans not covered by paragraphs (1) through (4) who are determined to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a).

(6) Veterans of the Mexican border period or of World War I; veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, as provided in 38 U.S.C. 1710(e); and veterans with 0 percent service-connected disabilities who are nevertheless compensated, including veterans receiving compensation for inactive tuberculosis.

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g).

We also propose to establish the following subcategories for priority category 7:

(i) Noncompensable zero percent service-connected veterans;

(ii) Catastrophically disabled veterans; and

(iii) All other priority category 7 veterans.

In our view, this would provide an equitable system for further prioritizing the enrollment of priority category 7 veterans if VA were able to provide care for only a portion of priority category 7 veterans.

Priority category 4 includes veterans who are ''catastrophically disabled.'' We have included a detailed definition of this term in proposed § 17.36(e). We believe this is consistent with the Congressional intent.

In connection with the Secretary's determination regarding which categories of veterans would be eligible for hospital and outpatient care, the proposed rule states that the Secretary will publish in the notice section of the **Federal Register** on or before October 1, 1998, a document announcing which categories of veterans are eligible to be enrolled. The proposed rule also states that thereafter, it is anticipated that the Secretary would publish in the notice section of the **Federal Register** on or before August 1 of each year the determination of which categories of veterans are eligible to be enrolled. It is likely that the Secretary would have sufficient information by August 1 of each year to make an appropriate determination. However, because of the possibility that the initial determination may require modification, the proposed rule would allow the Secretary to revise the determination by publication in the notice section of the **Federal Register** as necessary at any time. The proposed rule also includes criteria for determining which priority categories will be eligible to be enrolled.

Veterans may appeal VA decisions regarding enrollment and disenrollment under the existing VA procedures, which include the right to appeal to the Board of Veterans' Appeals and the Court of Veterans Appeals.

Enrollment Not Required for Certain Categories of Veterans (Proposed § 17.37)

Consistent with the provisions of Public Law 104–262, the proposed rule states that certain categories of veterans, including veterans rated for service-connected disabilities at 50 percent or greater, are not required to be enrolled in the VA healthcare system as a condition for receiving VA care.

Under Public Law 104–262, the list of veterans not required to be enrolled includes veterans ineligible to be enrolled but who need care based on ''compelling medical reasons.'' Based on our view of the statutory intent, the proposed rule indicates that this covers those cases when it is necessary to complete a course of treatment started when the veteran was enrolled in the VA healthcare system.

Further, we note that we do not believe that the authority for providing hospital and outpatient care for ''compelling medical reasons'' was intended to cover the provision of care as a humanitarian service in emergency cases. VA has separate and long-standing authority to provide care to individuals such as non-enrolled veterans in medical emergencies subject to charges set by VA.

Medical Benefits Package (Proposed § 17.38)

This document also proposes to set forth provisions explaining what care would and would not be provided to veterans enrolled in the VA healthcare system. The Secretary has authority to provide healthcare as determined to be medically needed. In our view, medically needed constitutes care that is determined by appropriate healthcare professionals to be needed to promote, preserve, or restore the health of the individual and to be in accord with generally accepted standards of medical practice. The care included in the proposed ''medical benefits package'' is intended to meet these criteria.

The proposed regulations also explain that a veteran may receive certain types of VA care not included in the ''medical benefits package'' if authorized by statute or other sections of 38 CFR (e.g., humanitarian emergency care for which the individual will be billed, compensation and pension examinations, dental care, domiciliary care, nursing home care, readjustment counseling, care as part of a VA-approved research project, seeing-eye or guide dogs, sexual trauma counseling and treatment, special registry examinations).

Technical Changes

The proposed rule also proposes to make a number of technical amendments to the medical regulations for purposes of consistency.

OMB

This document has been reviewed by the Office of Management and Budget OMB under Executive Order 12866.

Paperwork Reduction Act of 1995

OMB has determined that proposed 38 CFR 17.36 would contain collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to OMB for its review of the collections of information.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collections of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to ''RIN 2900–AJ18.''

Title: Initial Application for Health Benefits.

Summary of collection of information: Under the provisions of proposed § 17.36(d)(1), a veteran who wishes to be enrolled must apply by submitting a VA Form 10–10EZ to a VA medical facility. Veterans applying based on inclusion in categories 1, 2, 3, 4, 6, and 7 do not need to complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 5 must complete the entire form. VA Form 10–10EZ is set forth in full at proposed § 17.36(f).

Description of the need for information and proposed use of information: This information would be needed to determine whether a veteran would be eligible to be enrolled in the VA healthcare system and, consequently, whether the veteran would be eligible for VA hospital and outpatient care.

Description of likely respondents: Veterans wishing to be enrolled in the VA healthcare system for the first time in order to receive VA hospital and outpatient care.

Estimated number of respondents: 1,000,000.

Estimated frequency of responses: 1.

Estimated total annual reporting and recordkeeping burden: 333,333 hours.

Estimated annual burden per collection: 20 minutes.

Title: Yearly Re-application for Health Benefits.

Summary of collection of information: Under the provisions of proposed § 17.36(d)(4)(iii), veterans enrolled based on inclusion in priority category 5 would be mailed a Form 10–10EZ on a yearly basis. They would be requested to complete the form and return the form to the address on the return envelope. VA Form 10–10EZ is set forth in full at proposed § 17.36(f).

Description of the need for information and proposed use of information: This information would be needed to determine whether a veteran would be eligible to continue to be enrolled in the VA healthcare system, and, consequently, whether the veteran would be eligible to continue to receive VA hospital and outpatient care.

Description of likely respondents: Veterans in priority category 5 wishing to continue to be enrolled in the VA healthcare system in order to receive VA hospital and outpatient care.

Estimated number of respondents: 1,372,766.

Estimated frequency of responses: 1.

Estimated total annual reporting and recordkeeping burden: 343,192 hours.

Estimated annual burden per collection: 15 minutes.

Title: Voluntary disenrollment.

Summary of collection of information: Under the provisions of proposed § 17.36(d)(4)(i), a veteran wishing to disenroll and forgo VA hospital and outpatient care would submit to a VA medical center a signed document stating that the veteran no longer wishes to be enrolled.

Description of the need for information and proposed use of information: This information is needed to determine the identity of those veterans wishing to disenroll and forgo VA hospital and outpatient care. This will help VA determine how to allocate available funding for hospital and outpatient care.

Description of likely respondents: Veterans no longer wishing to receive VA hospital and outpatient care.

Estimated number of respondents: 100.

Estimated frequency of responses: 1.

Estimated total annual reporting and recordkeeping burden: 8.3 hours.

Estimated annual burden per collection: 5 minutes.

The Department considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections of information on those who are to respond, including responses 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.

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would affect only individuals. Accordingly, pursuant to 5 U.S.C. 605(b), this proposed rule is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

The Catalog of Federal domestic assistance numbers for the programs affected by this rule are 64.005, 64.007, 64.008, 64,009, 64.010, 64.011, 64.012, 64.013, 64.014, 64.015, 64.016, 64.018, 64.019, 64.022, and 64.025.

List of Subjects in 38 CFR Part 17

Administrative practice and procedure, Alcohol abuse, Alcoholism, Claims, Day care, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs health, Grant programs-veterans, Health care, Health facilities, Health professions, Health records, Homeless, Medical and dental schools, Medical devices, Medical research, Mental health programs, Nursing homes, Philippines, Reporting and record-keeping requirements, Scholarships and fellowships, Travel and transportation expenses, Veterans.

Approved: May 12, 1998.

Togo D. West, Jr.,

Secretary.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below:

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, 1721 unless otherwise noted.

§ 17.34 [Amended]

12. The first sentence of § 17.34 is amended by removing ''When an application'' and adding, in its place, ''Subject to the provisions of §§ 17.36 through 17.38, when an application''.

2. An undesignated center heading and § 17.36 are added to read as follows:

Enrollment Provisions and Medical Benefits Package

§ 17.36 Enrollment—provision of hospital and outpatient care to veterans.

(a) *Enrollment requirement for veterans.* (1) Except as otherwise provided in § 17.37, a veteran must be enrolled in the VA healthcare system as a condition for receiving VA hospital and outpatient care.

Note to paragraph (a)(1): A veteran may apply to be enrolled at any time. (See § 17.36(d)(1).)

(2) Except as provided in paragraph (a)(3) of this section, a veteran enrolled under this section is eligible for VA hospital and outpatient care as provided in the ''medical benefits package'' set forth in § 17.38.

(3) A veteran enrolled based on having a disorder associated with exposure to a toxic substance or radiation, or having a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, as provided in 38 U.S.C. 1710(e), is eligible for VA hospital and outpatient care provided in the ''medical benefits package'' set forth in § 17.38 for the disorder.

(b) *Categories of veterans eligible to be enrolled.* The Secretary will determine which categories of veterans are eligible to be enrolled based on the following order of priority:

(1) Veterans with a singular or combined rating of 50 percent or greater based on one or more service-connected disabilities or unemployability.

(2) Veterans with a singular or combined rating of 30 percent or 40 percent based on one or more service-connected disabilities.

(3) Veterans who are former prisoners of war; veterans with a singular or combined rating of 10 percent or 20 percent based on one or more service-connected disabilities; veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty; veterans who receive disability compensation under 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for hospital and outpatient care is provided for in the judgment or settlement described in 38 U.S.C. 1151; veterans whose entitlement to disability compensation is suspended because of the receipt of military retired pay; and veterans receiving compensation at the 10 percent rating level based on multiple noncompensable service-connected disabilities that clearly interfere with normal employability.

(4) Veterans who receive increased pension based on their need for regular aid and attendance or by reason of being permanently housebound and other veterans who otherwise would be included in paragraphs (5) or (6) of this section but who are determined to be catastrophically disabled by the Chief of Staff (or equivalent clinical official) at the VA facility where they were examined.

(5) Veterans not covered by paragraphs (1) through (4) of this section who are determined to be unable to defray the expenses of necessary care under 38 U.S.C. 1722(a).

(6) Veterans of the Mexican border period or of World War I; veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation or for a disorder associated with service in the Southwest Asia theater of operations during the Gulf War, as provided in 38 U.S.C. 1710(e); and veterans with 0 percent service-connected disabilities who are nevertheless compensated, including veterans receiving compensation for inactive tuberculosis.

(7) Veterans who agree to pay to the United States the applicable copayment determined under 38 U.S.C. 1710(f) and 1710(g). This category is further prioritized into the following subcategories:

(i) Noncompensable zero percent service-connected veterans;

(ii) Catastrophically disabled veterans; and

(iii) All other priority category 7 veterans.

(c) **Federal Register** *notification of eligible enrollees.* The Secretary will publish in the notice section of the **Federal Register** on or before October 1, 1998, a document announcing which categories of veterans are eligible to be enrolled. Thereafter, it is anticipated that the Secretary will publish in the notice section of the **Federal Register** on or before August 1 of each year a document announcing which categories of veterans are eligible to be enrolled. As necessary, the Secretary at any time may revise the determination by publication in the notice section of the **Federal Register**. A **Federal Register** document published under this paragraph must specify the total amount of appropriated funds and other revenue projected to be available for VA hospital and outpatient care for veterans eligible to be enrolled, specify the average amount of cost projected for a veteran in each priority category, and specify the projected utilization of VA hospital and outpatient care by veterans eligible to be enrolled for each priority category (based on experience from past years). The determination should include consideration of relevant internal and external factors, *e.g.*, economic changes, changes in medical practices. Consistent with these criteria, the Secretary will determine which categories of veterans are eligible to be enrolled based on the order of priority specified in paragraph (b) of this section.

(d) *Enrollment and disenrollment process—(1) Application for enrollment.* A veteran may apply to be enrolled in the VA healthcare system at any time. A veteran who wishes to be enrolled must apply by submitting a VA Form 10–10EZ to a VA medical facility. Veterans applying based on inclusion in priority categories 1, 2, 3, 4, 6, and 7 do not need to complete section II, but must complete the rest of the form. Veterans applying based on inclusion in priority category 5 must complete the entire form. VA Form 10–10EZ is set forth in paragraph (f) of this section and is available from VA medical facilities.

Note to paragraph (d)(1): To remain enrolled based on inclusion in priority category 5, a veteran annually must return to VA information on a VA Form 10–10EZ as provided in paragraph (d)(4)(iii) of this section and otherwise meet the requirements for enrollment.

(2) *Action on application.* Upon receipt of a completed VA Form 10–10EZ, a VA network or facility director will accept a veteran as an enrollee upon determining that the veteran is in a priority category eligible to be enrolled as announced in the applicable **Federal Register** notice. Upon determining that a veteran is not in a priority category eligible to be enrolled, the VA network or facility director will inform the applicant that the applicant is ineligible to be enrolled.

(3) *Automatic enrollment.* Notwithstanding other provisions of this section, veterans who were notified by VA letter that they were enrolled in the VA healthcare system under the trial VA enrollment program prior to October 1, 1998, automatically will be enrolled in the VA healthcare system under this section if determined by a VA network or facility director that the veteran is in a priority category eligible to be enrolled as announced in the applicable **Federal Register** notice. Upon determining that a veteran is not in a priority category eligible to be enrolled, the VA network or facility director will inform the veteran that the veteran is ineligible to be enrolled.

(4) *Disenrollment.* A veteran enrolled under paragraph (d)(2) or (d)(3) of this section will be disenrolled only if:

(i) The veteran submits to a VA medical center a signed document stating that the veteran no longer wishes to be enrolled;

(ii) A VA network or facility director determines that the veteran is no longer in a priority category eligible to be enrolled, as announced in the applicable **Federal Register** notice; or

(iii) A VA network or facility director determines that the veteran has been enrolled based on inclusion in priority category 5; determines that the veteran was sent by mail a VA Form 10–10EZ; and determines that the veteran failed to return the completed form to the address on the return envelope within

60 days from receipt of the form. VA Form 10–10EZ is set forth in paragraph (f) of this section.

(5) *Notification of enrollment status.* Notice of a decision by a VA network or facility director regarding enrollment status will be provided to the affected veteran by letter and will contain the reasons for the decision. The decision will be based on all information available to the decisionmaker, including the information contained in VA Form 10–10EZ.

(e) *Catastrophically disabled.* For purposes of this section, catastrophically disabled means to have a permanent severely disabling injury, disorder, or disease that compromises the ability to carry out the activities of daily living to such a degree that the individual requires personal or mechanical assistance to leave home or bed or requires constant supervision to avoid physical harm to self or others. This definition is met if an individual has been found by the Chief of Staff (or equivalent clinical official) at the VA facility where the individual was examined to have a condition specified in paragraph (e)(1) of this section or to meet one of the conditions specified in paragraph (e)(2) of this section.

(1) Quadriplegia and quadriparesis (ICD–9 Code 344.0x), paraplegia (ICD–9 Code 344.1), blindness (ICD–9 Code 369.4), unspecified hemiplegia (ICD–9 Code 342.90), persistent vegetative state (ICD–9 Code 780.03), or a condition resulting from two of the following procedures (ICD–9 Code 84.x) provided the two procedures were not on the same limb:

(i) Amputation through hand (procedure code 84.03);

(ii) Disarticulation of wrist (procedure code 84.04);

(iii) Amputation through forearm (procedure code 84.05);

(iv) Disarticulation of elbow (procedure code 84.06);

(v) Amputation through humerus (procedure code 84.07);

(vi) Shoulder disarticulation (procedure code 84.08);

(vii) Forequarter amputation (procedure code 84.09);

(viii) Lower limb amputation not otherwise specified (procedure code 84.10);

(ix) Amputation of toe (only if accompanied by V49.71 code for amputated great toe) (procedure code 84.11);

(x) Amputation through foot (procedure code 84.12);

(xi) Disarticulation of ankle (procedure code 84.13);

(xii) Amputation through malleoli (procedure code 84.14);

(xiii) Other amputation below knee (procedure code 84.15);

(xiv) Disarticulation of knee (procedure code 84.16);

(xv) Above knee amputation (procedure code 84.17);

(xvi) Disarticulation of hip (procedure code 84.18); and

(xvii) Hindquarter amputation (procedure code 84.19).

(2)(i) Dependent in 4 or more Activities of Daily Living (eating, dressing, bathing, toileting, transferring, incontinence of bowel and/or bladder), with at least 4 of the dependencies being permanent, using the Katz scale.

(ii) A score of 10 or lower using the Folstein Mini-Mental State Examination.

(iii) A score of 14 or higher on the Activities of Daily Living Index using Resource Utilization Group III.

(iv) A score of 2 or lower on at least 4 of the 13 motor items using the Functional Independence Measure.

(v) A score of 30 or lower using the Global Assessment of Functioning.

(f) *VA Form 10–10EZ.* [insert actual photocopy of VA Form 10–10EZ]

BILLING CODE 8320–01–P

OMB Approved No. 2900-XXXX
Estimated Burden: Avg. 20 min.

Department of Veterans Affairs

APPLICATION FOR HEALTH BENEFITS

SECTION I - GENERAL INFORMATION

1A. TYPE OF BENEFIT(S) APPLIED FOR *(You may check more than one)*
☐ HEALTH SERVICES ☐ NURSING HOME ☐ DOMICILIARY ☐ DENTAL ☐ CHAMPVA

1B. IF APPLYING FOR HEALTH SERVICES, WHICH VA MEDICAL CENTER OR OUTPATIENT CLINIC DO YOU PREFER

2. VETERAN'S NAME *(Last, First, MI)*	3. OTHER NAMES USED	4. GENDER *(Check one)* ☐ M ☐ F

5. SOCIAL SECURITY NUMBER	6. CLAIM NUMBER	7. DATE OF BIRTH *(mm/dd/yyyy)*	8. RELIGION

9A. CURRENT MAILING ADDRESS *(Street)*	9B. CITY	9C. STATE	9D. ZIP

9E. COUNTY	10. HOME TELEPHONE NUMBER ( )	11. WORK TELEPHONE NUMBER ( )

12. CURRENT MARITAL STATUS *(Check one)* ☐ MARRIED ☐ NEVER MARRIED ☐ SEPARATED ☐ WIDOWED ☐ DIVORCED ☐ UNKNOWN

13A. LAST BRANCH OF SERVICE	13B. LAST ENTRY DATE	13C. LAST DISCHARGE DATE	13D. DISCHARGE TYPE	13E. MILITARY SERVICE NUMBER

14. CIRCLE YES OR NO

A. ARE YOU A FORMER PRISONER OF WAR	YES	NO	H. DO YOU HAVE A MILITARY DENTAL INJURY	YES	NO
B. DO YOU HAVE A VA SERVICE-CONNECTED RATING	YES	NO	I. DO YOU HAVE A SPINAL CORD INJURY	YES	NO
IF YES, WHAT IS YOUR RATED PERCENTAGE		%	J. ARE YOU ELIGIBLE FOR MEDICAID	YES	NO
C. ARE YOU RECEIVING A VA PENSION	YES	NO	K. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART A	YES	NO
D. ARE YOU RETIRED FROM THE MILITARY	YES	NO	K1. EFFECTIVE DATE		
D1. WAS YOUR RETIREMENT THE RESULT OF A DISABILITY	YES	NO	L. ARE YOU ENROLLED IN MEDICARE HOSPITAL INSURANCE PART B	YES	NO
D2. WERE YOU REGULARLY RETIRED - (20+yrs.)	YES	NO	L1. EFFECTIVE DATE		
E. WERE YOU EXPOSED TO TOXINS IN THE GULF WAR	YES	NO	M. MEDICARE CLAIM NUMBER		
F. WERE YOU EXPOSED TO AGENT ORANGE	YES	NO	N. NAME EXACTLY AS IT APPEARS ON YOUR MEDICARE CARD		
G. WERE YOU EXPOSED TO RADIATION	YES	NO			

15A. VETERAN'S EMPLOYMENT STATUS *(Check one)*
☐ NOT EMPLOYED
☐ EMPLOYED
If employed or retired, complete item ☐ RETIRED *Date of retirement*

15B. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER

16A. SPOUSE'S EMPLOYMENT STATUS *(Check one)*
☐ NOT EMPLOYED
☐ EMPLOYED
If employed or retired, complete item 16B ☐ RETIRED *Date of retirement*

16B. COMPANY NAME, ADDRESS AND TELEPHONE NUMBER

17A. VETERAN'S HEALTH INSURANCE COMPANY		18A. SPOUSE'S HEALTH INSURANCE COMPANY	
		18B. NAME OF POLICY HOLDER	
17C. POLICY NUMBER	17D. GROUP CODE	18C. POLICY NUMBER	18D. GROUP CODE

19A. NAME, ADDRESS AND RELATIONSHIP OF NEXT OF KIN

19B. NEXT OF KIN'S HOME TELEPHONE NUMBER ( )

19C. NEXT OF KIN'S WORK TELEPHONE NUMBER ( )

20A. NAME, ADDRESS AND RELATIONSHIP OF EMERGENCY CONTACT

20B. EMERGENCY CONTACT'S HOME TELEPHONE NUMBER ( )

20C. EMERGENCY CONTACT'S WORK TELEPHONE NUMBER ( )

21. I DESIGNATE THE FOLLOWING INDIVIDUAL TO RECEIVE POSSESSION OF ALL MY PERSONAL PROPERTY LEFT ON THE PREMISES UNDER VA CONTROL AFTER I LEAVE SUCH PLACE OR AT THE TIME OF MY DEATH. *(Check one)* ***(This does not constitute a will or transfer of title.)***
☐ EMERGENCY CONTACT ☐ NEXT OF KIN

22A. IS NEED FOR CARE DUE TO ON THE JOB INJURY *(Check one)*	22B. IS NEED FOR CARE DUE TO ACCIDENT *(Check one)*
☐ YES ☐ YES	☐ YES ☐ YES

VA FORM APR 1998 **10-10EZ**

APPLICATION FOR HEALTH BENEFITS, Continued	VETERAN'S NAME	SOCIAL SECURITY NUMBER

SECTION II - FINANCIAL ASSESSMENT

IIA - FINANCIAL DISCLOSURE

You are not required to provide the financial information requested in this section. However, current law may require VA to consider your household financial situation to determine your eligibility for enrollment and/or cost-free care of your nonservice-connected (NSC) conditions. If you are an NSC veteran who is not an EX-POW or drawing VA pension benefits, you may be eligible for enrollment if your annual household income (or combined income and net worth) exceeds the established threshold for enrollment and you agree to pay VA co-payments for that care unless treatment is for your service-connected conditions. See Section III - Consent and Signature.

☐ **YES,** I WILL PROVIDE SPECIFIC INCOME AND/OR ASSET INFORMATION TO HAVE ELIGIBILITY FOR CARE DETERMINED. *Complete all sections below that apply to you . Use information from last calendar year. Sign and date the application.*

☐ **NO,** I DO NOT WISH TO PROVIDE MY DETAILED FINANCIAL INFORMATION. *By checking no, and signing below, you are agreeing to pay the applicable VA co-payment and be assigned into priority category 7.*

IIB - DEPENDENT INFORMATION *(Use a separate sheet for additional dependents)*

1A. SPOUSE'S NAME *(Last, First, MI)*	1B. CHILD'S NAME *(Last, First, MI)*	
2A. SPOUSE'S SOCIAL SECURITY NUMBER	2B. CHILD'S SOCIAL SECURITY NUMBER	3. CHILD'S DATE OF BIRTH *(mm/dd/yyyy)*
4A. SPOUSE'S ADDRESS AND TELEPHONE NUMBER *(Street, City, State, ZIP)*	4B. SPOUSE'S DATE OF BIRTH *(mm/dd/yyyy)*	
5A. SPOUSE'S MAIDEN NAME	5B. CHILD'S RELATIONSHIP TO YOU *(Circle one)* *Son* *Daughter* *Stepson* *Stepdaughter*	
6A. DATE OF MARRIAGE *(mm/dd/yyyy)*	6B. DATE CHILD BECAME YOUR DEPENDENT *(mm/dd/yyyy)*	
7. IF YOUR SPOUSE OR DEPENDENT CHILD DID NOT LIVE WITH YOU LAST YEAR, ENTER THE AMOUNT YOU CONTRIBUTED TO THEIR SUPPORT SPOUSE $ CHILD $	8. EXPENSES PAID BY YOUR DEPENDENT CHILD FOR COLLEGE, VOCATIONAL REHABILITATION OR TRAINING *(tuition, books, materials, etc.)* $	

IIC - GROSS ANNUAL INCOME OF VETERAN, SPOUSE AND DEPENDENT CHILDREN

	VETERAN	SPOUSE	CHILDREN
1. WHAT WAS YOUR GROSS ANNUAL INCOME FROM EMPLOYMENT *(wages, bonuses, tips, etc.)* , AS WELL AS INCOME FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS	$	$	$
2. LIST OTHER INCOME AMOUNTS *(Social Security, compensation, pension, interest, dividends) Exclude welfare.*	$	$	$
3. IF ANY OF YOUR GROSS ANNUAL INCOME WAS OBTAINED FROM YOUR FARM, RANCH, PROPERTY OR BUSINESS, REFER TO PAGE 2, SECTION IIC OF THE INSTRUCTIONS			

IID - DEDUCTIBLE EXPENSES

1. NON-REIMBURSED MEDICAL EXPENSES PAID BY YOU OR YOUR SPOUSE *(payments for doctors, dentists, drugs, Medicare, health insurance, hospital and nursing home)*	$
2. AMOUNT YOU PAID LAST CALENDAR YEAR FOR FUNERAL AND BURIAL EXPENSES FOR YOUR DECEASED SPOUSE OR DEPENDENT CHILD *(Also enter spouse or child's information in Section III.)*	$
3. AMOUNT YOU PAID LAST CALENDAR YEAR FOR YOUR COLLEGE OR VOCATIONAL EDUCATIONAL EXPENSES *(tuition, books, fees, materials, etc.) DO NOT LIST YOUR DEPENDENTS EDUCATIONAL EXPENSES.*	$

IIE - NET WORTH

	VETERAN	SPOUSE
1. CASH, AMOUNT IN BANK ACCOUNTS *(Checking and savings accounts, certificates of deposit, individual retirement accounts, etc.)*	$	$
2. MARKET VALUE OF LAND AND BUILDINGS MINUS MORTGAGES AND LIENS. *Do not count your primary home. Include value of farm, ranch, or business assets.*	$	$
3. STOCKS AND BONDS AND VALUE OF OTHER PROPERTY OR ASSETS *(art, rare coins, etc.)* MINUS THE AMOUNT YOU OWE ON THESE ITEMS. *Exclude household effects and family vehicles.*	$	$

SECTION III - CONSENT AND SIGNATURE

CO-PAYMENT NOTICE: If you are a nonservice-connected veteran or a 0% service-connected veteran not due monthly VA compensation **and** your household income or combined income and net worth exceeds the established threshold, you may be eligible for enrollment only if you agree to pay VA co-payments for treatment of your NSC conditions. By signing this application you are agreeing to pay the applicable VA co-payment if required by law.

I CERTIFY THE FOREGOING STATEMENT(S) ARE TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.	DATE *(mm/dd/yyyy)*
• **SIGN HERE** *(Signature of applicant or applicant's representative)*	

THE LAW PROVIDES SEVERE PENALTIES FOR WILLFUL SUBMISSION OF FALSE INFORMATION.

VA FORM APR 1998 **10-10EZ**

BILLING CODE 8320–01–C

(Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1721, 1722)

3. A new § 17.37 is added to read as follows:

§ 17.37 Enrollment not required—provision of hospital and outpatient care to veterans.

Even if not enrolled in the VA healthcare system:

(a) A veteran rated for service-connected disabilities at 50 percent or greater will receive VA hospital and outpatient care provided for in the ''medical benefits package'' set forth in § 17.38.

(b) A veteran who has a service-connected disability will receive VA hospital and outpatient care provided for in the ''medical benefits package'' set forth in § 17.38 for that service-connected disability.

(c) A veteran who was discharged or released from active military service for a disability incurred or aggravated in the line of duty will receive VA hospital and outpatient care provided for in the ''medical benefits package'' set forth in § 17.38 for that disability for the 12-month period following discharge or release.

(d) When there is a compelling medical need to complete a course of VA treatment started when the veteran was enrolled in the VA healthcare system, a veteran will receive that treatment.

(e) Subject to the provisions of § 21.240, a veteran participating in VA's vocational rehabilitation program described in §§ 21.1 through 21.430 will receive VA hospital and outpatient care provided for in the ''medical benefits package'' set forth in § 17.38.

(f) A veteran may receive VA hospital and outpatient care based on factors other than veteran status (e.g., a veteran who is a private-hospital patient and is referred to VA for a diagnostic test by that hospital under a sharing contract; a veteran who is a VA employee and is examined to determine physical or mental fitness to perform official duties; a Department of Defense retiree under a sharing agreement).

(g) For care not provided within a State, a veteran may receive VA hospital and outpatient care provided for in the ''medical benefits package'' set forth in § 17.38 if authorized under the provisions of 38 U.S.C. 1724 and 38 CFR 17.35.

(h) Commonwealth Army veterans and new Philippine Scouts may receive hospital and outpatient care provided for in the ''medical benefits package'' set forth in § 17.38 if authorized under the provisions of 38 U.S.C. 1734 and 1735.

(i) A veteran may receive certain types of VA hospital and outpatient care not included in the ''medical benefits package'' set forth in § 17.38 if authorized by statute or other sections of 38 CFR (e.g., humanitarian emergency care for which the individual will be billed, compensation and pension examinations, dental care, domiciliary care, nursing home care, readjustment counseling, care as part of a VA-approved research project, seeing-eye or guide dogs, sexual trauma counseling and treatment, special registry examinations).

(Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1721, 1722)

4. A new § 17.38 is added to read as follows:

§ 17.38 Medical benefits package.

(a) Subject to paragraphs (b) and (c) of this section, the following hospital and outpatient care constitutes the ''medical benefits package'' (basic care and preventive care):

(1) Basic care.

(i) Outpatient medical, surgical, and mental healthcare, including care for substance abuse.

(ii) Inpatient hospital, medical, surgical, and mental healthcare, including care for substance abuse.

(iii) Prescription drugs, including over-the-counter drugs and medical and surgical supplies available under the VA national formulary system.

(iv) Emergency care in VA facilities; and emergency care in non-VA facilities in accordance with sharing contracts or if authorized by §§ 17.52(a)(3), 17.53, 17.54, 17.120–132.

(v) Bereavement counseling as authorized in § 17.98.

(vi) Comprehensive rehabilitative services other than vocational services provided under 38 U.S.C. chapter 31.

(vii) Consultation, professional counseling, training, and mental health services for the members of the immediate family or legal guardian of the veteran or the individual in whose household the veteran certifies an intention to live, if needed to treat:

(A) The service-connected disability of a veteran; or

(B) The nonservice-connected disability of a veteran where these services were first given during the veteran's hospitalization and continuing them is essential to permit the veteran's release from inpatient care.

(viii) Durable medical equipment and prosthetic and orthotic devices, including eyeglasses and hearing aids as authorized under § 17.149.

(ix) Home health services authorized under 38 U.S.C. 1717 and 1720C.

(x) Reconstructive (plastic) surgery required as a result of disease or trauma, but not including cosmetic surgery that is not medically necessary.

(xi) Respite, hospice, and palliative care.

(xii) Payment of travel and travel expenses for veterans eligible under § 17.143 if authorized by that section.

(2) Preventive care, as defined in 38 U.S.C. 1701(9), which includes:

(i) Periodic medical exams.

(ii) Health education, including nutrition education.

(iii) Maintenance of drug-use profiles, drug monitoring, and drug use education.

(iv) Mental health and substance abuse preventive services.

(v) Immunizations against infectious disease.

(vi) Prevention of musculoskeletal deformity or other gradually developing disabilities of a metabolic or degenerative nature.

(vii) Genetic counseling concerning inheritance of genetically determined diseases.

(viii) Routine vision testing and eye-care services.

(ix) Periodic reexamination of members of high-risk groups for selected diseases and for functional decline of sensory organs, and the services to treat these diseases and functional declines.

(b) *Provision of the ''medical benefits package''.* Care referred to in the ''medical benefits package'' will be provided to individuals only if it is determined by appropriate healthcare professionals that the care is needed to promote, preserve, or restore the health of the individual and is in accord with generally accepted standards of medical practice.

(1) *Promote health.* Care is deemed to promote health if the care will enhance the quality of life or daily functional level of the veteran, identify a predisposition for development of a condition or early onset of disease which can be partly or totally ameliorated by monitoring or early diagnosis and treatment, and prevent future disease.

(2) *Preserve health.* Care is deemed to preserve health if the care will maintain the current quality of life or daily functional level of the veteran, prevent the progression of disease, cure disease, or extend life span.

(3) *Restoring health.* Care is deemed to restore health if the care will restore the quality of life or daily functional level that has been lost due to illness or injury.

(c) In addition to the care specifically excluded from the ''medical benefits package'' under paragraphs (a) and (b) of

this section, the ''medical benefits package'' does not include the following:

(1) Abortions and abortion counseling.

(2) Drugs, biologicals, and medical devices not approved by the Food and Drug Administration unless the treating medical facility is conducting formal clinical trials under an Investigational Device Exemption (IDE) or an Investigational New Drug (IND) application, or the drugs, biologicals, or medical devices are prescribed under a compassionate use exemption.

(3) Gender alterations.

(4) Hospital and outpatient care for a veteran who is either a patient or inmate in an institution of another government agency if that agency has a duty to give the care or services.

(5) Infertility services.

(6) Membership in spas and health clubs.

(7) Pregnancy and delivery.

(8) Reproductive sterilization, unless medically necessary.

(9) Surgery to reverse voluntary sterilization.

(10) Surgical implantation of penile prostheses.

(Authority: 38 U.S.C. 101, 501, 1701, 1705, 1710, 1721, 1722)

§ 17.43 [Amended]

5–6. In § 17.43, paragraph (a) is removed and paragraphs (b) through (e) are redesignated as paragraphs (a) through (d), respectively.

§ 17.47 [Amended]

7. In § 17.47, paragraph (h) is removed; paragraphs (i) through (l) are redesignated as paragraphs (h) through (k), respectively; and newly redesignated paragraph (h) is amended by removing ''hospital or'' and by removing ''or hospital care in a Federal hospital under agreement,''.

§ 17.93 [Amended]

8. In § 17.93, paragraph (a)(2) is amended by removing ''Medical services'' and adding, in its place, ''Subject to the provisions of §§ 17.36 through 17.38, medical services''.

§ 17.99 [Removed]

9. Section 17.99 is removed.

§ 17.100 [Amended]

10. In § 17.100, the third sentence is amended by removing ''a new application is filed, and''.

[FR Doc. 98–18302 Filed 7–9–98; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH 114–1b; FRL–6123–2]

Approval and Promulgation of Maintenance Plan Revision; Ohio

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to approve a March 13, 1998, request from Ohio, for a State Implementation Plan maintenance plan revision for the Columbus ozone maintenance area. The maintenance plan revision establishes an out year of 2010 for the area's emissions budget. The maintenance plan revision also allocates to the 2010 mobile source emissions budget a portion of the area's safety margin. The 2010 mobile source emissions budget will be used for transportation conformity purposes. The safety margin is the difference between the attainment inventory level of the total emissions and the projected levels of the total emissions in the final year of the maintenance plan.

In the final rules section of this **Federal Register**, EPA is approving the State's requests as a direct final rule without prior proposal because EPA views this action as noncontroversial and anticipates no adverse comments. A detailed rationale for approving the State's request is set forth in the direct final rule. The direct final rule will become effective without further notice unless the Agency receives relevant adverse written comment on the rule. Should the Agency receive such comment, it will publish a notice informing the public that the direct final rule did not take effect and such public comment received will be addressed in a subsequent final rule based on this proposed rule. If no adverse written comments are received, the direct final rule will take effect on the date stated in that document and no further activity will be taken on this proposed rule. EPA does not plan to institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments on this proposed action must be received by August 10, 1998.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

FOR FURTHER INFORMATION CONTACT: Scott Hamilton, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–4775.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final document which is located in the Rules section of this **Federal Register**. Copies of the requests are available for inspection at the following address: (Please contact Scott Hamilton at (312) 353–4775 before visiting the Region 5 office.) USEPA Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen oxides, Transportation conformity.

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

Dated: July 1, 1998.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 98–18421 Filed 7–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–300680; FRL–6016–1]

40 CFR Part 180

RIN 2070–AB18

Food and Food By-Products Used as a Pesticide; Proposed Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to establish an exemption from the requirement of a tolerance for residues of any edible food commodity (except for peanuts, tree nuts, milk, soybean, eggs, fish, crustacea, and wheat) used as a pesticide, when applied in accordance with good agricultural practices, in or on all food commodities. Any edible food commodity used as a pesticide under this exemption must not be ''adulterated food'' as defined in FFDCA section 402. 21 U.S.C. 342. The exemption from the requirement of a tolerance is being proposed by the Agency on its own initiative, since the

Agency believes that the exemption for edible food commodities will be safe.

DATES: Comments, identified by the docket control number [OPP–300680], must be received on or before September 8, 1998.

ADDRESSES: By mail, submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202. 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). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Comments and data may also be submitted electronically by following the instructions under Unit IV of this document. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Freshteh Toghrol, Biopesticides and Pollution Prevention Division (7511W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Station #1, 5th Floor, 2805 Crystal Drive, Arlington, VA 22202; (703) 308–7014; toghrol.freshteh@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 408(e) of the Federal Food, Drug and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e), EPA proposes to amend 40 CFR part 180 by establishing an exemption from the requirement of a tolerance for residues of any edible food commodity (except for peanuts, tree nuts, milk, eggs, fish, crustacea, and wheat) used as a pesticide, when applied in accordance with good agricultural practices in or on all food commodities. By edible food commodity, EPA means foods that are widely consumed for their nutrient properties. This exemption would not apply to any ''adulterated food'' under FFDCA section 402.

I. Statutory Authority

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

II. Risk Assessment and Statutory Findings

Under the conditions of the proposed tolerance exemption for residues of any edible food commodity used as a pesticide (as defined above) in or on all food commodities, and in consideration of the conditions, criteria, and requirements set forth by FQPA, the Agency believes that this tolerance exemption will be safe for humans, including infants and children. This exemption only applies to those foods that have been widely consumed for their nutrient properties. Any safety concerns regarding exposure to residues of such edible food commodities have been addressed by the long history of safe use of these foods in commerce, as well as the adequate regulation of foods by the Food and Drug Administration. Additionally, any cumulative effects from aggregate exposure to residues of food commodities when used as pesticides in or on other food commodities would not likely impact those effects that may occur from much broader exposure via consumption of food in the diet.

Some edible foods produce an allergic reaction in certain individuals. Allergy to food proteins occurs in less than 1 to 2% of the population. The majority of individuals with documented immunologic reactions to foods exhibit immunoglobulin E (IgE)-mediated immediate hypersensitivity reactions that can be sudden and severe. Current scientific knowledge suggest that common food allergens are glycosylated proteins, which tends to be resistant to degradation by heat, acid, and proteases. Where food allergy is confirmed patients are usually allergic to only a few specific proteins within one or two specific foods. Eight food or food groups (peanut, soybean, tree nuts, milk, eggs, fish, crustacea, and wheat) account for the vast majority of documented food allergies worldwide (the Food and Agriculture Organization (FAO) of the United Nation: Report of the FAO Technical Consultation on Food Allergies, Rome, Italy, November 13-14, 1995). Even though, as explained below, there are unlikely to be significant residues from use of edible food as a pesticide, the Agency has decided not to include those known allergenic food commodities in this exemption.

The Agency believes that food commodities will be used as pesticides to control or mitigate pests or as plant growth regulators in only very limited cases. It is unlikely that an edible food commodity could be used to control a pest via a toxic mode of action. This assumption is supported by the Agency's experience to date where food commodities have been used to attract, repel or otherwise suppress pests. The purported mechanisms of action for food commodities involve feeding deterrence for herbivorous insects or mammals or an alteration in the microbial flora which suppresses the microbial pests. In the case of an altered microbial populations, it is necessary for the food commodity to be degraded or metabolized before the desired effect can occur.

The Agency also believes that residues from any edible food commodity, when used as a pesticide on another food commodity would be minimal to non-existent because of rapid degradation in the environment.

No tolerances or exemptions from requirements of tolerances have been issued in the United States or internationally for all food commodities as biochemical pesticides; however, some individual foods or food by-products have tolerance exemptions in the United States.

III. Safety Determination for U.S. Population and Infants and Children

The Agency believes that this tolerance exemption will be safe for humans, including infants and children.

Any safety concerns regarding exposure to residues of edible food commodities have been addressed by the long history of safe use of foods in commerce, as well as the adequate regulation of foods by the Food and Drug Administration. Additionally, any cumulative effects from aggregate exposure to residues of food commodities when used as pesticides in or on other food commodities would not likely impact those effects that may occur from much broader exposure via consumption of food in the diet. Since food commodities are non toxic to humans including infants and children, EPA has not assessed the risk from food commodities using a safety factor approach. Accordingly, application of an additional 10X safety factor analysis or quantitative risk assessment for the protection of infants and children is not necessary to protect the safety of infants and children.

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. Based on the information and data considered, the Agency has determined that, in amending 40 CFR 180.1164, as proposed, there is reasonable certainty that no harm to the general population, including infants and children will result from aggregate exposure to edible food commodities used as pesticides. An exemption from tolerance is appropriate for these pesticides because EPA believes they do not pose a dietary risk under reasonably forseeable circumstances. Accordingly, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

IV. Public Docket and Electronic Submissions

The official record for this rule making, as well as the public version, has been established for this rule making under document control number [OPP–300680] (including 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 119 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. 22202.

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 rule making, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer any copies of comments received electronically into printed paper form as they are received and will place the paper copies in the official rule making record. The official rule making record is the paper record maintained at the Virginia address in ''ADDRESSES'' at the beginning of this document.

V. Regulatory Assessment Requirements

This rule proposes an exemption from the requirement of a tolerance under FFDCA section 408(d). The EPA is proposing this regulation on its own initiative. 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 action 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, 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).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 40 CFR Part 180

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and record keeping requirements.

Dated: June 29, 1998.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I, part 180 is proposed to be 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 180.1164 is amended by adding paragraph (d) to read as follows:

§ 180.1164 Food and food by-products; exemption from the requirement of a tolerance.

* * * * *

(d) Any edible food commodity (except for peanuts, tree nuts, milk, eggs, fish, crustacea, and wheat) used as a pesticide is exempted from the requirement of a tolerance when used in accordance with good agricultural practice in or on all food commodities. This exemption shall not apply to any edible food commodity that is adulterated under section 342 of Title 21 of the United States Code.

[FR Doc. 98–18280 Filed 7–9–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[IL–64–2–5807; FRL–6122–8]

Project XL Site-specific Rulemaking for OSi Specialties, Inc., Sistersville, WV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental proposal.

SUMMARY: This document proposes a narrow modification being considered by the EPA in implementing a project under the Project XL program for the OSi Specialties, Inc., plant, a wholly owned subsidiary of Witco Corporation, located near Sistersville, West Virginia (''the Sistersville Plant''). To implement this XL project, the EPA proposed on March 6, 1998, a site-specific regulatory deferral of certain air emission standards. That action has not yet been

promulgated. Today's document addresses the narrow issue of a condition contained in that proposed site-specific deferral, which requires the Sistersville Plant to conduct an initial performance test within 60 days of initial start-up of a thermal oxidizer.

DATES: Comments on this document will be accepted through July 24, 1998.

ADDRESSES: Docket. Supporting information for today's supplemental proposal is available for public inspection and copying at the EPA's docket office located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. The public is encouraged to phone in advance to review docket materials. Appointments can be scheduled by phoning the Docket Office at (703) 603–9230. For information specific to today's supplemental proposal, refer to RCRA docket number F–98–MCCA–FFFFF. For information used in developing the XL project and the proposed rule, refer to RCRA docket number F–98–MCCP–FFFFF.

Hand delivery of items and review of docket materials are made at the Virginia address. To submit comments by mail, the mailing address for the RCRA docket office is RCRA Information Center (5305W), U. S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

A duplicate copy of the docket is available for inspection and copying at U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, during normal business hours. Persons wishing to view the duplicate docket at the Philadelphia location are encouraged to contact Mr. Tad Radzinski in advance, by telephoning (215) 814–2394. NOTE: comments will not be received at the Philadelphia location; All comments must be submitted to the RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

Comments: Written comments regarding today's supplemental proposal may be mailed to the RCRA Information Center of the U.S. Environmental Protection Agency, at the above-mentioned Washington, D.C. mailing address. Please send an original and two copies of all comments, and refer to Docket Number F–98-MCCA-FFFFF.

The EPA will consider comments on this supplemental proposal that are received through July 24, 1998.

FOR FURTHER INFORMATION CONTACT: For information about this document, the proposed site-specific regulatory deferral, or the OSi XL project, please contact Mr. Tad Radzinski, U.S. Environmental Protection Agency, Region 3 (3WC11), Waste Chemical Management Division, 1650 Arch Street, Philadelphia, PA, 19103–2029, (215) 814–2394.

To be included on the OSi Specialties Project XL mailing list to receive information about future public meetings, XL progress reports and other mailings from OSi on the XL Project, contact: Okey Tucker, OSi Specialties, Inc., 3500 South State Rte. 2, Friendly, WV 26146. Mr. Tucker can also be reached by telephone at (304) 652-8131.

For information on all other aspects of the XL Program contact Christopher Knopes at the following address: Office of Reinvention, United States Environmental Protection Agency, Room 1029WT, 401 M Street, SW (1802), Washington, DC 20460. Additional information on Project XL, including documents referenced in this document, other EPA policy documents related to Project XL, regional XL contacts, application information, and descriptions of existing XL projects and proposals, is available via the Internet at ''http://www.epa.gov/ProjectXL'' and via an automated fax-on-demand menu at (202) 260–8590.

SUPPLEMENTARY INFORMATION: On March 6, 1998, the EPA proposed in the **Federal Register** (63 FR 11200) a conditional site-specific regulatory deferral to implement a project under the Project XL program. The XL project and the conditional site-specific deferral are applicable only to the Sistersville Plant. The proposed site-specific deferral would grant to the Sistersville Plant a conditional deferral from certain technical requirements applicable to two on-site hazardous waste surface impoundments. The standards proposed to be deferred are codified in 40 CFR parts 264 and 265 under subpart CC (referred to as the ''subpart CC standards'').

The proposed site-specific deferral includes specific technical and administrative requirements for the operation of a thermal oxidizer at the Sistersville Plant. As proposed, the site-specific deferral requires the Sistersville Plant to perform initial start-up of the thermal oxidizer no later than April 1, 1998. The proposed deferral also requires the Sistersville Plant to conduct an initial performance test of the thermal oxidizer within 60 days of the initial start-up. That requirement is found at paragraph (f)(2)(ii)(B) in §§ 264.1080 and 265.1080 of the proposed site-specific deferral. See 63 FR 11200, March 6, 1998. It is this initial performance test deadline that is the subject of today's supplemental proposal.

Following initial start-up of the thermal oxidizer on April 1, 1998, the Sistersville Plant encountered certain operational difficulties related to the new equipment. At that time, representatives from the Sistersville Plant notified EPA of those difficulties. On May 26, 1998, the Sistersville Plant notified EPA that it would not be able to meet the proposed requirement to conduct the initial performance test by May 31, 1998, which is the date 60 days after initial start-up of the on-site thermal oxidizer. Representatives from the Sistersville Plant conveyed that they expected to conduct the initial performance test by the end of June 1998; however, they requested the deadline be extended by an additional 60 days to allow for possible further delays due to additional unexpected events.

This missed deadline is a material failure by the Sistersville Plant to meet the provisions set forth in the Final Project Agreement (''FPA'') for the XL project, as well as the proposed requirements of the site-specific deferral. It is the expectation of all the stakeholders that the Sistersville Plant will adhere to its commitments to achieving the environmental benefits of this XL project in exchange for the site-specific regulatory flexibility provided by EPA and WV OAQ. The XL project and the related requirements of the proposed site-specific deferral were developed by mutual agreement among EPA, the West Virginia Office of Air Quality (''WV OAQ''), and the Sistersville Plant. The FPA was made available for public review and comment on June 27, 1997. See 62 FR 34748. Though not in itself an enforceable document, the EPA and the other Project XL stakeholders consider the FPA to be a clear expression of the Sistersville Plant's agreement with EPA and WV OAQ to comply with the specified project requirements, particularly the requirements to be codified through the site-specific deferral.

Although the site-specific deferral is not yet promulgated, the provisions of that deferral, as proposed March 6, 1998, are currently applicable to, and enforceable against, the Sistersville Plant under a consent order issued by the WV OAQ. In discussions and correspondence with OSi, EPA has emphasized the importance of meeting deadlines contained in the FPA, and complying with the conditions contained in the proposed site-specific deferral. Upon promulgation, the site-specific deferral will become directly

enforceable by EPA, WV OAQ and citizens.

The EPA and WV OAQ have reviewed documentation provided by the Sistersville Plant regarding their failure to conduct the initial performance test within 60 days of initial start-up, or May 31, 1998. It appears from that documentation that the Sistersville Plant made good faith efforts to comply with that requirement of the XL project, the proposed site-specific deferral, and the WV OAQ consent order. In recognition that the Sistersville Plant cannot possibly meet that passed deadline, and the site-specific deferral which proposed that requirement has not yet been promulgated, the EPA proposes to modify the site-specific deferral prior to its promulgation.

The modification would extend by 60 days, the initial performance test deadline that was contained in the proposed site-specific deferral. The EPA proposes an extension period of 60 days in response to the Sistersville Plant's representative's written statement that the test could be accomplished by the end of June, 1998, but that the recent history of operational difficulties at the Sistersville Plant indicates additional time may become necessary. A copy of that electronic mail note, dated May 26, 1998 from Mr. Tony Vandenberg to Ms. Beth Termini and Ms. Michele Aston, has been entered into the docket for this supplemental notice. A recent telephone meeting between EPA and the Sistersville Plant confirmed that further delays to the initial performance test schedule have occurred, due to continued operational problems with the thermal oxidizer and severe inclement weather in the Sistersville, West Virginia area, and that the initial performance test is scheduled for July 14 and 15, 1998.

The EPA proposes that extending the initial performance test deadline by 60 days will not result in significant, if any, decreases in the environmental benefits of this XL project. The Sistersville Plant has reported that the thermal oxidizer began operation on April 1, 1998, and following some initial technical difficulties, has been fully operational in accordance with the conditions of the proposed site-specific deferral, since April 13, 1998. The primary purpose of the initial performance test is to set a site-specific operating temperature that will indicate the thermal oxidizer is achieving the required 98 percent by weight reduction of the organics in the controlled vapor stream, as set forth in the proposed site-specific deferral. The FPA and the proposed site-specific deferral set a default operating temperature of 1600 degrees Fahrenheit for the period prior to conducting the initial performance test. This requirement is contained in the proposed site-specific deferral at §§ (f)(2)(ii)(A)(*1*)(*I*) of paragraphs 264.1080 and 265.1080, and is currently enforceable under the WV OAQ consent order. See 63 FR 11200, March 6, 1998. Because the Sistersville Plant has reportedly operated the thermal oxidizer at 1600 degrees Fahrenheit, EPA estimates that the Sistersville Plant has been achieving the majority, if not all, of the environmental benefits of the thermal oxidizer's operation since it first began its fully operational service on April 13, 1998.

In light of the apparent good faith effort by the Sistersville Plant to meet the May 31, 1998 deadline for the initial performance test, their timely notification to EPA of the missed deadline, and their compliance with the requirements otherwise applicable to the thermal oxidizer (e.g., continuously operating the unit at 1600 degrees Fahrenheit), the EPA proposes to extend the deadline for the initial performance test.

At the EPA's request, the Sistersville Plant has agreed to provide direct written notice of this issue to the XL project stakeholder group, and to notify this group that a **Federal Register** document will be published requesting public comment on this issue. The Sistersville Plant has also agreed that, upon publication of today's document in the **Federal Register**, it will promptly notify the stakeholder group, and publish a notification in the local Sistersville newspaper of the opportunity for public comment related to today's supplemental proposal.

The EPA considers a 14-day comment period to be adequate for this document, due to the very narrow scope of the issue, the narrow applicability of the site-specific deferral being considered, and the extensive notice to interested parties that the Sistersville Plant will provide prior to, and immediately following, publication of this supplemental proposal in the **Federal Register**.

List of Subjects 40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Hazardous waste, Organics, Surface impoundment, Thermal oxidizer.

Dated: July 7, 1998.

J. Charles Fox,

Associate Administrator, Office of Reinvention.

[FR Doc. 98–18463 Filed 7–9–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 281

[FRL–6123–4]

Tennessee; Tentative Approval of State Underground Storage Tank Program

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule; notice of tentative determination on application of State of Tennessee for final approval, public hearing and public comment period.

SUMMARY: The State of Tennessee has applied for approval of its underground storage tank program for petroleum substances under Subtitle I of the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed the Tennessee application and has made the tentative decision that Tennessee's underground storage tank program for petroleum substances satisfies all of the requirements necessary to qualify for approval. The Tennessee application for approval is available for public review and comment. A public hearing will be held to solicit comments on the application, unless insufficient public interest is expressed.

DATES: A public hearing is scheduled for September 3, 1998, unless insufficient public interest is expressed in holding a hearing. EPA reserves the right to cancel the public hearing if sufficient public interest is not communicated to EPA in writing by August 20, 1998. EPA will determine by August 27, 1998, whether there is significant interest to hold the public hearing. The State of Tennessee will participate in the public hearing held by EPA on this subject. Written comments on the Tennessee approval application, as well as requests to present oral testimony, must be received by the close of business on August 20, 1998.

ADDRESSES: Copies of the Tennessee approval application are available at the following addresses for inspection and copying:

Tennessee Department of Environment and Conservation, Division of Underground Storage Tanks, 401 Church Street 4th Floor, L&C Tower, Nashville, Tennessee 37243–1541, Phone: (615) 532–0945, 8:00 am through 4:30 pm, Central Daylight Savings Time

U.S. EPA Docket Clerk, Office of Underground Storage Tanks, c/o RCRA Information Center, 1235

Jefferson Davis Highway, Arlington, Virginia 22202, Phone: (703) 603–9231, 9:00 am through 5:00 pm, Eastern Daylight Savings Time

and

U.S. EPA Region 4, Underground Storage Tank Section, Atlanta Federal Center, 15th Floor, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Phone: (404) 562–9277, 9:00 am through 5:00 pm, Eastern Daylight Savings Time.

Written comments should be sent to Mr. John K. Mason, Chief of Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street S.W., Atlanta, Georgia 30303, telephone (404) 562–9277.

Unless insufficient public interest is expressed, EPA will hold a public hearing on the State of Tennessee's application for program approval on September 3, 1998, at 7:00 pm, Central Daylight Savings Time, at the Tennessee Department of Environment and Conservation, Conference Room B, 17th Floor, L&C Tower, 401 Church Street, Nashville, Tennessee 37243–1541. Anyone who wishes to learn whether or not the public hearing on the State's application has been cancelled should telephone the following contacts after August 27, 1998:

Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, 61 Forsyth Street, S.W., Atlanta, Georgia 30303, Phone: (404) 562–9277, or

Mr. Lamar Bradley, Acting Director, Division of Underground Storage Tanks, Tennessee Department of Environment and Conservation, 401 Church Street, 4th Floor, L&C Tower, Nashville, Tennessee 37243–1541, Phone: (615) 532–0945.

FOR FURTHER INFORMATION CONTACT: Mr. John K. Mason, Chief, Underground Storage Tank Section, U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street S.W., Atlanta, Georgia 30303, phone: (404) 562–9277.

SUPPLEMENTARY INFORMATION:

I. Background

Section 9004 of the Resource Conservation and Recovery Act (RCRA) authorizes EPA to approve State underground storage tank programs to operate in the State in lieu of the Federal underground storage tank (UST) program. Program approval may be granted by EPA pursuant to RCRA section 9004(b), if the Agency finds that the State program: is ''no less stringent'' than the Federal program for the seven elements set forth at RCRA section 9004(a)(1) through (7); includes the notification requirements of RCRA section 9004(a)(8); and provides for adequate enforcement of compliance with UST standards of RCRA section 9004(a).

II. Tennessee

The State of Tennessee submitted their draft state program approval application to EPA by letter dated December 9, 1993. After reviewing the package, EPA submitted comments to the state for review. Tennessee submitted their complete state program approval application for EPA's tentative approval on September 1, 1996.

On December 8, 1989, Tennessee adopted UST program regulations for petroleum underground storage tanks related to procedures for fees and notification. The remainder of Tennessee's UST program regulations for petroleum underground storage tanks became effective on April 15, 1990. Prior to the adoption of the regulations, Tennessee solicited public comment and held a public hearing on the draft UST program regulations. EPA has reviewed the Tennessee application, and has tentatively determined that the State's UST program for petroleum substances meets all of the requirements necessary to qualify for final approval.

EPA will hold a public hearing on its tentative decision on September 3, 1998, unless insufficient public interest is expressed. The public may also submit written comments on EPA's tentative determination until August 20, 1998. Copies of the Tennessee application are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this document.

EPA will consider all public comments on its tentative determination received at the hearing, or received in writing during the public comment period. Issues raised by those comments may be the basis for a decision to deny final approval to Tennessee. EPA expects to make a final decision on whether or not to approve Tennessee's program within 60 days, and will give notice of it in the **Federal Register**. The document will include a summary of the reasons for the final determination and a response to all major comments.

III. Administrative Requirements

A. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

B. Unfunded Mandates Reform Act

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 certain regulatory actions on State, local, and tribal governments and the private sector. Under sections 202 and 205 of the UMRA, EPA generally must prepare a written statement of economic and regulatory alternatives analyses for proposed and final rules with Federal mandates, as defined by the UMRA, 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. The section 202 and 205 requirements do not apply to today's action because it is not a ''Federal mandate'' and because it does not impose annual costs of $100 million or more.

Today's rule contains no Federal mandates for State, local or tribal governments or the private sector for two reasons. First, today's action does not impose new or additional enforceable duties on any State, local or tribal governments or the private sector because the requirements of the Tennessee program are already imposed by the State and subject to State law. Second, the Act also generally excludes from the definition of a ''Federal mandate'' duties that arise from participation in a voluntary Federal program. Tennessee's participation in an approved UST program is voluntary.

Even if today's rule did contain a Federal mandate, this rule will not result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the Tennessee program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector.

The requirements of section 203 of UMRA also do not apply to today's action. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, section 203 of the UMRA requires EPA to develop a small government agency plan. This rule contains no regulatory requirements that might significantly or uniquely affect small governments. The Agency recognizes that although small governments may own and/or operate USTs, they are already subject to the regulatory requirements under existing state law which are being approved by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

C. Certification Under the Regulatory Flexibility Act

EPA has determined that this approval will not have a significant economic impact on a substantial number of small entities. Such small entities which own and/or operate USTs are already subject to the regulatory requirements under existing State law which are being approved by EPA. EPA's approval does not impose any additional burdens on these small entities. This is because EPA's approval would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Therefore, EPA provides the following certification under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act. Pursuant to the provision at 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. This rule approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

D. Submission to Congress and The General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, does not apply because this action is not a rule, for purposes of 5 U.S.C. 804(3).

E. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by an information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

List of Subjects in 40 CFR Part 281

Environmental protection, Administrative practice and procedure, Hazardous materials, State program approval, Underground storage tanks.

Authority: This notice is issued under the authority of Section 9004 of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 1, 1998.

Michael V. Peyton,

Acting Regional Administrator.

[FR Doc. 98–18422 Filed 7–9–98; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 63, No. 132
Friday, July 10, 1998

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TM–98–00–5]

Notice of Meeting of the National Organic Standards Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES: July 21, 1998, at 1:30 p.m. to 5:00 p.m.; July 22, 1998, from 8:00 a.m. to 5:00 p.m.; and July 23, 1998, from 8:00 a.m. to 5:00 p.m. for the NOSB.

PLACE: U.S. Department of Agriculture, 1400 Independence Avenue, S.W., Jefferson Auditorium (July 21, 1998) and Room 3501 South Building (July 22–23, 1998), Washington, D.C. 20250. Phone: (202) 690–3655.

FOR FURTHER INFORMATION CONTACT: Keith Jones, Program Manager, Room 2510 South Building, U.S. Department of Agriculture, AMS, Transportation and Marketing, National Organic Program Staff, P.O. Box 96456, Washington, D.C. 20090-6456. Phone (202) 720–3252.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act of 1990 (OFPA), as amended (7 U.S.C. Section 6501 *et seq.*) requires the establishment of NOSB. The purpose of NOSB is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of OFPA. NOSB met for the first time in Washington, D.C., in March 1992 and currently has six committees working on various aspects of the program. The committees are: Crops Standards; Processing, Labeling and Packaging; Livestock Standards; Accreditation; Materials; and International Issues. In August 1994, NOSB provided its initial recommendations for the National Organic Program (NOP) to the Secretary of Agriculture and since that time has submitted 30 addenda to the recommendations and reviewed more than 170 substances for inclusion on the National List of Allowed and Prohibited Substances. The last meeting of NOSB was held in March 1998, in Ontario, California. The Department of Agriculture (USDA) published its proposed rule for NOP in the **Federal Register** (62 FR 65849) on December 16, 1997. An extension of the comment period on the proposed rule was published in the **Federal Register** (63 FR 6498–6499) on February 9, 1998. The comment period was extended until April 30, 1998.

PURPOSE AND AGENDA: The main purposes of this meeting are to review committee reports; continue dialog on unresolved issues from the March 1998 meeting, including fees, peer review panels, treated seeds, and aquaculture; elect new officers; appoint committee chairpersons; and plan future activities of the Board.

A final agenda for this meeting will be available on July 7, 1998. Persons requesting copies of the final agenda should contact Karen Thomas at the above address or phone (202) 690–3655.

TYPE OF MEETING: All meetings will be open to the public. NOSB has scheduled time for public input on July 21, 1998, beginning at 1:30 p.m. and continuing until 5:00 p.m. Individuals and organizations wishing to make an oral presentation at the meeting on any organic issue should forward the request to Ms. Thomas at the above address or by FAX to (202) 205–7808 by July 15, 1998, in order to be scheduled. While persons wishing to make a presentation may sign up at the door, advance registration will ensure an opportunity to speak during the allotted time period and will help NOSB better manage the meeting and accomplish its agenda. Individuals or organizations will be given approximately 5 minutes to orally present their views. All persons making an oral presentation are requested also to provide their comments in writing, if possible. Written submissions may of course expand on or supplement the oral presentation with additional material. Attendees who do not wish to make an oral presentation are invited to submit written comments to NOSB at the meeting. All persons submitting written comments should provide 20 copies to NOSB.

Dated: July 7, 1998.

Eileen S. Stommes,

Deputy Administrator, Transportation and Marketing.

[FR Doc. 98–18540 Filed 7–8–98; 11:55 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Sierra Nevada Conservation Planning for National Forests in California

AGENCY: Forest Service, USDA.

ACTION: Announcing the beginning of a planning process that will: (1) Examine existing management direction for the National Forests in the Sierra Nevada in light of new scientific information, and (2) develop new management direction where necessary, supported by an environmental impact statement to be completed by July 31, 1999. After an initial public involvement period, the Agency will amend this notice with a Notice of Intent that will more fully describe an Agency proposed action.

SUMMARY: The USDA, Forest Service, Pacific Southwest Region, is beginning a planning process to ensure that new scientific information is adequately considered in management direction contained in the Pacific Southwest Regional Guide and the ten Forest Plans for the National Forests in the Sierra Nevada. The Pacific Southwest Regional Forester, in consultation with the Director of the Pacific Southwest Research Station, anticipates (1) having a completed and peer reviewed report that synthesizes new scientific information of rangewide urgency to the National Forests in the Sierra Nevada by late-July, 1998; (2) having completed an examination of current management direction in light of the new scientific information and the identification of weaknesses in current management direction along with possible changes that could be made in management direction to rectify those weaknesses by the end of July, 1998; (3) providing a 60-

day opportunity for the public to comment on the new scientific information, the identified weaknesses in current management direction, and possible changes that could be made in management direction to rectify those weaknesses by mid-October, 1998; and (4) by October 31, 1998, issue a Notice of Intent, which will amend this Notice, to fully articulate the Agency's proposed action to change management direction in the Pacific Southwest Regional Guide and the Forest Plans for the ten National Forests in the Sierra Nevada. Publication of the Notice of Intent will initiate a 60-day public comment period wherein the public will be asked to provide any additional information they feel the Forest Service may still not have at that time, and to submit any issues regarding potential effects of the proposed action. More specific information regarding the proposal, decision-making process, and schedule for completion will be included in the Notice of Intent.

ADDRESS: Send written comments to Dick Andrews, Regional Environmental Coordinator, Ecosystem Planning, Room 859A, 630 Sansome Street, San Francisco, CA 94111.

FOR FURTHER INFORMATION CONTACT: Dick Andrews, Regional Environmental Coordinator, Ecosystem Planning, (415) 705–2557.

SUPPLEMENTARY INFORMATION: This announcement is being published by the Forest Service in an effort to ensure an open and inclusive public process is employed in gathering information that may be used to formulate a proposed action and articulate the purpose and need for amending the management direction specified in the Pacific Southwest Regional Guide and the Forest Plans for the Eldorado, Inyo, Lassen, Modoc, Plumas, Sequoia, Sierra, Stanislaus, and Tahoe National Forests and the Lake Tahoe Basin Management Unit.

In preparation for this planning process, the USDA Forest Service Pacific Southwest Research Station is reviewing recently developed scientific information relevant to the Sierra Nevada. A report summarizing this work is currently in draft and may be viewed at the Research Station's internet website, www.psw.fs.fed.us/sierra/. By mid-July additional information about the planning process and opportunities for public involvement will be available through the Pacific Southwest Region's internet website, www.r5.fs.fed.us/.

Date: July 6, 1998.

G. Lynn Sprague,

Regional Forester.

[FR Doc. 98–18387 Filed 7–9–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Washington Provincial Advisory Committee Meeting Notice

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Washington Provincial Advisory Committee will meet on Thursday, May 16, 1998, in Toppenish, Washington, at the Yakama Indian Nation Cultural Center (Highway 97 and Buster Road) in the 14 Tribes Room. The meeting will begin at 10 a.m. and continue until 5 p.m. The purpose of the meeting is to provide information on (1) Water Quality Issues, (2) Tribal Hunting and Wildlife Concerns, (3) Huckleberry and other Special Forest Product concerns, (4) Timber Management by the Yakama Nation during the listing of the Spotted Owl, and (5) Public Open Forum. All Southwest Washington Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend. The ''open forum'' provides opportunity for the public to bring issues, concerns, and discussion topics to the Advisory Committee. The ''open forum'' is scheduled as part of agenda item (5) for this meeting. Interested speakers will need to register prior to the open forum period. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Linda Turner, Public Affairs Specialist, at (360) 891–5195, or write Forest Headquarters Office, Gifford Pinchot National Forest, 10600 NE. 51st Circle, Vancouver, WA 98682.

Dated: July 2, 1998.

Larry I. Seekins,

Deputy Forest Supervisor.

[FR Doc. 98–18311 Filed 7–9–98; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Extension of Currently Approved Information Collection for the Stewardship Incentive Program (SIP)

AGENCY: Forest Service, USDA.

ACTION: Notice of information collection; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Forest Service announces its intent to seek extension of the approval of an existing information collection authorized under Office of Management and Budget number 0596–0120. Several Forest Service information collection forms are approved under this authorization number: SIP 36, Assignment of Payment; SIP 211, Power of Attorney; SIP 211–1, Power of Attorney for Husband and Wife; and SIP 502, Payment Limitation Review. Non-industrial private forest owners complete these forms to participate in the Forest Service State and Private Forestry Stewardship Incentive Program.

DATES: Comments must be received in writing on or before September 8, 1998.

ADDRESSES: All comments should be addressed to: Stewardship Coordinator, Cooperative Forestry Staff, mail stop 1123, Forest Service, USDA, P.O. Box 96090, Washington, D.C. 20090–6090.

FOR FURTHER INFORMATION CONTACT: Susan Stein, Cooperative Forestry Staff, at (202) 205–0837.

SUPPLEMENTARY INFORMATION: The Forest Service is seeking extension of the approval of an existing information collection authorized under Office of Management and Budget number 0596–0120. Several Forest Service information collection forms are approved under this authorization number: SIP 36, Assignment of Payment; SIP 211, Power of Attorney; SIP 211–1, Power of Attorney for Husband and Wife; and SIP 502, Payment Limitation Review. An additional form, AD–245, SIP Request for Cost-Shares, formerly named SIP 245, SIP Request for Cost-Shares, also must be completed by non-industrial private forest owners. A separate request for extension of approval of form AD–245 is being processed by the Farm Service Agency departmental request for extensions of information collections authorized under Office of Management and Budget approval number 0560–0082. The Forest Service and the Farm Service Agency cooperatively administer the Forest Service State and Private Forestry Stewardship Incentive Program.

Non-industrial private forest owners complete these forms to participate in the Forest Service State and Private Forestry Stewardship Incentive Program. The collected information identifies 1) the Stewardship Incentive Program assignment of payment, 2) Internal Revenue Service income

reporting requirements for participants; and 3) the participants' delegated Power of Attorney.

All collected information is used by the Forest Service and the Farm Service Agency to facilitate non-industrial private forest owner participation in the Forest Service State and Private Forestry Stewardship Incentive Program.

Data gathered in this information collection is not available from other sources.

Description of Information Collection

The following describes the information collection to be extended:

Title: SIP 36, Assignment of Payment.

OMB Number: 0596–0120.

Expiration Date of Approval: June 30, 1998.

Type of request: Extension of a previously approved information collection.

Abstract: Non-industrial private forest owners complete SIP 36, Assignment of Payment, when they want to assign a cost-share payment to a third party. The information requested includes the payment amount assigned and the names, addresses, and signatures of the assignor and the assignee.

Estimate of burden. 10 minutes.

Type of respondents: Non-industrial private forest owners.

Estimated number of respondents: 20,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 3,333 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: SIP 211, Power of Attorney.

OMB Number: 0596–0120.

Expiration Date of Approval: June 30, 1998.

Type of request: Extension of a previously approved information collection.

Abstract: The non-industrial private forest landowner completes SIP 211, Power of Attorney, to grant a power of attorney. The landowner indicates on this form whether the Power of Attorney is being granted for (1) all actions, (2) the signing of an application, (3) the receiving of payments, (4) the pledge of agreements, (5) the making of reports, or (6) ''other.'' It is signed by the landowner and witnesses.

Estimate of burden: 5 minutes.

Type of respondents: Non-industrial private forest owners.

Estimated number of respondents: 20,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 1,667 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: SIP 211–1, Power of Attorney for Husband and Wife.

OMB Number: 0596–0120.

Expiration Date of Approval: June 30, 1998.

Type of request: Extension of a previously approved information collection.

Abstract: Participants, who are husband and wife and who wish to grant each other a Power of Attorney, must complete SIP 211–1, Power of Attorney for Husband and Wife. Both the husband and wife print and sign their names on the form.

Estimate of burden: 5 minutes.

Type of respondents: Non-industrial private forest owners.

Estimated number of respondents: 20,000.

Estimated number of responses per respondent: 1.

Estimated total annual burden on respondents: 1,667 hours.

Description of Information Collection

The following describes the information collection to be extended:

Title: SIP 502, Payment Limitation Review.

OMB Number: 0596–0120.

Expiration Date of Approval: June 30, 1998.

Type of request: Extension of a previously approved information collection.

Abstract: To ensure they have not exceeded the cost-share payment limit for a fiscal year, non-industrial private forest owners complete SIP 502, Payment Limitation Review. A landowner is not allowed to receive more than $10,000 in Stewardship Incentive Program cost-share payments in a single fiscal year. Program participants provide their name and address, entity identification number, and the date the entity was formed. They also indicate whether they are an individual, an irrevocable trust, a revocable trust, a corporation, a limited partnership, a general partnership, a joint venture, an estate, or ''other.'' Participants also list all stockholders, members, heirs, or beneficiaries having an interest in the entity.

Estimate of burden: 25 minutes.

Type of respondents: Non-industrial private forest owners.

Estimated number of respondents: 20,000.

Estimated number of responses per respondent: 1 per form.

Estimated total annual burden on respondents: 8,333 hours.

Comment is Invited

The agency invites comments on the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Use of comments

All comments received in response to this notice, including name and address when provided, will become a matter of public record. Comments received in response to this notice will be summarized and included in the request for Office of Management and Budget approval.

Dated: July 1, 1998.

Robert Lewis, Jr.,

Acting Associate Chief.

[FR Doc. 98–18431 Filed 7–9–98; 8:45 am]

BILLING CODE 3410–11–P

ASSASSINATION RECORDS REVIEW BOARD

Sunshine Act Meeting

DATES: July 20–21, 1998.

PLACE: ARRB, 600 E Street, NW, Washington, DC.

STATUS: July 20: 9:00 a.m. Closed, July 21: 10:00 a.m. Open.

MATTERS TO BE CONSIDERED:

Closed Meeting:

1. Review and Accept Minutes of Closed Meeting
2. Review of Assassination Records
3. Other Business

Open Meeting:

1. Discussion of Final Report
2. Review and Accept Minutes of July 8, 1998 Open Meeting
3. Other Business

CONTACT PERSON FOR MORE INFORMATION: Eileen Sullivan, Press Officer, 600 E Street, NW, Second Floor, Washington,

DC 20530. Telephone: (202) 724–0088; Fax: (202) 724–0457.

T. Jeremy Gunn,

General Counsel.

[FR Doc. 98–18606 Filed 7–8–98; 2:23 pm]

BILLING CODE 6118–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposal(s) to add to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: August 10, 1998.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity and services.

3. The action will result in authorizing small entities to furnish the commodity and services to theGovernment.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Cushion Assembly, Commander's Seat
2540–01–314–7834
NPA: Lions Services, Inc., Charlotte, North Carolina

Services

Administrative Services,
U.S. Department of Agriculture (USDA)
Economic Research Service (ERS)
1031 New York Avenue, N.W.
Washington, DC
NPA: Fairfax Opportunities Unlimited, Inc., Alexandria, Virginia

Janitorial/Custodial
Fort McHenry National Monument and Historic Shrine
Hampton National Historic Site
Baltimore, Maryland
NPA: Baltimore Association for Retarded Citizens, Inc., Baltimore, Maryland

Mailroom Operation & Administrative Support
Buildings 5250 & 5308
Redstone Arsenal, Alabama
NPA: Huntsville Rehabilitation Foundation, Huntsville, Alabama

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action does not appear to have a severe economic impact on future contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities and services have been proposed for deletion from the Procurement List:

Commodities

Cover, Generator Set
6115–00–960–2703
6115–00–941–1655

Roll, Tools and Accessories
5140–00–106–5616
6630–01–NIB–0001

Services

Carpet Cleaning
Portland, Oregon, plus 10-mile radius

Carwash Service
Bureau of Land Management
Medford District Office
3040 Biddle Road
Medford, Oregon

Car Wash/Operation of Recycling Station
Olympic National Park
Port Angeles, Washington

Commissary Shelf Stocking
Naval Administrative Unit
Scotia, New York

Janitorial/Custodial
U.S. Army Corps of Engineers at the following Yakima, Washington locations:
Fort Lewis Resident Office, Project Office adjacent to Building 810, Yakima Firing Center

Pallet Repair
Naval Supply Center, Puget Sound, Bremerton, Washington.

G. John Heyer,

General Counsel.

[FR Doc. 98–18452 Filed 7–9–98; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Annual Survey of Government Employment

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on

proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 8, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Alan Stevens, U.S. Bureau of the Census, Governments Division, Washington, DC 20233–6800, (301) 457–1550.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Survey of Government Employment collects data on the employment, payrolls, and hours worked by part-time employees of state and local governments for one pay period in March. Data are collected from all agencies, departments, and institutions of the fifty state governments and from a sample of all local governments (counties, cities, townships, school districts, and special districts).

This is a mail canvass survey with an initial mailing and one follow-up mailing. Telephone follow-up is used to contact non-respondents and, as necessary, to correct apparent errors and incomplete responses. These forms and procedures are similar to those used in the previous annual survey conducted in March 1998.

Results from this survey are used directly in a variety of Federal programs: By the Bureau of Economic Analysis to develop the public sector components of the National Income and Product Accounts and to develop personal income statistics; by the Department of Housing and Urban Development for the allocation of operating subsidies to local housing authorities; and by the Bureau of Labor Statistics to bench mark the government component in their monthly employment and earnings statistics program. Other users include state and local government executives and legislators, policy makers, economists, researchers, and the general public.

II. Method of Collection

Data collection is primarily accomplished through the use of mail canvass questionnaires that are tailored to the type of government, agency or institution being surveyed. Mail canvass replies are screened for completeness, electronically recorded for processing, and electronically edited. Special data reporting arrangements exist with many state governments and some local governments to facilitate data reporting in ways that help minimize reporting burden (e.g. central reporting of data for all agencies and institutions of individual state governments, electronic reporting of data by some state and local governments, central reporting of school systems data by a number of state education agencies, etc.).

III. Data

OMB Number: 0607–0452.

Form Number: E–1, E–2, E–3, E–4, E–6, E–7, E–9.

Type of Review: Regular.

Affected Public: State, local or tribal government.

Estimated Number of Respondents: 20,244.

Estimated Time Per Response: 1.06.

Estimated Total Annual Burden Hours: 21,437.

Estimated Total Cost: The estimated cost to respondents for the employment survey is $326,277. The budgeted cost to the Federal government for all phases of this survey is $1.1 million.

Legal Authority: This survey is authorized by Title 13, United States Code, Section 161.

Respondents' Obligation: This is a voluntary survey.

IV. Request for Comments

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 (including hours and cost) 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 the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–18335 Filed 7–9–98; 8:45 a.m.]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

Annual Survey of Foreign Direct Investment in the United States

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before September 8, 1998.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instruments and instructions should be directed to: R. David Belli, U.S. Department of Commerce, Bureau of Economic Analysis, BE–50(OC), Washington, D.C. 20230 (Telephone: 202–606–9800).

SUPPLEMENTARY INFORMATION:

I. Abstract

The Annual Survey of Foreign Direct Investment in the United States (Form BE–15) is necessary to provide reliable, useful, and timely measures of foreign direct investment in the United States. The annual survey covers all affiliates above a size-exemption level and collects annual data on the financial structure and operations of nonbank U.S. affiliates of foreign companies needed to update similar data for the universe of U.S. affiliates collected once every 5 years in the BE–12 benchmark survey. The data are used to derive annual estimates of the operations of U.S. affiliates of foreign companies, including their balance sheets; income statements; property, plant, and equipment; external financing; employment and employee

compensation; merchandise trade; sales of goods and services; taxes; and research and development (R&D) activity. The data will be used to measure the economic significance of foreign direct investment in the United States and to analyze its effect on the U.S. economy. They will also be used in formulating, and assessing the impact of, U.S. policy on foreign direct investment.

Several revisions to the survey are being proposed to bring it into conformity with the BE–12 Benchmark Survey of Foreign Direct Investment in the United States—1997. BEA proposes to raise the exemption level for the survey to $30 million on the BE–15(SF) short form, up from $10 million (measured by the company's total assets, sales, or net income or loss), thereby reducing respondent burden for small companies; on the survey's long form, the BE–15(LF), the exemption level will be raised to $100 million, up from $50 million. In addition, BEA proposes to base industry coding on the North American Industry Classification System (NAICS) in place of the U.S. Standard Industrial Classification system, and to modify the detail collected on the composition of external financing of the reporting enterprise, on research and development expenditures, and on the operations of foreign-owned businesses in individual States.

II. Method of Collection

The BE–15 annual survey will be sent to potential respondents at the end of March each year. A completed report covering a reporting company's fiscal year ending during the previous calendar year will be due to be filed by May 31, 60 days after mailing. Reports must be filed by every nonbank U.S. business enterprise that is owned 10 percent or more by a foreign investor and that has total assets, sales, or net income (or loss) of over $30 million. Potential respondents are those U.S. business enterprises that report in the 1997 benchmark survey of foreign direct investment in the United States, along with affiliates that subsequently enter the direct investment universe. The BE–15 is a cutoff-sample survey, as described; universe estimates are developed from the reported data.

III. Data

OMB Number: 0608–0034.

Form Number: BE–15.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 4,975.

Estimated Time Per Response: 26 hours.

Estimated Total Annual Burden: 128,000 hours.

Estimated Total Annual Cost: $3,840,000 (based on an estimated reporting burden of 128,000 hours and an estimated hourly cost of $30).

IV. Request for Comments

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 has practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: July 6, 1998.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 98–18334 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Technical Advisory Committees; Notice of Recruitment of Private-Sector Members

SUMMARY: Technical Advisory Committees (TACs) advise the Department of Commerce on the technical parameters for export controls applicable to dual-use commodities and technology and on the administration of those controls. The TACs are composed of representatives from industry and Government representing diverse points of view on the concerns of the exporting community. Industry representatives are selected from firms producing a broad range of goods, technologies, and software presently controlled for national security, foreign policy, non-proliferation, and short supply reasons or that are proposed for such controls, balanced to the extent possible among large and small firms.

TAC members are appointed by the Secretary of Commerce and serve terms of not more than four consecutive years. The membership reflects the Department's commitment to attaining balance and diversity. TAC members must obtain secret-level clearances prior to appointment. These clearances are necessary so that members can be permitted access to relevant classified information needed in formulating recommendations to the Department of Commerce. Each TAC meets approximately 4 times per year. Members of the Subcommittee will not be compensated for their services.

Three TACs are currently seeking to fill membership vacancies. Those TACs and the areas in which they advise the Department of Commerce are the following: the Materials Processing Equipment TAC—Control List Category 2 (materials processing); the Regulations and Procedures TAC—the Export Administration Regulations (EAR) and procedures for implementing the EAR: and the Transportation and Related Equipment TAC—Control List Category), and Category 9 (propulsion systems, space vehicles, and related equipment).

To respond to this Notice of Recruitment, please send a fact sheet on your company as well as a resume/biography to the following address: Ms. Lee Ann Carpenter, OAS/EA/BXA MS: 3886C, U.S. Department of Commerce, 15th St. & Pennsylvania Ave., N.W., Washington, D.C. 20230.

Materials may also be faxed to Ms. Carpenter at (202) 501–8024.

DEADLINE: This Notice of Recruitment will be open for 20 days from date of publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Lee Ann Carpenter on (202) 482–2583.

Dated July 6, 1998.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 98–18419 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Materials Technical Advisory Committee; Notice of Open Meeting

A meeting of the Materials Technical Advisory Committee (MTAC) will be held July 23, 1998, 10:30 a.m., in the Herbert C. Hoover Building, Room 1617M(2), 14th Street between Constitution & Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration with respect to technical questions that

affect the level of export controls applicable to advanced materials and related technology.

Agenda:

1. Opening remarks by the Chairman.
2. Explanation on purpose of electing Co-Chair.
3. Election of Co-Chair.
4. Presentation on status of Chemical Weapons Convention.
5. Presentation on status of Biological Weapons Convention implementation protocol.
6. Presentation on technical issues for chemical and equipment related to Australia Group list review.
7. Presentation on technical issues for biologicals and biological equipment related to Australia Group list review.
8. Presentation of papers or comments by the public.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee.

Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting to the following address: Ms. Lee Ann Carpenter, OAS/EA/BXA MS:3886C, 15th St. & Pennsylvania Ave., N.W., U.S. Department of Commerce, Washington, D.C. 20230.

For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: July 2, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–18152 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–822, A–122–823]

Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Preliminary Results of Antidumping Duty Administrative Reviews and Intent To Revoke in-Part

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of preliminary results of the antidumping duty administrative review of certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada.

SUMMARY: In response to requests from interested parties, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. These reviews cover six manufacturers/exporters of the subject merchandise to the United States (three manufacturers/exporters of corrosion resistant steel and four manufacturers/exporters of cut-to-length steel plate), and the period August 1, 1996 through July 31, 1997.

We have preliminarily determined that sales have been made below normal value (''NV'') by various companies subject to these reviews. If these preliminary results are adopted in our final results of these administrative reviews, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price (''EP'') or constructed export price (''CEP'') and the NV.

EFFECTIVE DATE: July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski (Dofasco Inc. and Sorevco Inc. (collectively, ''Dofasco'')), Eric Scheier (Continuous Colour Coat (''CCC'')), Lesley Stagliano (Algoma Steel, Inc. (''Algoma'')), Gideon Katz (Gerdau MRM Steel (''MRM'') and A.J. Forsyth and Co., Ltd. (''Forsyth'')), N. Gerard Zapiain (Stelco, Inc. (''Stelco'')), or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR part 351 (62 FR 27379, May 19, 1997).

Background

On August 19, 1993, the Department published in the **Federal Register** (58 FR 44162) the antidumping duty orders on certain corrosion-resistant carbon steel flat products and certain cut-to-length carbon steel plate from Canada. On August 12, 1997, Forsyth requested a review of its exports of cut-to-length steel plate. On August 13, 1997, CCC requested a review of its exports of corrosion-resistant steel. On August 28, 1997, Algoma requested a review of its exports of cut-to-length steel plate and that the Department revoke the order on cut-to-length steel plate with regard to Algoma. On August 29, 1997, the following companies also requested reviews for their exports of corrosion-resistant carbon steel flat products: Dofasco (corrosion-resistant steel), Stelco (corrosion-resistant steel and cut-to-length steel plate), and MRM (cut-to-length steel plate). On August 29, 1997, Bethlehem Steel Corporation, U.S. Steel Group (a Unit of USX Corporation), Inland Steel Industries Inc., AK Steel Corporation, LTV Steel Co., Inc., and National Steel Corporation, petitioners, requested reviews of CCC, Dofasco, and Stelco on corrosion-resistant carbon steel flat products. On September 8, 1997, Stelco submitted an addendum to its August 29, 1997 submission, requesting that the Department revoke the orders on corrosion-resistant steel and carbon steel plate with regard to Stelco, pursuant to Section 351.222(b) of the Department's regulations. On September 25, 1997, in accordance with Section 751 of the Act, we published a notice of initiation of administrative reviews of these orders for the period August 1, 1996 through July 31, 1997 (62 FR 50292).

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 365 days. On March 19, 1998, the Department published a notice of extension of the time limit for the preliminary results in the review to July 3, 1998. *See Corrosion-Resistant Carbon Steel Flat Products and Cut-to-Length Carbon Steel Plate: Extension of Time Limits for Preliminary Results of Antidumping Administrative Review*, 63 FR 13990.

The Department is conducting these reviews in accordance with section 751(a) of the Act.

Scope of Reviews

The products covered by these administrative reviews constitute two separate ''classes or kinds'' of merchandise: (1) certain corrosion-resistant steel and (2) certain cut-to-length plate.

The first class or kind, certain corrosion-resistant steel, includes flat-rolled carbon steel products of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-,

aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule (HTS) under item numbers 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead (''terne plate''), or both chromium and chromium oxides (''tin-free steel''), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20%-60%-20% ratio. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

The second class or kind, certain cut-to-length plate, includes hot-rolled carbon steel universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, 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 hot-rolled carbon steel flat-rolled products in straight lengths, 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 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 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. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (i.e., products which have been worked after rolling)—for example, products which have been beveled or rounded at the edges. Excluded is grade X–70 plate. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope of this review.

Verification

As provided in section 782(i) of the Act, we verified information provided by Algoma (cost and sales), Dofasco (sales), and Stelco (sales, cost and further manufacturing) using standard verification procedures, including on-site inspection of the manufacturer's facilities and the examination of relevant sales and financial records. Our verification results are outlined in the public versions of the verification reports.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent, covered by the description in the Scope of the Review section, above, and sold in the home market during the period of review (POR), to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the most similar foreign like product on the basis of the characteristics listed in Appendix V of the Department's September 19, 1997 antidumping questionnaire.

Fair Value Comparisons

To determine whether sales of subject merchandise to the United States were made at less than fair value, we compared the EP or CEP to the NV, as described in the ''United States Price'' and ''Normal Value'' sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transaction prices.

Interested Party Comments

On June 22, 1998, the petitioner submitted comments regarding Stelco and CCC. On June 23, 1998, Forsyth submitted comments. Because of the lateness of these submissions, we are not able to consider them for these preliminary results, but will consider them for the final results.

Intent To Revoke

On August 28, 1997, Algoma submitted a request, in accordance with 19 CFR 351.222(b), that the Department revoke the order covering cut-to-length carbon steel plate from Canada with respect to its sales of this merchandise. On August 29, 1997, Stelco submitted a request that the Department revoke the orders covering cut-to-length carbon steel plate and corrosion-resistant steel from Canada with respect to its sales of this merchandise.

In accordance with 19 CFR 351.222(b)(2)(iii), these requests were accompanied by certifications from Algoma and Stelco that they had not sold the subject merchandise at less than NV for a three-year period, including this review period, and would not do so in the future. Algoma and Stelco also agreed to its immediate reinstatement in the relevant antidumping order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 351.216 that, subsequent to revocation, it sold the subject merchandise at less than NV.

The Department conducted verifications of Algoma's and of Stelco's responses for this period of review. In the two prior reviews of this order, we determined that Algoma and Stelco sold cut-to-length carbon steel plate from Canada at not less than NV or at *de*

minimis margins. We preliminarily determine that both Algoma and Stelco sold cut-to-length carbon steel plate at not less than NV during this review period. Based on Algoma's and on Stelco's three consecutive years of zero or *de minimis* margins and the absence of evidence to the contrary, we preliminarily determine that it is not likely that either Algoma or Stelco will in the future sell cut-to-length carbon steel plate at less than NV. Therefore, if these preliminary findings are affirmed in our final results, we intend to revoke the order on cut-to-length carbon steel plate from Canada with respect to Algoma and to Stelco.

In the last two administrative reviews, we determined that Stelco sold corrosion-resistant steel at less than fair value. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 12725 (March 16, 1998) and *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 18448 (April 15, 1997). Although the final results of the second and third reviews are subject to litigation, that litigation is not yet complete. Additionally, as discussed below, we have preliminarily determined that Stelco sold corrosion-resistant steel at less-than-fair-value (LTFV) during the period covered by this review. Consequently, we preliminarily determine that because Stelco does not have three consecutive years of zero or *de minimis* margins on corrosion-resistant steel, Stelco is not eligible for revocation of the order on corrosion-resistant steel under 19 CFR 351.222(b).

United States Price

For calculation of the price to the United States, we used EP when the subject merchandise was sold directly or indirectly to the first unaffiliated purchaser in the United States prior to importation and constructed export price (CEP) was not otherwise warranted, based on facts on the record. We used CEP for certain sales by Stelco. *See* the subsection of ''United States Price'' titled ''Stelco.''

Algoma

The Department calculated EP for Algoma based on packed, prepaid or delivered prices to customers in the United States. We made adjustments to the starting price, net of billing adjustments, for movement expenses (foreign and U.S. movement, brokerage and handling, and U.S. Customs duties), in accordance with section 772(c)(2) of the Act.

We used Algoma's date of invoice as the date of sale for both U.S. sales and home market sales, where applicable, in accordance with 19 CFR 351.401(i), and the Department's standard practice. See, e.g., *Porcelain-on-Steel Cookware from Mexico; Preliminary Results of Antidumping Duty Administrative Review,* 62 FR 4723, 4725 (January 31, 1997). For further discussion of this issue, *see Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for Algoma,* July 2, 1998.

CCC

The Department calculated EP for CCC based on packed, prepaid or delivered prices to customers in the United States.

We made deductions to the starting price, net of discounts and price adjustments, for movement expenses (foreign and U.S. movement, brokerage and handling, and U.S. Customs duties), in accordance with section 772(c)(2). Although the record does not contain pre-sale agreements for certain payments which CCC reported as ''credit notes,'' based on CCC's information we have determined to treat these payments as price adjustments which should be excluded from the starting price. See *Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for CCC,* July 2, 1998.

Dofasco

For purposes of these reviews, we treated Dofasco, Inc. and Sorevco, Inc. as one respondent, as we have done in prior segments of the proceeding. See, *e.g., Certain Corrosion-Resistant Carbon Steel Flat Products from Canada: Final Determination of Sales at Less than Fair Value,* 58 FR 37099 (1993), and *Final Results of Antidumping Duty Administrative Review: Certain Corrosion-Resistant Carbon Steel Flat Products from Canada,* 63 FR 12725 (March 16, 1998). The Department calculated EP for Dofasco based on packed prices to customers in the United States.

We made deductions to the starting price, net of discounts and rebates, for movement expenses (foreign and U.S. movement, U.S. Customs duty and brokerage, and post-sale warehousing) in accordance with section 772(c)(2).

As discussed in prior reviews, certain Dofasco sales have undergone minor further processing in the United States as a condition of sale to the customer. *See Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 18461, (April 15, 1997). In order to determine the value of subject merchandise at the time of exportation of such merchandise to the United States, the Department has deducted the price charged to Dofasco for this minor further processing from gross unit price to determine U.S. price.

It is the Department's current practice normally to use the invoice date as the date of sale; we may, however, use a date other than the invoice date if we are satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale. See 19 CFR 351.401(i) (62 FR at 27411).

The questionnaire we sent to the respondents on September 19, 1998 instructed them to report the date of invoice as the date of sale; it also stated, however, for EP sales, that ''(t)he date of sale cannot occur after the date of shipment.'' In this review, Dofasco's date of shipment in many instances preceded the date of invoice, and therefore we cannot use the date of invoice as the new regulations prescribe. Accordingly, as allowed by the exception set forth in section 351.401(i) of the regulations, we used the dates of sale described below. These sale dates reflect the dates on which the exporter or producer established the material terms of sale.

We used the date of order acknowledgment as date of sale, as reported by Dofasco, Inc., for all Dofasco, Inc. sales in both the U.S. market and the home market, except for sales made pursuant to long-term contracts. For Dofasco, Inc.'s sales made pursuant to long-term contracts, we used date of the contract as date of sale.

We used the date of order confirmation as the date of sale, as reported by Sorevco, Inc., for all Sorevco, Inc. sales in the U.S. and the home market, except that when Sorevco shipped more merchandise than the customer originally ordered, and such overages were in excess of accepted industry tolerances. Lacking any evidence of the precise date after the date of order confirmation on which the quantity was changed, we used date of shipment as date of sale for the excess merchandise.

MRM

The Department calculated EP for MRM based on packed, prepaid or delivered prices to customers in the United States. We made deductions to the starting price for movement expenses (foreign and U.S. movement,

brokerage and handling, and U.S. Customs duties) pursuant to section 772(c)(2) of the Act.

We used MRM's date of invoice as the date of sale for its U.S. sales in accordance with the Department's standard practice.

Stelco

Corrosion-resistant steel: We calculated EP or CEP, as appropriate, based on the packed price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions to the starting price for movement expenses, including foreign and U.S. freight, brokerage and handling, and U.S. Customs duties, in accordance with section 772(c)(2) of the Act. In accordance with sections 772(d)(1) and (2) of the Act, for CEP sales, we also deducted credit expenses, technical service expenses, indirect selling expenses, inventory carrying costs, U.S. inland freight incurred by Stelco USA (''SUSA''), and further manufacturing costs incurred by SUSA. Finally, we made an adjustment for an amount of profit allocated to these expenses, when incurred in connection with economic activity in the United States, in accordance with section 772(d)(3) of the Act.

We used Stelco's date of invoice as the date of sale for both EP and CEP corrosion-resistant sales in accordance with the Department's standard practice.

Plate: We calculated EP based on the packed price to unaffiliated purchasers in, or for exportation to, the United States. There were no CEP sales of plate. We made deductions for movement expenses, including foreign and U.S. movement, brokerage and handling, and U.S. Customs duty, in accordance with section 772(c)(2) of the Act. We used Stelco's date of invoice as the date of sale for EP plate sales in accordance with the Department's standard practice.

Normal Value

The Department determines the viability of the home market as the comparison market by comparing the aggregate quantity of home market and U.S. sales. We found that each company's quantity of sales in its home market exceeded five percent of its sales to the United States for the relevant class or kind of merchandise. Moreover, there is no evidence on the record supporting a particular market situation in the exporting country that would not permit a proper comparison of home market and U.S. prices. We, therefore, have determined that each company's home market sales are viable for purposes of comparison with sales of the subject merchandise to the United States, pursuant to section 773(a)(1)(C) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the home market, in the usual commercial quantities and in the ordinary course of trade, at the same level of trade as the EP sale.

In accordance with section 773(a)(4) of the Act, we used CV as the basis for NV when there were no above-cost contemporaneous sales of identical or similar merchandise in the comparison market. We calculated CV in accordance with section 773(e) of the Act. We included the cost of materials and fabrication, SG&A expenses, and profit. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses.

We used sales to affiliated customers only where we determined such sales were made at arm's-length prices, i.e., at prices comparable to prices at which the firm sold identical merchandise to unaffiliated customers.

For both classes or kinds of merchandise under review and for all respondents with the exception of Forsyth, the Department disregarded sales below the cost of production (''COP'') in the last completed review as of the date of the issuance of the antidumping questionnaire (*see Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 18448 (April 15, 1997)). We therefore had reasonable grounds to believe or suspect, pursuant to section 773(b)(2)(A)(ii) of the Act, that sales of the foreign like product under consideration for the determination of NV in this review may have been made at prices below the COP. Pursuant to section 773(b)(1) of the Act, we initiated COP investigations of sales by all respondents, except Forsyth, in the home market.

We compared sales of the foreign like product in the home market with the model-specific cost of production figure for the POR (''COP''). In accordance with section 773(b)(3) of the Act, we calculated the COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product plus selling, general and administrative (SG&A) expenses and all costs and expenses incidental to placing the foreign like product in condition packed and ready for shipment. In our COP analysis, we used home market sales and COP information provided by each respondent in its questionnaire responses.

After calculating COP, we tested whether home market sales of subject merchandise were made at prices below COP and, if so, whether the below-cost sales were made within an extended period of time in substantial quantities and at prices that did not permit recovery of all costs within a reasonable period of time. Because each individual price was compared against the POR-long average COP, any sales that were below cost were also not at prices which permitted cost recovery within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's sales of a given model were at prices less than COP, we did not disregard any below-cost sales of that model because the below-cost sales were not made in substantial quantities within an extended period of time. Where 20 percent or more of a respondent's sales of a given model during the POR were at prices less than the weighted-average COPs for the POR, we disregarded the below-cost sales because they were made within an extended period of time in substantial quantities in accordance with sections 773(b)(2) (B) and (C) of the Act, and were at prices which would not permit recovery of all costs within a reasonable period of time in accordance with section 773(b)(2)(D) of the Act. Based on this test, we disregarded below-cost sales with respect to all companies and classes or kinds of merchandise.

In accordance with section 773(a)(1)(B)(i) of the Act, where possible, we based NV on sales at the same level of trade (''LOT'') as the U.S. price. *See* the Level of Trade Section below.

The Department determined in the final results of the last administrative review (*Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate From Canada: Final Results of Antidumping Duty Administrative Reviews,* 62 FR 12725, March 9, 1998) that it would be inappropriate to resort directly to constructed value (CV), in lieu of foreign market sales, as the basis for NV if the Department finds foreign market

sales of merchandise identical or most similar to that sold in the United States to be outside the ''ordinary course of trade.'' Therefore, we will match a given U.S. sale to foreign market sales of the next most similar model when all sales of the most comparable model are below cost. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the ''Scope of Review'' section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C of our antidumping questionnaire. This methodology is pursuant to the ruling of the Court of Appeals for the Federal Circuit in *CEMEX* v. *United States,* 1998 WL 3626 (Fed Cir. 1998), and has been implemented to the extent that the data on the record permitted.

Where appropriate, we made adjustments to NV for differences in circumstances of sale (COS), in accordance with section 773(a)(6) and (8) of the Act and 19 CFR 351.410. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. We also made adjustments, where applicable for home market indirect selling expenses to offset U.S. commissions in EP pursuant to 19 CFR section 351.410(b). For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses pursuant to section 772(d) of the Act.

Algoma

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to unaffiliated purchasers (Algoma made no home market sales to affiliated parties), in accordance with 19 CFR 351.403. Home market prices were based on the packed, ex-factory or delivered prices to unaffiliated purchasers in the home market.

We calculated the starting price net of discounts, rebates, and post-sale adjustments, where applicable. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6) (A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for differences in COS in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses (credit and warranty expenses) and adding U.S. direct selling expenses (credit and warranty expenses). When comparisons were made to EP sales on which commissions were paid, but no commissions were paid on the foreign market sales, we made adjustments for home market indirect selling expenses to offset these U.S. commissions pursuant to 19 CFR section 351.410(e).

MRM

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to unaffiliated purchasers (MRM made no home market sales to affiliated parties), in accordance with 19 FR 351.403. Home market prices were based on the packed, ex-factory or delivered prices to unaffiliated purchasers in the home market.

We used a starting price net of rebates, where applicable. We made adjustments, where applicable, for movement expenses in accordance with sections 773(a)(6) (A) and (B) of the Act. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses (credit expenses) and adding U.S. direct selling expenses (credit expense). When comparisons were made to EP sales on which commissions were paid, but no commissions were paid on the foreign market sales, we made adjustments for home market indirect selling expenses to offset these U.S. commissions pursuant to 19 CFR section 351.410(e).

CCC

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to unaffiliated parties, in accordance with 19 CFR 351.403. Home market starting prices were based on the packed, ex-factory or delivered prices to unaffiliated purchasers in the home market, net of discounts and price adjustments, where applicable. Although the record does not contain pre-sale agreements for certain payments which CCC reported as ''credit notes,'' based on CCC's information we have determined to treat these payments as price adjustments which should be excluded from the starting price. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6) (A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for COS differences in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses (credit) and adding U.S. direct selling expenses (credit). When comparisons were made where commissions were paid on EP sales, but no commissions were paid on the foreign market sales, we made adjustments for home market indirect selling expenses to offset U.S. commissions pursuant to 19 CFR section 351.410(e).

Dofasco

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to affiliated parties (when made at prices determined to be arm's-length) or unaffiliated parties, in accordance with 19 CFR 351.403. Home market starting prices were based on the packed, ex-factory or delivered prices to affiliated or unaffiliated purchasers in the home market, net of discounts and rebates, where applicable. We made adjustments, where applicable, for packing and movement expenses in accordance with sections 773(a)(6) (A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for COS differences in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses (credit, royalties and warranty expenses) and adding U.S. direct selling expenses (credit, royalties and warranty expenses). When comparisons were made where commissions were paid on EP sales, but no commissions were made on foreign market sales, we made adjustments for home market indirect selling expenses to offset U.S. commissions pursuant to 19 CFR 351.410(e).

We denied Dofasco's requested start-up adjustment to its costs, as we determined that Dofasco did not meet the statutory criteria for granting an adjustment. Under section 773(f)(1)(C)(ii) of the Act, Commerce may make an adjustment for start-up

costs only if the following two conditions are satisfied: (1) A company is using new production facilities or producing a new product that requires substantial additional investment, and (2) production levels are limited by technical factors associated with the initial phase of commercial production. The Statement of Administrative Action (''SAA'') to the URAA states that ''any determination of the appropriate startup period involves a fact-intensive inquiry.'' This includes a consideration of ''factors unrelated to startup operations that may have affected the volume of production processed, such as demand, seasonality, or business cycles.'' The SAA further states that the ''start-up [period] will be considered to end at the time the level of commercial production characteristic of the merchandise, producer, or industry concerned is achieved. The attainment of peak production levels will not be the standard for identifying the end of the start-up period, because the start-up period may end well before a company achieves optimum capacity utilization.'' SAA at 836. Moreover, ''[t]o determine when a company reaches commercial production levels, Commerce will consider first the actual production experience of the merchandise in question. Production levels will be based on units processed.'' SAA at 836 (166).

In the instant case, we agree with Dofasco that the construction of the new Electric Arc Furnace (EAF) facility constitutes a new production facility.

In order to determine the duration of the initial phase of commercial production, we examined Dofasco's reported production starts at the EAF. Our determination of an appropriate startup period was based, in large part, on a review of scrap starts at the new facility during the POR, which represents the best measure of the facility's ability to produce at commercial production levels. We concluded that the number of scrap starts during the first two months (September and October 1996) did not meet commercial production levels characteristic of the producer, but that commercial production levels were reached by November 1996.

However, we have determined that the reported technical factors which Dofasco claims limited production during this two-month period are insufficient to constitute what the Department believes to be technical factors. The kind of chronic production problems experienced by Dofasco do not constitute ''technical factors'' which are unique to a startup operation. As such, we have not granted Dofasco a startup adjustment for the POR. For further details, *see Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for Dofasco,* July 2, 1998.

Stelco

For those models for which there was a sufficient quantity of sales at prices above COP, we based NV on home market prices to affiliated (when made at prices determined to be arms-length) or unaffiliated parties, in accordance with 19 CFR 351.403. Home market starting prices were based on the packed, ex-factory or delivered prices to affiliated or unaffiliated purchasers in the home market net of discounts and rebates. We made adjustments, where applicable, for packing and movement expenses, in accordance with sections 773(a)(6) (A) and (B) of the Act. We also made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act and for COS differences in accordance with 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

Corrosion resistant steel: We adjusted home market prices for interest revenue on certain sales. For comparison to EP, we made COS adjustments by deducting home market direct selling expenses (credit, warranties, advertising and technical services) and adding U.S. direct selling expenses (credit, advertising, warranties and technical services). For comparison to CEP, we made COS adjustments by deducting home market direct selling expenses pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

Plate: For comparison to EP, we made COS adjustments by deducting home market direct selling expenses (credit, warranties, advertising, commissions, and technical services) and adding U.S. direct selling expenses (credit, warranties, advertising and technical services). We offset home market commissions by the amount of indirect selling expenses incurred on the U.S. sale, up to the amount of the home market commission.

Level of Trade (''LOT'')

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (''LOT'') as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (''CV''), that of the sales from which we derive selling, general and administrative (''SG&A'') expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

In the present review, only Dofasco, Forsyth, and CCC claimed that more than one LOT existed; none of the respondents requested a LOT adjustment. To evaluate LOTs, we examined information regarding the distribution systems in both the U.S. and Canadian markets, including the selling functions, classes of customer, and selling expenses for each respondent. Forsyth's claim of LOT differences is discussed below in the Facts Available section.

Algoma

In both the home market and the United States, Algoma reported one LOT and one distribution system with two classes of customers: end-users and steel service centers. We analyzed the selling functions and activities performed for both classes of customers in both markets. We preliminarily determine that Algoma's selling functions and activities are substantially similar for both classes of customers for sales of subject merchandise and, therefore, that there is one level of trade in both markets. For a further discussion of the Department's LOT analysis with respect to Algoma, *see Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for Algoma,* July 2, 1998.

CCC

CCC reported three different LOTs in the home market based on class of customer: OEMs, steel service centers, and scrap merchants. However, we examined the reported selling functions and found that CCC provides the same selling functions to its home market customers regardless of channel of distribution. We preliminarily determine that the selling functions between the reported LOTs are sufficiently similar to consider them as one LOT in the comparison market.

CCC stated that it sells to two LOTs in the United States: OEMs and steel service centers. Again, we examined the selling functions at both claimed levels, and found they were the same. Therefore, we preliminarily determine that the selling functions between the reported LOTs are sufficiently similar to consider them as one LOT in the United States market. Finally, we compared the selling functions performed at the home market LOT and the LOT in the United States and found them substantially similar. For a further discussion of the Department's LOT analysis with respect to CCC, *see Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for CCC,* July 2, 1998.

Dofasco

Dofasco reported three LOTs in the home market. Dofasco defined its LOT categories by customer category: service center, automotive, and construction and converters/manufacturers (''construction''). We examined the selling functions performed at each claimed level and found that there was a significant difference in selling functions offered to these three categories. Of the seventeen reported selling functions, Dofasco performed only three of the same or similar selling functions at both the automotive and service center sales levels. Dofasco reported fourteen selling functions which were different between these two levels. Moreover, Dofasco has established a separate sales division for its automotive sales. Additionally, sales to automotive customers are sales to end users, while sales to service centers are sales to resellers. In sum, these sales were made at different stages of marketing. Therefore, we preliminarily conclude that the automotive and service center classes of customer constitute separate levels of trade.

Although both automotive and construction customers are OEMs, we note that both quantitatively and qualitatively, the selling functions offered to automotive customers involve significantly greater resources and thus represent a distinct stage of marketing. Specifically, of the seventeen reported selling functions, Dofasco performed only seven of the same or similar selling functions to both automotive and construction customers. Dofasco's functions for these two channels differed with respect to ten other activities. Therefore, given these differences, we preliminarily conclude that automotive and construction constitute separate levels of trade.

There were numerous differences in selling functions between construction and service center sales channels. Of the seventeen reported selling functions, Dofasco performed only eight of the same or similar selling functions at both levels. We found that these differences suggested distinct stages of marketing. Therefore, we preliminarily conclude that construction and service centers constitute different LOTs.

Overall, we determine that the selling functions for the automotive, service center, and construction customer categories are substantially dissimilar to one another and that these sales are made at different stages of marketing. Therefore, we preliminarily determine that the automotive, service center, and construction customer categories should be treated as three LOTs in the comparison market.

Respondents reported the same three LOTs in the U.S. market: automotive, service center, and construction. We preliminarily determine that the results of our analysis of U.S. LOTs are identical to those of the comparison market. In addition, there were only insignificant differences in selling functions at each LOT between the comparison market and the U.S. market. Therefore, we found that the three U.S. LOTs corresponded to the three comparison market LOTs.

The Department did not find that there existed a pattern of consistent price differences between the three levels of trade. Therefore, we did not make LOT adjustments when comparing sales at different LOTs. For a further discussion of the Department's LOT analysis with respect to Dofasco, *see Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for Dofasco,* July 2, 1998.

MRM

In both the home market and the United States, MRM reported one LOT and one distribution system with two classes of customers in the home market, distributors and OEMs, and one class of customer, OEMs, in the U.S. market. We analyzed the selling functions and activities performed for each class of customer in each market. We found that MRM's selling functions and activities were substantially similar for both classes of customers for sales of subject merchandise and, therefore, constitute one level of trade in the home market. Finally, we compared the selling functions performed at the home market LOT and the LOT in the United States and found them substantially similar. Thus, no adjustment was appropriate.

Stelco

Stelco identified one level of trade and two channels of distribution (to end-users or to resellers) in the home market for each class or kind of merchandise. We examined the selling functions performed in each channel and found that Stelco provided many of the same or similar selling functions in each, including inventory maintenance, after sales service, technical advice, and freight and delivery arrangements. We found few differences between selling functions for transactions made through the two channels of trade. Overall, we determine that the selling functions between the two sales channels are sufficiently similar to consider them one LOT in the home market for sales of both corrosion-resistant products and plate products.

In the United States, Stelco Inc. sold both products through the two channels of distribution listed above. For EP sales, we determine that the results of our analysis of the U.S. LOT is identical to that of the home market: the selling functions performed for sales to the United States are sufficiently similar to consider them one LOT for both corrosion-resistant products and plate products. Additionally, we consider this LOT to be the same as that identified in the home market. Therefore, no adjustment is appropriate.

For CEP sales of corrosion-resistant steel made by SUSA, we compared the selling activities associated with the sale to the affiliated reseller to those associated with the home market sales and found them to be dissimilar. For example, the level of trade of the CEP sales involved no after sales services, or technical advice. Therefore, we considered the home market sales to be at a different level of trade and at a more advanced stage of distribution than the CEP sales. Because the sole home market level of trade was different from the level of trade of the CEP, we could not match to sales at the same level of trade in the home market nor could we determine a level-of-trade adjustment based on Stelco's home market sales of merchandise under review.

Furthermore, we have no other information that provides an appropriate basis for determining a level-of-trade adjustment. Accordingly, for Stelco, we determined NV at the sole home market level of trade and made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. For a further discussion of the Department's LOT analysis with respect to Stelco, *see Memorandum to the File: Analysis Memorandum for the Preliminary Results of Review for Stelco,* July 2, 1998.

Facts Available

Forsyth has stated that it sells subject merchandise in the home market at three distinct LOTs and at only one LOT in the U.S. market. Forsyth did not report a significant portion of its home market sales because it claims that these home market sales are made at a different LOT than the U.S. sales made during the POR, that there are sufficient contemporaneous sales of identical merchandise at the same LOT, and that, therefore, the Department will not be using these sales in its calculation of NV. The Department, however, clearly warned Forsyth that if it did not report all of its home market sales made during the period of review, we may be required to base our findings on the facts available.

Forsyth has not provided adequate information to justify its LOT claim. More specifically, Forsyth has not shown there to be a significant difference in selling functions between its coil division, which sells in both the home market and in the U.S. market, and its distribution and distribution & processing divisions, which sell only in the home market. In fact, there was substantial overlap among the selling functions performed by these three divisions. Moreover, many of the alleged ''selling functions'' which Forsyth identified and claimed differed among the three divisions were not selling functions at all, but rather manufacturing processes. Section 773(a)(7)(A) clearly establishes that relevant differences between levels of trade must be supported by differences in *selling* functions. *See also,* SAA at 829–830 and 19 C.F.R. § 351.412. The statute accounts for other differences between sales through other adjustments; thus, for example, differing manufacturing processes may be accounted for under the adjustment for physical differences in the merchandise being compared under section 773(a)(6)(C)(ii). It would contravene the purposes inherent in the adjustment provisions of section 773 if the Department were to subsume the differences for which such specific adjustments are made within a broader definition of level of trade differences. Finally, the SAA specifically warns the Department against finding differences in the level of trade that are more appropriately attributable to differences in the nature of the products. SAA at 830.

Consequently, we conclude that, because the record does not reveal significant differences in the selling functions performed by Forsyth's three home market divisions, all of Forsyth's HM sales were made at a single level of trade. Therefore, we require detailed information on all of Forsyth's home market sales in order to accurately calculate NV. Since Forsyth did not report all of its home market sales made during the POR, we preliminarily determine that, in accordance with section 776(a) of the Act, the use of facts available is appropriate for Forsyth.

Where a respondent has failed to cooperate to the best of its ability, section 776(b) of the Act authorizes the Department to use facts available that are adverse to the interests of that respondent, which may include information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Forsyth did not respond to our repeated requests for information about all of its home market sales; rather it presented arguments as to why it should not have to provide that information. Therefore, we conclude that Forsyth has failed to cooperate to the best of its ability.

As adverse facts available, we are using the highest dumping margin calculated in any segment of this proceeding, 68.70 percent. This rate was calculated for Stelco, Inc. in the LTFV determination of certain cut-to-length carbon steel plate from Canada (58 FR 37121, July 9, 1993).

Preliminary Results of Reviews

As a result of our reviews, we preliminarily determine the weighted-average dumping margins for the period August 1, 1996 through July 31, 1997 to be as follows:

Manufacturer/Exporter	Time period	Margin (percent)
Algoma (plate)	08/01/96–07/31/97	[1] 0.28
Stelco (plate)	08/01/96–07/31/97	0.00
Stelco (corrosion-resistant)	08/01/96–07/31/97	2.69
MRM (plate)	08/01/96–07/31/97	0.00
CCC (corrosion-resistant)	08/01/96–07/31/97	2.06
Dofasco (corrosion-resistant)	08/01/96–07/31/97	0.54
Forsyth (plate)	08/01/96–07/31/97	68.70

[1] De minimis.

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 37 days after the date of publication or the first business day thereafter. Case briefs from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs, limited to issues raised in those briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will publish the final results of this administrative review, including its analysis of issues raised in the case and rebuttal briefs, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. Because the inability to link sales with specific entries prevents calculation of duties on an entry-by-entry basis, we will calculate an importer-specific ad valorem duty assessment rate for each class or kind of merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer for that class or

kind of merchandise made during the POR.

If the revocation is made final for Algoma and Stelco, it will apply to all unliquidated entries of this merchandise produced by Algoma and Stelco, exported to the United States and entered, or withdrawn from warehouse, for consumption, on or after August 31, 1997, which is the effective date of the revocation from the order for Algoma and Stelco.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a) of the Act: (1) The cash deposit rate for each reviewed company will be that established in the final results of review (except that a deposit of zero will be required for firms with zero or de minimis margins, i.e., margins less than 0.5 percent); (2) for exporters not covered in this review, but covered in the LTFV investigation or previous review, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be the ''all others'' rates established in the LTFV investigations, which were 18.71 percent for corrosion-resistant steel products and 61.88 percent for plate (see Amended Final Determination, 60 FR 49582 (September 26, 1995)). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative reviews.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative reviews and notices are published in accordance with 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

Dated: July 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18343 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–812]

Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Postponement of Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for final results of antidumping duty administrative review.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final results of the antidumping duty administrative review of the antidumping order on dynamic random access memory semiconductors of one megabit or above from the Republic of Korea, covering the period May 1, 1996, through April 30, 1997, since it is not practicable to complete the review within the time limit mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act).

EFFECTIVE DATE: July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Robert W. Blankenbaker or John Conniff, Antidumping Duty and Countervailing Duty Enforcement Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–0989 or 482–1009.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Rounds Agreements Act.

Background

On June 19, 1997 (62 FR 33394), the Department initiated an administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit or above from the Republic of Korea, covering the period May 1, 1996 through April 30, 1997. On March 9, 1998, the Department published the preliminary determination in this review.

Postponent of Final Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to 180 days after the date on which the preliminary determination is published.

Because of the complexity of the issues involved in this review, we determine that it is not practicable to complete this review within the original time frame.

Accordingly, the deadline for issuing the final results of this review will be no later than 180 days from the publication of the preliminary determination (September 8, 1998).

Dated: July 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18291 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–822]

Certain Helical Spring Lock Washers from the People's Republic of China: Notice of Extension of Time Limit for Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of the fourth administrative review of the antidumping order on certain helical spring lock washers from the People's Republic of China. The period of review is October 1, 1996 to September 31, 1997. This extension is made pursuant to Section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act.

EFFECTIVE DATE: July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Todd Hansen, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington

D.C. 20230; telephone (202) 482–3464 or (202) 482–1276, respectively.

SUPPLEMENTARY INFORMATION: The Department of Commerce (Department) initiated this administrative review on November 26, 1997 (62 FR 63069). Because it is not practicable to complete this review within the original time limit set forth in section 751(a)(3)(A) of the Tariff Act of 1930, as amended (*i.e.*, July 3, 1998 (extended to July 6, 1998 because of Holiday)), pursuant to that same section, the Department is extending the time limit for completion of the preliminary results until October 31, 1998. *See* the July 6, 1998 Memorandum from Susan Kuhbach, Office Director, AD/CVD Enforcement to Richard W. Moreland, Acting Assistant Secretary for Import Administration, which is on file in the Central Records Unit, Room B–099 of the Department's headquarters.

Dated: July 6, 1998.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18444 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–805]

Industrial Nitrocellulose From the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the respondent, Daesang Corporation (Daesang)[1] the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on industrial nitrocellulose from the Republic of Korea (Korea). The review covers one manufacturer/exporter of the subject merchandise to the United States during the period July 1, 1996 through June 30, 1997. The review indicates the existence of dumping margins during the review period.

We have preliminarily determined that sales have been made below normal value (NV). If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between United States price (U.S. price) and NV.

Interested parties are invited to comment on these preliminary results. Parties who submit argument are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Elfi Blum or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0197 or 482-3020, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (62FR 27296, May 19, 1997).

SUPPLEMENTARY INFORMATION:

Background

On July 10, 1990, the Department published in the **Federal Register** (55 FR 28267) the antidumping order on industrial nitrocellulose (INC) from Korea. On July 2, 1997, the Department published in the **Federal Register** (62 FR 38973) a notice of opportunity to request an administrative review of this antidumping duty order. On July 31, 1997, in accordance with 19 CFR 351.213, one exporter of the subject merchandise to the United States, Daesang, requested that the Department conduct an administrative review of its exports of subject merchandise to the United States. We published a notice of initiation of this administrative review on September 25, 1997 (62 FR 50292), covering the period July 1, 1996 through June 30, 1997.

Scope of Review

Imports covered by this review are shipments of INC from Korea. INC is a dry, white amorphous synthetic chemical with a nitrogen content between 10.8 and 12.2 percent, and is produced from the reaction of cellulose with nitric acid. INC is used as a film-former in coatings, lacquers, furniture finishes, and printing inks. The scope of this order does not include explosive grade nitrocellulose, which has a nitrogen content of greater than 12.2 percent.

INC is currently classified under Harmonized Tariff System (HTS) subheading 3912.20.00. While the HTS item number is provided for convenience and Customs purposes, the written description remains dispositive as to the scope of the product coverage. The review period is July 1, 1996 through June 30, 1997.

Verification

As provided in section 782(i) of the Act, we conducted a U.S. verification of the questionnaire responses submitted by Daesang Corporation, concerning its U.S. affiliate, Daesang America. We used standard verification procedures, including the examination of relevant accounting, sales, and other financial records, and the selection of original documentation containing relevant information. Our verification results are outlined in the public version of the verification report.

United States Price

In calculating the United States Price (USP), we used export price (EP), in accordance with section 772 (a) and (c) of the Act, because Daesang's sales to the first unaffiliated purchaser occurred before importation into the United States, and because constructed export price (CEP) methodology was not otherwise indicated. We based EP on the packed prices to the first unaffiliated purchaser in the United States. We made deductions from the starting price, where appropriate, for foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. customs brokerage and U.S. duties. We also added an amount for duty drawback. No other adjustments were claimed or allowed.

Normal Value

In calculating NV, we used home market prices to unaffiliated purchasers, as defined in section 773 of the Act. In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared Daesang's volume of home market sales of the subject merchandise to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Daesang's volume of home market sales of the subject merchandise was greater than five percent of its volume of U.S. sales of the subject merchandise, we determined that the home market provides a viable basis for calculating NV for Daesang.

[1] In its questionnaire response dated October 31, 1997, Daesang was referred to as Miwon Co., Ltd. Daesang advised the Department by letter dated December 5, 1997 that its name had been changed.

We based NV on the gross unit price, and made deductions, where appropriate, for inland freight from the plant to the warehouse, inland freight from the plant or warehouse to the customer, presale warehousing expenses, handling charges, and commissions. We made a circumstance-of-sale adjustment, where appropriate, by deducting home market direct selling expenses and adding U.S. direct selling expenses. We also made adjustments, where applicable, for U.S. indirect selling expenses to offset home market commissions.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa, 62 FR 61731, 61732 (November 19, 1997).

Daesang did not claim a LOT adjustment; however, we requested information concerning Daesang's distribution system, including classes of customers, selling functions, and selling expenses, to determine whether such an adjustment was necessary. Daesang reported that all sales to the United States during the Period of Review (POR) were to distributors, and sales in the comparison market, the home market in this case, were to end-users or distributors. Daesang claimed that there were no differences in selling functions or selling expenses between sales in the home market and sales in the United States, nor did we find any such difference. Therefore, we preliminarily determine that sales in the home market and sales in the United States are at the same LOT, and that no adjustment is warranted.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that the following margin exists for the period July 1, 1996 through June 30, 1997:

Manufacturer/Exporter	Margin (percent)
Daesang Corporation	8.72

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice in accordance with 19 CFR 351.224. Any interested party may request a hearing within 30 days of publication in accordance with 19 CFR 351.310. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice in accordance with 19 CFR 351.309. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed within five days after the time limit for filing case briefs. *See* 19 CFR 351.309. Parties who submit argument in this proceeding are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments, not later than 120 days after the date of publication of this notice.

Upon issuance of the final results of review, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific ad valorem duty assessment rates based on the ratio of the total amount of dumping margins calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. These rates will be assessed uniformly on all entries of each particular importer made during the POR. (This is equivalent to dividing the total amount of antidumping duties, which are calculated by taking the difference between statutory NV and statutory EP, by the total statutory EP value of the sales compared, and adjusting the result by the average difference between EP and customs value for all merchandise during the POR.)

The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. Upon completion of this review, the Department will issue appraisement instructions directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of INC from Korea entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Daesang will be the rate established in the final results of this review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate shall be the rate established in the investigation of sales at less than fair value, which is 66.3 percent. See 55 FR 28267 (May 22, 1990).

These deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties

This notice serves as a preliminary reminder to importers of their responsibility under section 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.213, 351.221.

Dated: June 30, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18443 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–810]

Mechanical Transfer Presses From Japan; Final Results of Antidumping Duty Administrative Review and Revocation of Antidumping Duty Administrative Order in Part

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review and revocation of antidumping duty administrative order in part.

SUMMARY: On March 6, 1998, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of its antidumping duty administrative review of the antidumping duty order on mechanical transfer presses (MTPs) from Japan and intent to revoke in part with respect to respondent Aida Engineering, Ltd. (Aida) (63 FR 11211). This review covers two manufacturers/exporters of the subject merchandise to the United States and the period of February 1, 1996 through January 31, 1997. We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Aida. We received rebuttal comments from Verson Division of Allied Products Corp., the United Autoworkers of America, and the United Steelworkers of America (AFL–CIO/CLC) (petitioners). We have not changed the results from those presented in the preliminary results of review. We have also determined to revoke the order in part, with respect to Aida.

EFFECTIVE DATE: July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Lesley Stagliano or Maureen Flannery, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–3782, (202) 482–3020.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provision effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR part 353 (1997).

Background

On March 6, 1998, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the review of the antidumping duty order and intent to revoke order in part on MTPs from Japan (63 FR 11211). The Department has now completed this antidumping duty administrative review in accordance with section 751(b) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive of the scope of the order.

The term mechanical transfer presses refers to automatic metal-forming machine tools with multiple die stations in which the work piece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled. This review does not cover certain parts and accessories, which were determined to be outside the scope of the order (See ''Final Scope Ruling on Spare and Replacement Parts,'' U.S. Department of Commerce, March 20, 1992; and ''Final Scope Ruling on the Antidumping Duty Order on Mechanical Transfer Presses (MTPs) from Japan: Request by Komatsu, Ltd.,'' U.S. Department of Commerce, October 1, 1996).

This review covers two manufacturers of MTPs, and the period February 1, 1996 through January 31, 1997.

Analysis of the Comments Received

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Aida and rebuttal comments from petitioners.

Comment 1: Aida contends that the Department erred in excluding below-cost sales in calculating the profit rate for constructed value. Aida states that its below-cost sales were not outside the ordinary course of trade according to the general definition of ''ordinary course of trade'' as it is defined in Section 771(15) of the Act; therefore, they should not have been excluded by the Department in its calculation of constructed value. Section 771(15) states:

> The term ''ordinary course of trade'' means the conditions and practices which, for a reasonable time prior to the exportation of the merchandise which is the subject of the investigation, have been normal in the trade under consideration with respect to merchandise of the same class or kind. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:
>
> (A) Sales disregarded under section 773(b)(1)
>
> (B) Transactions disregarded under section 773(f)(2)

Aida states that the Department and the courts have consistently held that below-cost sales are not *per se* outside the ''ordinary course of trade.'' *See, e.g., Federal-Mogul Corp.* v. *United States,* 918 F. Supp. 386, 402–403 (Ct. Int'l Trade, 1996); *Timken Co.* v. *United States,* 930 F. Supp. 621, 624–625 (Ct. Int'l Trade, 1996); and *Torrington Co.* v. *United States,* 984 F. Supp. 67, 75 (Ct, Int'l Trade, 1996). Although these cases were decided under the definition of ''ordinary course of trade'' as it existed prior to the Uruguay Round Agreements Act (URAA), Aida maintains that these cases continue to be valid because this definition was carried forward with URAA law. Aida asserts that the second sentence of section 771(15) only applies to below-cost sales that have been disregarded for purposes of normal value comparisons under section 773(b) of the Act.

Aida argues that there were no home market sales ''under consideration for the determination of normal value,'' and no sales were disregarded under section 773(b)(1). Aida contends that the Department based its decision to use constructed value on section 773(a)(1)(C) when it stated that ''the particular market situation in this case, which requires that the subject merchandise be built to each customer's specifications, does not permit proper price-to-price comparisons in either the home market or third countries.'' 63 FR 11213. Aida concludes that, since no home market sales were considered or disregarded for price comparison under section 773(b)(1), the second sentence of section 771(15) was inapplicable, and that Aida's below-cost sales were not outside the ordinary course of trade.

Aida argues that the Department's discussion of the below-cost sales issue is based on an incorrect interpretation of

section 773(b)(1) in that the Department equated calculation of constructed value profit with ''determination of normal value.'' Aida states that, prior to the URAA amendments, the Department consistently took the position that section 773(b)(1) did not apply to the calculation of constructed value. *See Antifriction Bearings . . . and Parts Thereof From France, et al.,* 57 FR 28360, June 24, 1992. Aida asserts that the Department's position was upheld by the Court of Appeals for the Federal Circuit in *Torrington Co.* v. *United States,* 127 F.3d 1077, 1977, in which the Court stated:

> The requirement in 19 U.S.C. 1677b(b) [Section 773(b) of the Act] that Commerce ''shall'' disregard below-cost sales when calculating FMV based on actual sales figures does not apply when Commerce calculates FMV based on constructed value.

Aida asserts that, although the URAA revised section 773(b)(1), it did not change the basic structure of the provision, namely that disregarding sales ''in the determination of normal value'' means that the sales will not be used to determine price-based normal value, not that they will not be used to determine the profit rate for constructed value. *See* SAA at 163, House Rept. 103–316 at 833. Aida states that Congress amended the statute to provide for exclusion of certain below-cost sales from the constructed value profit calculation by adding the second sentence to the definition of ''ordinary course of trade'' in section 771(15). Aida asserts that in conjunction with the definitions of constructed value profit in section 773(e), the amendment determines when below-cost sales may be excluded from constructed value profit. *See* 62 FR 27359, *supra. See* also *Final Results of Antidumping Duty Review: Color Picture Tubes from Japan,* 62 FR 34201, 34209, June 25, 1997. Aida contends that if sales could be disregarded under section 773(b)(1) for constructed value purposes there would be no reason for the addition of clause (A) to section 771(15), and below-cost sales would be excluded without regard to the method of profit calculation. Aida argues that sales were not considered for price comparisons under section 773(a) and were not disregarded for such purposes pursuant to section 773(b)(1); thus, they are not outside the ordinary course of trade, and, therefore, do not meet the conditions for exclusion from the constructed value profit calculation under section 773(e)(2)(A).

In addition, Aida states that nothing on the record suggests that Aida's below-cost sales fell into any of the ''ordinary course of trade'' definitions mentioned in the Statement of Administrative Action (SAA), which accompanied the URAA amendments.

Petitioners contend that, in the 1995–1996 administrative review of this order, the Department rejected this same argument stating:

> We conclude, therefore, that in this review it is appropriate to exclude these sales from the profit calculation as outside the ordinary course of trade, pursuant to Section 771(15) of the Act. The fact that we did not ''disregard'' such sales in a price based determination of NV as provided in Section 771(15) of the Act does not prevent the Department from finding these sales outside the ordinary course of trade when we have, in effect, conducted a cost test on the sales and found that they have failed. We would have disregarded these sales, pursuant to Section 773(b)(1) of the Act if we were using price-to-price comparisons, and, as a result, we believe that it is appropriate to do so here. *Mechanical Transfer Presses from Japan: Final Results of Antidumping Duty Administrative Review,* 62 FR 11850–22, March 17, 1997.

Petitioners assert that the Department maintained that it was appropriate to exclude below-cost sales from CV profit, as sales made outside the ordinary course of trade in *Large Newspaper Printing Presses from Japan; Final Determination of Sales at less Than Fair Value,* 61 FR 38139–45, July 23, 1996; and *Certain Welded Carbon Steel Pipes from Thailand; Final Results of Antidumping Duty Administrative Review,* 61 FR 56515–18, November 1, 1996. Petitioners argue that although the Department does not treat below-cost sales as *per se* outside the ordinary course of trade in price-to-price cases, the Department has a *per se* rule with respect to below-cost sales made in a case where normal value is based on CV from the outset due to the unique nature of the product involved. Petitioners state that, in such situations, the Department performs a cost test on a sale-by-sale basis ''because each MTP is custom-built, differs significantly in specifications, and is essentially a discrete model.'' *Preliminary Results* at 11213.

Petitioners state that in the only ''new'' law case cited by Aida, the Department did not disregard below-cost sales because the Department based normal value on price-to-price comparisons, and the specific models found to be below-cost did not exceed the Department's ''20 percent'' test. *See Final Results of Antidumping Duty Review: Color Picture Tubes from Japan,* 62 FR 34209. Petitioners point out that Aida states in its case brief that the Department referenced *Mechanical Transfer Presses from Japan* in *Color Picture Tubes from Japan,* and indicates that, while a *per se* rule may not attain in price-to-price cases, below-cost sales are properly excluded from CV profit when normal value is based on CV. Accordingly, petitioners argue that the Department should continue to disregard below-cost sales in its CV profit calculation for the final results, consistent with its determination in the preliminary results and the other cited cases.

Department's Position: Aida's argument that no sales were disregarded under section 773(b)(1), and therefore none can be considered outside the ordinary course of trade reflects an overly-restrictive interpretation of the Act, and raises form over substance. Because the Department found below-cost sales in the previous review, the Department had ''reasonable grounds to believe or suspect'' that home market sales were made at prices which were below the cost of production under section 773(b)(2)(A)(ii), and therefore was required to initiate a cost investigation under section 773(b)(1). Moreover, as the Department explained in the prior review, there are reasonable grounds to believe that below-cost sales were made where actual costs demonstrate as much, as they do in the present case. *MTPs from Japan,* 62 FR at 11822.

Furthermore, the facts of this case closely resemble those of *LNPPs,* in which the Department explained, ''the unique cost reporting aspects of this case were such that, in effect, [we] conducted a cost investigation. . .'' 61 FR at 38145.

The Department also explained in *LNPPs* that, the Department has sufficient flexibility under section 771(15) to conclude, in the present circumstances, that sales below the cost of production should be disregarded as outside the ordinary course of trade. *Id.* This position has been upheld by the CIT in *Mitsubishi Heavy Industries* v. *U.S.,* Slip Op. 98–82. at 41–42 (CIT June 23, 1998). Section 771(15) makes clear on its face that the circumstances listed are only two ''among others'' in which sales should be considered to have been made outside the ordinary course of trade. See also URAA Statement of Administrative Action (SAA), H.R. Doc. 103–316, 103d Cong., 2d Sess, Vol. 1 at 834. Thus, even taking AIDA's view that the Department is not acting under section 773(b), the Department has the authority to find, in the present circumstances, that sales which it finds to be below cost, and which it would disregard under section 773(b), are outside the ordinary course of trade.

Finally, Aida's overly-rigid reading of the statute must be rejected because it

would mean that in cases such as the present one and *LNPPs,* where the complexity of the product makes resort to CV almost inevitable, the Department would be unreasonably precluded from computing actual profit under section 773(e)(2)(A), the preferred method of determining CV profit, since sales outside the ordinary course of trade may not be used in the calculation of profit under that method. Moreover, the SAA, at 840, indicates that under this provision ''in most cases Commerce would use profitable sales as the basis for calculating profit.'' Thus, Aida's interpretation of the statute undermines Congress' preference for the calculation of actual profit for purposes of CV.

Comment 2: Aida contends that the Department should use the Japanese short-term interest rate to calculate credit expenses for Aida's U.S. sales #1–4 which were made in yen. Aida originally reported the credit expenses for U.S. sales #1–4 based on the Japanese yen short-term prime interest rate, but later revised their calculations in accordance with the Department's supplemental questionnaire. Aida cites both *Sodium Azide from Japan,* 61 FR 42585, 42588, August 16, 1996, and *Engineered Process Gas Turbo-Compressor Systems * * * from Japan,* 62 FR 24394, 24408, May 5, 1997, which state:

> [W]hen sales are made in, and future payments are expected in a given currency, the measure of the company's extension of credit should be based on an interest rate tied to the currency in which its receivables are denominated.

Thus, Aida argues that since U.S. sales #1–4 were made in yen and payment was received in yen, the yen short-term interest rate should be used to calculate credit expense for these sales.

Department's Position: The Department agrees with respondents, in that, credit for U.S. sales # 1–4 should be denominated in Japanese yen. The Department has used a short-term interest rate tied to the currency in which the sales are denominated. We based this interest rate on the respondent's weighted-average short-term borrowing experience in the currency of the transaction. Thus, we have calculated credit for U.S. sales #1–4 based on Japanese yen since these sales were denominated in yen.

Comment 3: Aida argues that the Department should reduce expenses in U.S. sale #2 on a *pro-rata* basis to adjust for the removal of the destack feeder from the sales price. In its preliminary determination, the Department removed the destack feeder from sale #2 by subtracting from the reported gross unit price the line item price set forth for the destack feeder in a price quotation that had preceded the contract. Aida argues that having done so, the Department should have subtracted the amount of expense attributable to the destack feeder from the movement expenses, warranty expense, credit expense, and service fee to reflect the removal of the destack feeder from the sale.

Department's Position: The Department agrees with Aida in that expenses in U.S. sale #2 should be reduced on a *pro rata* basis corresponding to the subtraction of the destack feeder from the sales price. The Department has revised the U.S. sales summary to reflect these changes.

Comment 4: Aida asserts that the Department should deduct transportation expense from the sales price in calculating profit on home market sales. Aida states that its cost accounting includes transportation cost in its manufacturing cost. Aida Section D Response, pp. D–34, D–35. Since the Department treats transportation cost as a movement expense, Aida deducted transportation cost from manufacturing cost in calculating cost of manufacture cost (MANCOST), and it subtracted transportation cost as a separate line item in calculating the home market profit rate. Aida Supplemental Response Exhibit S–10. Since it is a cost incurred by Aida on the sales, Aida maintains that transportation cost must be subtracted from revenue in calculating profit. Aida contends that when the Department recalculated Aida's home market profit rate, it failed to deduct transportation expense, thus, overstating home market profit.

Department's Position: The Department agrees with Aida. Transportation expense should be deducted from the sales price when calculating the home market profit rate. To ensure that home market profit is calculated correctly it is necessary to deduct the transportation expense from both the sales price and the COM.

Final Results of the Review

We determine that the following dumping margins exist:

Manufacturer/exporter	Time Period	Margin (percent)
Aida Engineering, Ltd	2/1/96–1/31/97	0.00
Hitachi-Zosen	2/1/96–1/31/97	0.00

We further determine that Aida sold MTPs at not less than NV for three consecutive review periods, including this review period, and it is not likely that Aida will in the future sell subject merchandise at less than NV. Additionally, Aida has submitted the required certifications, and has agreed to its immediate reinstatement in the antidumping duty order, as long as any firm is subject to the order, if the Department concludes under 19 CFR 353.22(f) that, subsequent to revocation, it sold the subject merchandise at less than NV. Furthermore, we received no comments from any interested party contesting the revocation. For these reasons we are revoking the order on MTPs from Japan with respect to Aida in accordance with section 751(d) of the Act and 19 CFR 353.25(a)(2). In accordance with the regulations, the Department will take seriously any credible evidence that, subsequent to the revocation, Aida sold the merchandise at less than NV.

This revocation applies to all entries of the subject merchandise from Aida entered, or withdrawn from warehouse, for consumption on or after February 1, 1997. The Department will order suspension of liquidation ended for all such entries and will instruct the Customs Service to release any cash deposits or bonds. The Department will further instruct the Customs Service to refund with interest any cash deposits on entries made on or after February 1, 1997.

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for Hitachi Zosen will be the rate stated above; (2) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of

the merchandise; and (3) the cash deposit rate for all other manufacturers or exporters will be the rate established in the investigation of sales at less than fair value, which is 14.51 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification to Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 353.22(f).

Dated: July 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18307 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

[A–580–807]

Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 6, 1998, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on polyethylene terephthalate film sheet, and strip (PET film) from the Republic of Korea. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1996 through May 31, 1997.

As a result of comments we received, the dumping margin has changed from that presented in our preliminary results.

EFFECTIVE DATE: July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney, or Linda Ludwig, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4475, or 3833, respectively.

SUPPLEMENTAL INFORMATION:

Background

On March 6, 1998, (63 FR 11214), the Department published the preliminary results of administrative review and recission in part of the antidumping duty order on PET film from the Republic of Korea, 56 FR 25669, (June 5, 1991).

This review covers one manufacturers/exporter of the subject merchandise to the United States: SKC Co., Ltd, (SKC), and the period June 1, 1996 through May 31, 1997.

The Department has concluded this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period June 1, 1996 through May 31, 1997.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 353 (1997).

Analysis of Comments Received

We invited interested parties to comment on the preliminary results of this administrative review. On April 6, 1998, we received timely comments from the respondent, SKC and the petitioners (E.I. DuPont de Nemours & Company, Hoechst Celanese Corporation, and ICI America's Inc.) (Petitioners). SKC and the Petitioners submitted their reply briefs on April 13, 1998 and April 14, 1998 respectively.

Comment 1: SKC contends that the payment dates for some of the U.S. sales reported in its December 8, 1997 letter were incorrectly transcribed, thereby overstating its U.S. credit expense. SKC contends that the Department should accept the corrected payment dates set forth in its March 16, 1998 letter. SKC further contends that the correct payment dates are discernible from the record, and that the error in question is clearly clerical in nature.

SKC argues that the Department's established practice is to accept corrections following the preliminary results when (1) the error in question is demonstrated to be a clerical error; (2) the corrective documentation provided in support of the clerical error allegation is reliable; (3) the respondent availed itself of the earliest reasonable opportunity to correct the error; (4) the clerical error allegation, and any corrective documention, is submitted to the Department no later than the due date for the respondent's administrative case brief; (5) the clerical error does not entail a substantial revision of the response; and (6) the respondent's corrective documentation does not contradict information previously determined to be accurate at verification. (*See e.g., Certain Fresh Cut Flowers from Colombia, Final Results of Antidumping Duty Administrative Reviews, (Colombian Flowers)* 61 FR 42833, 42834 (August 19, 1996).)

SKC asserts that the corrected information meets the criteria outlined in *Colombian Flowers* because the error contained in its December 8, 1997 response is demonstrably clerical, can reliably be discerned from the data on

record, and was brought immediately to the Department's attention upon receipt by SKC of its disclosure materials. Moreover, SKC argues that correction of this error would not entail a substantial revision of its response. Finally, SKC notes that the data provided in its March 16, 1998 submission does not contradict any previously verified information.

Department's Position: We agree with SKC. The Department will accept a respondent's clerical corrections so long as it fulfills the criteria first articulated in Colombian Flowers. (*See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Outside Diameter, and Components Thereof, From Japan, Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 20585, 20610 (April 27, 1998) (citing *NTN Bearing Corp.* v. *United States*, 74 F.3d 1204 (Fed. Cir. 1995) and *Colombian Flowers*).) The formatting error resulted in the uniform transcription of ''9'' as ''0'' for certain U.S. sales. For example, payments made on March 5, 1997 were incorrectly read as ''070305'' rather than ''970305''. This error is clearly clerical in nature. Further, SKC provided reliable documentation supporting its correction of that clerical error. SKC corrected the clerical error five days after receipt of its disclosure materials, and provided the corrective documentation prior to submission of its case brief. Finally, correction of this clerical error does not constitute a substantial revision of SKC's response, and does not contradict previously verified information. Thus, consistent with the position established in *Colombian Flowers*, we have used SKC's corrected payment dates in these final results.

Comment 2: Consistent with previous administrative reviews of this case, SKC objects to the Department's equal allocation of scrap costs to A-grade and B-grade film. SKC contends that its allocation methodology is reasonable and consistent with widely accepted accounting concepts. In support of its argument, SKC cites to the March 5, 1996 case brief filed in the second and third administrative reviews of this case. (*See* Attachment 1 of SKC's April 6, 1998 case brief.)

SKC states that allocating the cost of scrap film equally to A-grade and B-grade films improperly overstates the cost of B-grade films while understating the cost of A-grade films. SKC contends that its methodology of initially allocating costs equally among A-grade film, B-grade film, and scrap, and then reallocating the cost of scrap to the cost of A-grade film is consistent with accepted cost accounting methodologies.

SKC also asserts that its methodology is consistent with the Department's treatment of jointly produced products in numerous other antidumping proceedings, wherein the Department recognized that a pure quantitative, or physical measures approach to cost allocation is unreasonable where there is a significant difference in the value of the jointly produced products.

SKC cites *Elemental Sulphur from Canada*, 61 FR 8239, 8241–8243 (March 4, 1996) (*Sulphur from Canada); Oil Country Tubular Goods from Argentina*, 60 FR 33539, 33547 (June 28, 1995) *(OCTG from Argentina); Canned Pineapple Fruit from Thailand*, 60 FR 29553, 29560 (June 5, 1995) *(Pineapple from Thailand)* in support of its position.

SKC maintains that it is the Department's well-established practice to calculate costs in accordance with a respondent's normal cost accounting system unless the system results in an unreasonable allocation of costs, and cites *Pineapple from Thailand* as support for this assertion. SKC states that its reported cost of manufacturing (COM) data were calculated in accordance with its normal and long-established management cost accounting system. SKC notes that in the first review of this case (covering the period November 30, 1990 through May 31, 1992), the Department allocated all of the costs associated with the production of scrap film to A-grade film. SKC contends that this methodology was recently upheld by the Court of International Trade (CIT). (*See E.I. Dupont de Nemours & Co., et al.* v. *United States*, No. 98–35, Slip. Op. at 12–14 (CIT March 26, 1998 (*DuPont*).) Based upon the foregoing, SKC concludes that the Department should allocate all scrap costs to A-grade film.

Petitioners argue that SKC has not provided justification for the Department deviating from its current practice which is to allocate costs equally between prime- and off-grade merchandise. Petitioners note that the allocation of scrap film has been a contentious issue from the LTFV investation of this case. Petitioners further note that the Department's method of allocating yield losses equally between A-grade and B-grade film is consistent with the ruling of the U.S. Court of Appeal for the Federal Circuit in *IPSCO* v. *United States*, 965 2d. 1056 (Fed Cir., 1992) (*IPSCO*). Petitioners contend that the methodology employed by the Department in this review is consistent with that employed in the second (June 1, 1992 through May 31, 1993) and third (June 1, 1993 through May 31, 1994) reviews of this case. Additionally, Petitioners assert that the decision by the CIT in *DuPont* does not require the Department to employ the allocation methodology used in the first review of this case. Petitioners contend that in accepting SKC's reported costs for the first review, the Department predicated its acceptance of SKC's allocation methodology on the understanding that SKC had applied ''a cost methodology that assigns equal costs to the prime and off-grade PET film in accordance with the *Ipsco Appeal*.'' (original emphasis). (*See Polyethylene Terephthalate Film, Sheet and Strip From the Republic of Korea; Final Results of Antidumping Duty Administrative Review*, 60 FR 42835, 42839 (August 17, 1995).) Petitioners assert that this indicates that the Department believed that ''SKC's reported cost allocation system was based on allocating equal costs'' to A-grade and B-grade film. Petitioners contend that the allocation methodology set forth by SKC does not allocate scrap costs equally to A-grade and B-grade film, and thus should be rejected by the Department.

Additionally, Petitioners challenge SKC's characterization of its proposed allocation methodology as ''normal and long-established.'' Petitioners cite to their April 14, 1997 reply brief filed in the fifth administrative review (June 1, 1995 through May 31, 1996) of this case in which Petitioners contend that SKC had historically assigned equal costs to all PET film and devised its current cost system only after the initiation of this dumping case.

Department's Position: We agree with Petitioners and disagree with SKC. As we explained in the final results of previous reviews of this order, we have determined that A-grade and B-grade PET film have identical production costs. Accordingly, we continue to rely on an equal cost methodology for both grades of PET film in these final results (*See* Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea: Final Results of Review and Notice of Revocation in Part 61 FR 35177, 33182–83 (July 5, 1996) (Second and Third Reviews); Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final results of Review and Notice of Revocation in Part 61 FR 58374, 58375–76, (November 14, 1996) (Fourth Review); and Polyethylene Terephthalate Film, Sheet, and Strip from the Republic of Korea; Final Results of Review, 62 FR 38064, 38065–66, (July 16, 1997) (Fifth Review).)

Moreover, as noted in the final results of the second through the fifth reviews, the CIT has also ruled that our allocation of SKC's production costs between A-grade and B-grade film is reasonable (*see* E.I. DuPont de Nemours & Co., Inc. et al. v. United States, 932 F. Supp. 296 (CIT 1996)).

As Petitioners have indicated, our acceptance of SKC's allocation of scrap costs in the first review of this case was based upon our understanding that SKC had properly allocated the costs of A-grade and B-grade film. In that review, we did not verify SKC's costs data. We determined that no verification of SKC was necessary because SKC was verified in the original investigation. Second and Third Reviews, 60 FR at 42839. Based upon the evidence existing in the record during that proceeding, we accepted SKC's computations because we were satisfied that it had calculated actual costs consistent with the IPSCO decision.

During the second and third administrative reviews, however, we carefully examined SKC's allocation methodology and conducted a thorough verification of SKC's accounting records. We determined that the allocation methodology employed by SKC fails to capture the actual production costs of A-grade and B-grade film. Based upon this determination, we have consistently required SKC to allocate yield losses equally between A-grade and B-grade film since the second review of this case. Further, we have determined that A-grade and B-grade film undergo an identical production process that involves an equal amount of material and fabrication expenses. The only difference in the resulting A- and B-grade film is that at the end of the manufacturing process a quality inspection is performed during which some of the film is classified as high quality A-grade product while other film is classified as lower quality B-grade film (*see* Fourth Review (covering the period June 1, 1994 through May 31, 1995), 61 FR at 58375).

Finally, SKC's argument that DuPont affirmed SKC's allocation methodology is without merit. DuPont does not require the Department to accept an allocation methodology that does not accurately capture the actual cost of A-grad and B-grade film. In DuPont, the CIT concluded that the Department's acceptance of SKC's calculations was supported by substantial evidence. The Court further concluded that the calculations properly reflected SKC's actual costs of production. The CIT, however, did not affirm SKC's allocation methodology. It merely accepted the allocations resulting from the methodology because those allocations (based upon record evidence) reflected actual production costs as required by IPSCO.

In the four previous reviews of this case, the Department has determined that SKC's allocation methodology fails to capture the actual cost of A-grade and B-grade film. We continue to maintain that SKC's reliance on Sulphur from Canada. Pineapple from Thailand, and OCTG from Argentina is misplaced. Those cases concerned the appropriate cost methodology for products manufactured from a joint production process. SKC has mischaracterized the continuous production process of PET film as a joint production process. A joint production process occurs when ''two or more products result simultaneously from the use of one raw material as production takes place.'' (*See*, Management Accountants Handbook, Keeler, et al., Fourth Edition at 11:1.) A joint production process produces two distinct products and the essential point of a joint production process is that ''the raw material, labor, and overhead costs prior to the initial split-off can be allocated to the final product only in some arbitrary, although necessary, manner.'' Id. The identification of different grades of merchandise does not transform the manufacturing process into a joint production process which would require the allocation of costs. In this case, since production records clearly identify the amount of yield losses for each specific type of PET film, our allocation of yield losses to the films bearing those losses is reasonable, not arbitrary (Fourth Review, 61 FR at 58575–76).

It is the Department's practice to calculate costs in accordance with a respondent's management accounting system. Where that system reconciles to the respondent's normal financial and cost accounting records and results in a reasonable allocation of costs. Management accounting deals with providing information that managers inside an organization will use. Managerial accounting reports typically provide more detailed information about product costs, revenue and profits. They are used to identify problems, objectives or goals, and possible alternatives. In order to respond to the Department's questionnaires, SKC officials devised a management accounting methodology for allocating costs incurred in the film and chip production cost centers to individual products produced during the period of investigation. SKC adopted this cost accounting system to reflect a management goal (i.e., to respond to the Department). Under this system, SKC assigns the yield loss from the production of A- and B-grade films exclusively to the A-grade films. This methodology helps management to focus on the film types with low yields. However, notwithstanding SKC management's concern that it accurately portray the cost of their A-grade products, this managerial accounting methodology is not appropriate for reporting the actual costs of A- and B-grade products. As previously noted, A-grade and B-grade films undergo an identical production process. B-grade film is made using the same materials, on the same equipment, at the same time as the A-grade film. As such, scrap costs must be allocated equally to A- and B-grade films. It is within the Department's mandate to accept or reject the allocation methodologies devised by respondents. In this instance, we have continued to rely on an equal cost allocation methodology which reflects the actual costs incurred for both A-grade and B-grade film.

Comment 3: SKC asserts that the Department double counted inventory carrying costs in its calculation of COP and CV. SKC contends that all COP interest expenses were included in the variable RCOP, and that all CV interest expenses were included in the variable INTEXCV.

Department's Position: We agree with SKC. In these final results, we have revised the computer program to eliminate the double-counting of inventory carrying costs in our calculation of COP and CV.

Comment 4: SKC asserts that the Department failed to include U.S. indirect selling expenses incurred in the home market for purposes of calculating CEP profit. SKC contends that the Department should adjust its calculation of CEP profit to account for all U.S. selling expenses. regardless of where they were incurred.

Department's Position: We agree with SKC. Consistent with our established practice, we have not distinguished ''activities in the United States from other selling expenses'' in our calculation of CEP profit. (*See Import Administration Policy Bulletin No. 97/1. Calculation of Profit for Constructed Export Price Transactions* (September 4, 1997).)

Comment 5: SKC contends that the Department should offset interest revenue against imputed credit in building up the pool of U.S. selling expenses used to allocate profit to CEP sales. SKC notes that the Department made this offset in the final results of the fifth review. (*See Final Analysis*

Memorandum for SKC from Analyst to the file, June 30, 1997.)

Department's Position: We agree with SKC. In these final results, we have offset SKC's interest expense with the interest revenue realized by SKC.

Comment 6: Petitioners contend that the Department should revise SKC's imputed credit expenses on sales to Anacomp. Petitioners assert that SKC's calculation of credit expense is inconsistent with the ruling of the Federal Circuit in *LMI-LaMetalli Industriale, S.p.A.* v. *United States. (LMI)* 912 F.2d 455 (Fed. Cir. 1990) because SKC has not based its calculation of U.S. credit expense upon ''usual and reasonable commercial behavior.'' (*LMI* at 461.)

Petitioners contend that the Department's calculation of SKC's U.S. imputed credit expense should consider Anacomp's ''poor financial condition and the unusual trade credit term that SKC provided to Anacomp.'' Petitioners note that Anacomp declared bankruptcy just prior to the period of review, and emerged from bankruptcy in June 1996. Petitioners point to Anacomp's debt-to-equity ratio as another indication of the company's poor financial condition. Petitioners also note that the interest rate incurred by SKC on borrowings in the U.S. is below the U.S. prime rate. Petitioners assert that Anacomp's financial condition ''is shaky at best,'' and that credit expenses on sales to Anacomp should reflect Anacomp's poor financial condition. Petitioners further contend that the Department should use a rate higher than the rate used to calculate SKC's interest revenue on sales to Anacomp. Petitioners note that in *DuPont,* the CIT granted the Department's request for a remand to consider Anacomp's financial condition in determining the short-term interest rate to be utilized on SKC's U.S. sales. *DuPont* at 24.

SKC contends that the purpose of making an adjustment for U.S. credit expenses is to account for the opportunity cost that the seller incurs in waiting for payment from the buyer. SKC argues that the Department requested a remand in *DuPont* only because the issue had not been addressed on the record of that review. SKC further contends that the cost of extending credit can only be measured by the cost that the seller incurs in borrowing funds. SKC argues that bad debt expense (and not credit) represents the costs associated with not receiving payment. SKC further argues that Departmental practice is to base bad debt expense upon the actual expenses realized by the company. SKC notes that is has included its actual U.S. bad debt expenses in its calculation of U.S. indirect selling expenses. Finally, SKC contends that Petitioners' reliance on *LMI* is misplaced. SKC notes that in *LMI*, the Court instructed the Department to base U.S. interest expense upon the costs associated with borrowing funds in the United States. SKC notes that is based its calculation of U.S. credit expense upon the costs that it incurred in borrowing funds in the United States.

Department's Position: We agree with SKC and disagree with Petitioners. The Department has adopted a policy of using a short-term interest rate tied to the currency in which the sales are denominated. (*See Import Administration Policy Bulletin No. 98.2, Imputed Credit Expenses and Interest Rates* (February 23, 1998).) Subsequent to the *LMI* decision we established a practice of matching the short-term interest rate to the currency because we view this measure as accurately reflecting the cost of providing credit to the customer. (*See, e.g.; AIMCOR* v. *United States,* Nos. 96–1502, 97–1009, 1998 U.S. App. Lexis 7077, at * 40 (Fed. Cir. April 9, 1998) (*AIMCOR*); *Final Determination of Sales at Less Than Fair Value: Oil Country Tubular Goods From Austria,* 60 FR 33551, 33555 (June 28, 1995); *Certain Cut-to-Length Carbon Steel Plate From Sweden; Final Results of Antidumping Administrative Review,* 61 FR 15772, 15780 (April 9, 1996).) Moreover, in the second and third administrative reviews where the respondent had borrowings in the same currency as the transaction we used the weighted-average borrowing rates realized in that particular currency. (*See Second and Third Reviews* at 35184.) In these final results we have continued to base our calculations of SKC's credit expense upon the interest rate incurred on SKC's borrowings in the United States. This approach is consistent with the Court of Appeals' decision in *LMI.* In that case the Federal Circuit reversed the Department's calculation of U.S. imputed credit expenses which used home market borrowing rates because the respondent had actual U.S. loans at a much lower rate. (*LMI* at 460–61.) Inasmuch as the respondent's actual borrowing experience demonstrated its ability to secure financing in the United States at a lower rate, the Federal Circuit reasoned that use of the higher interest rates did not reflect the commercial reality of the respondent's borrowing experience in the United States.

Petitioner' arguments make clear that they have confused credit and bad-debt expenses. Bad debt represents the risk that the seller incurs of not receiving payment, and was separately reported by SKC in its calculation of indirect selling expenses. In contrast, credit expenses represents the opportunity cost incurred by the seller in awaiting payment. The extension of credit constitutes an expense to the firm, because it obligates funds which would otherwise be available for other business activities. Anacomp's financial status and condition has no bearing on SKC's imputed credit expenses computations because imputed credit expense reflects the opportunity cost experienced by the seller (*See AIMCOR,* at *7–8). Anacomp's poor financial condition is irrelevant in this instance because it has no bearing upon the opportunity costs incurred by SKC due to delayed payment. Similarly, neither Anacomp's declared bankruptcy nor it's interest rate in the commercial market place are reflective of the opportunity costs incurred by SKC in extending credit. Finally, we note that if we were to adopt the approach advanced by Petitioners, the distinction between credit expenses and bad debt would cease to exist.

SKC misapprehends the *LMI* decision. In *LMI*, the Federal Circuit reversed the Department for basing U.S. imputed credit costs upon the cost of borrowing funds in the home market, as opposed to the market in which the sales where made. SKC's calculation of U.S. credit, however, is based upon borrowings undertaken by SKC in the United States. SKC's calculation is therefore consistent with *LMI* and the Department's established practice.

Final Results of Review

As a result of our review, we determine that a weighted-average margin of 0.36 percent exists for SKC.

The Department shall determine, and the Customs Service shall assess, antidumpting duties on all appropriate entries. Individual differences between export price and normal value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results for all shipments of PET film from the Republic of Korea within the scope of the order entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Tariff Act: (1) no cash deposit shall be required for SKC because the weighted average margin is less than 0.5 percent and therefore *de minimis*; (2) for previously reviewed or investigated companies not listed above, the rate will continue to be the company-specific rate published for the

most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) for all other producers and/or exporters of this merchandise, the cash deposit rate will be 21.50 percent, the ''all others'' rate established in the remand redetermination of the LTFV investigation, as explained below. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification of Interested Parties

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: July 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18446 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–826]

Small Diameter Circular Seamless Carbon and Alloy Steel Standard, Line and Pressure Pipe From Brazil; Final Results of Changed Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of changed circumstances antidumping duty administrative review, and revocation in part of antidumping duty order.

EFFECTIVE DATE: July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Helen M. Kramer or Linda Ludwig, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0405 or (202) 482–3833, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 27, 1998, the Gulf States Tube Division of Vision Metals (''Gulf States'') [1], a petitioner in this case, requested that the Department of Commerce (the Department) conduct a changed circumstances antidumping duty administrative review to determine whether to revoke in part the antidumping duty order on small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from Brazil with respect to certain glass-lined seamless pressure pipe. Gulf States and Koppel Steel Corporation, the petitioners in this case, expressed no further interest in the relief provided by the antidumping duty order with respect to certain glass-lined seamless pressure pipe imported from Brazil. Accordingly, on May 22, 1998, the Department published a notice of initiation and preliminary results of changed circumstances antidumping duty administrative review and intent to revoke this order in part (63 FR 28357). We gave interested parties an opportunity to comment on the preliminary results of this changed circumstances review. No comments were received.

[1] Gulf States was previously a division of Quanex Corporation.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations, found in 62 FR 27296 (May 19, 1997).

Scope of the Review

Imports covered by this review and partial revocation are shipments of seamless carbon and alloy (other than stainless) steel pipes, of circular cross-section, not more than 114.3 mm (4.5 inches) in outside diameter, regardless of wall thickness or manufacturing process (hot-finished or cold-drawn) that (1) has been cut into lengths of six to 120 inches, (2) has had the inside bore ground to a smooth surface, (3) has had multiple layers of specially formulated corrosion resistant glass permanently baked on at temperatures of 1,440 to 1,700 degrees Fahrenheit in thicknesses from 0.032 to 0.085 inch (40 to 80 mils), and (4) has flanges or other forged stub ends welded on both ends of the pipe. The special corrosion resistant glass referred to in this definition may be glass containing by weight (1) 70 to 80 percent of an oxide of silicone, zirconium, titanium or cerium (Oxide Group RO_2), (2) 10 to 15 percent of an oxide of sodium, potassium, or lithium (Oxide Group RO), (3) from a trace amount to 5 percent of an oxide of either aluminum, cobalt, iron, vanadium, or boron (Oxide Group R_2O_3, or (4) from a trace amount to 5 percent of a fluorine compound in which fluorine replaces the oxygen in any one of the previously listed oxide groups. These glass-lined pressure pipes are commonly manufactured for use in glass-lined equipment systems for processing corrosive or reactive chemicals, including acrylates, alkanolamines, herbicides, pesticides, pharmaceuticals and solvents.

The glass-lined pressure pipes subject to this review are currently classifiable under subheadings 7304.39.0020, 7304.39.0024 and 7304.39.0028 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and U.S. Customs' purposes only. The written description of the scope of this review remains dispositive.

Final Results of Review; Partial Revocation of Antidumping Duty Order

The affirmative statement of no interest by petitioners in glass-lined seamless pressure pipe from Brazil constitutes changed circumstances sufficient to warrant partial revocation of this order. Therefore, the Department is partially revoking the order on small diameter circular seamless carbon and alloy steel standard, line and pressure pipe from Brazil with respect to certain glass-lined seamless pressure pipe as described above, in accordance with sections 751(b) and 782(h) of the Act and 19 CFR 351.216(d)(1). This partial revocation applies to all unliquidated entries of the subject glass-lined seamless pressure pipe not covered by the final result of an administrative review.

The Department will instruct the U.S. Customs Service to proceed with liquidation, without regard to antidumping duties, of all unliquidated entries of certain glass-lined seamless pressure pipe as described above, in accordance with section 778 of the Act.

This changed circumstances administrative review, partial revocation of the antidumping duty order and notice are in accordance with sections 751 (b) and 782(h) of the Act and sections 351.216, 351.221(c)(3) and 351.222(g)(1)(i) of the Department's regulations.

Dated: July 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18339 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Preliminary Results of 1996–1997 Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 1996–1997 antidumping duty administrative review and new shipper review of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China.

SUMMARY: In an administrative review, we preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were made below normal value during the period June 1, 1996, through May 30, 1997. In a new shipper review, we preliminarily determine that sales of tapered roller bearings and parts thereof, finished and unfinished, from the People's Republic of China, were not made below normal value during the period June 1, 1996, through May 30, 1997. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Zak Smith or Cynthia Thirumalai, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–1279 and (202) 482-4087, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (''the Act''), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (''URAA''). In addition, all references to the Department's regulations are to 19 CFR 353 (April 1997).

Background

On May 27, 1987, the Department of Commerce (''the Department'') published in the **Federal Register** (52 FR 19748) the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished (''TRBs''), from the People's Republic of China (''PRC''). The Department notified interested parties of the opportunity to request an administrative review of this order on June 11, 1997 (62 FR 31786). The petitioner, The Timken Company, and one of the respondents, Luoyang Bearing Factory (''Luoyang''), requested that the Department conduct an administrative review. These requests were received on June 30, 1997. Thus, in accordance with 19 CFR 353.22(c), we published a notice of initiation of this antidumping duty administrative review on August 1, 1997 (62 FR 41339).

In addition to the administrative review, on May 30, 1997, Zhejiang Changshan Bearing (Group) Co., Ltd. (''ZX'') requested that we conduct a new shipper review. We published a notice of initiation of this new shipper administrative review on August 14, 1997 (62 FR 43514). This new shipper review covers the same period as the normal administrative review: June 1, 1996, through May 30, 1997.

On September 23, 1997, we sent a questionnaire to the Secretary General of the Basic Machinery Division of the Chamber of Commerce for Import & Export of Machinery and Electronics Products and requested that the questionnaire be forwarded to all PRC companies identified in our initiation notice and to any subsidiary companies of the named companies that produce and/or export the subject merchandise. In this letter we also requested information relevant to the issue of whether the companies named in the initiation request are independent from government control. See the *Separate Rates* section, below. Courtesy copies of the questionnaire were also sent to companies with legal representation and to companies listed in the initiation notice for which we were able to obtain addresses.

We received responses to the questionnaire from the following ten companies: Peer Bearing Company/Chin Jun Industrial, Ltd. (''Chin Jun''), Wafangdian Bearing Factory (''Wafangdian''), China National Machinery Import & Export Corporation (''CMC''), Liaoning MEC Group Company (''Liaoning''), Luoyang, Zhejiang Machinery Import & Export Corporation (''Zhejiang''), Wanxiang Group Corporation (''Wanxiang''), Premier Bearing & Equipment (''Premier''), and Xiangfan Machinery Foreign Trade Corporation (''Xiangfan''), as respondents in the administrative review, and ZX, as the respondent in the new shipper review.

The Department is conducting this administrative review and new shipper review in accordance with section 751 of the Act.

Scope of Review

Merchandise covered by this review includes TRBs and parts thereof, finished and unfinished, from the PRC; flange, take up cartridge, and hanger units incorporating tapered roller bearings; and tapered roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. This merchandise is classifiable under the Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8482.20.00, 8482.91.00.50, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30, 8483.90.80, 8708.99.80.15, and 8708.99.80.80. Although the HTSUS item numbers are provided for convenience and customs purposes, the written description of the scope of the order and this review is dispositive.

Verification

As provided in section 782(i) of the Act, we verified information provided by Wafangdian, CMC, Xiangfan, ZX and Luoyang as well as certain subcontractors, using standard verification procedures, including on-site inspection of manufacturers' facilities, the examination of relevant cost data and financial records, and selection of original documentation containing relevant information. Our verification results are outlined in the public and business proprietary versions of the verification reports.

Separate Rates Determination

To establish whether a company operating in a state-controlled economy is sufficiently independent to be entitled to a separate rate, the Department analyzes each exporting entity under the test established in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991) (''Sparklers''), as amplified by the Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) (''Silicon Carbide''). Under this policy, exporters in non market economies (''NMEs'') are entitled to separate, company-specific margins when they can demonstrate an absence of government control, both in law and in fact, with respect to export activities. Evidence supporting, though not requiring, a finding of de jure absence of government control over export activities includes: (1) an absence of restrictive stipulations associated with the individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and, (3) any other formal measures by the government decentralizing control of companies. De facto absence of government control over exports is based on four factors: (1) whether each exporter sets its own export prices independently of the government and without the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits or financing of losses; (3) hether each exporter has the authority to negotiate and sign contracts and other agreements; and, (4) whether each exporter has autonomy from the government regarding the selection of management (see, Silicon Carbide, 59 FR at 22587 and Sparklers, 56 FR at 20589).

In previous administrative reviews of the antidumping duty order on TRBs from the PRC we determined that Wafangdian, CMC, Liaoning, Luoyang, Zhejiang, Wanxiang, and Xiangfan merited separate rates (see, e.g., Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China; Final Results of Antidumping Administrative Review, 62 FR 61276 (November 17, 1997) (''TRBs 95–96 Review'')). We preliminarily determine that the evidence on the record of this review also demonstrates an absence of government control, both in law and in fact, with respect to these companies' exports according to the criteria identified in Sparklers and Silicon Carbide. Therefore, we have continued to assign each of these companies a separate rate.

Premier and Chin Jun are privately owned Hong Kong trading companies. Because we have determined that these firms, rather than their PRC-based suppliers, are the proper respondents with respect to their sales of TRBs to the United States, no separate-rates analyses of Premier's and Chin Jun's suppliers are necessary. See the *United States Sales* section, below.

Finally, as discussed below, the new shipper, ZX, also meets both the de jure and de facto criteria. Accordingly, we preliminarily determine to apply a separate rate to ZX.

ZX: De Jure Analysis

Information submitted during this review indicates that ZX is owned ''by all the people of the People's Republic of China.'' In Silicon Carbide (59 FR at 22586), we found that the PRC government had devolved control of state-owned enterprises, i.e., enterprises owned ''by all of the people.'' As a result, we determined that companies owned ''by all of the people'' were eligible for individual rates if they met the criteria developed in Sparklers and Silicon Carbide.

The following laws, which have been placed on the record in this case, indicate a lack of de jure government control over these companies, and establish that the responsibility for managing companies owned by ''all of the people'' has been transferred from the government to the enterprises themselves. These laws include: ''Law of the PRC on Industrial Enterprises Owned by the Whole People,'' adopted on April 13, 1988 (''1988 Law''); ''Regulations for Transformation of Operational Mechanism of State-Owned Industrial Enterprises,'' approved on August 23, 1992 (''1992 Regulations''); and the ''Temporary Provisions for Administration of Export Commodities,'' approved on December 21, 1992 (''Export Provisions''). The 1988 Law states that enterprises have the right to set their own prices (*see* Article 26). This principle was restated in the 1992 Regulations (*see* Article IX). Finally, the 1992 ''Temporary Provisions for Administration of Export Commodities'' lists those products subject to direct government control. TRBs do not appear on this list and therefore are not subject to the constraints of these provisions.

Consistent with Silicon Carbide, we preliminarily determine that the existence of these laws demonstrates that ZX, a company owned by ''all of the people,'' is not subject to de jure government control with respect to export activities. In light of reports indicating that laws shifting control from the government to the enterprises themselves have not been implemented uniformly [1], an analysis of de facto control is critical in determining whether respondents are, in fact, subject to government control with respect to export activities.

ZX: De Facto Analysis

According to information provided by ZX, the company's pricing and export strategy decisions with respect to the subject merchandise are not subject to any entity's review or approval and there are no government policy directives that affect these decisions. ZX further claims that there are no restrictions on the use of its revenues or profits, including export earnings.

ZX further states that its general manager is selected by the company's board of directors. While the results of ZX's management selections are recorded with the Foreign Trade and Economic Cooperation Commission, there is no evidence that this commission controls the selection process or that it has rejected a general manager selected through the election process. ZX's general manager has the right to contractually bind the company in making sales of TRBs.

ZX also states that its sources of funds are its own revenues or bank loans. It has sole control over, and access to, its bank accounts, which are held in ZX's own name.

Based on our analysis of the foregoing evidence on the record, we find neither

[1] ''PRC Government Findings on Enterprise Autonomy,'' in Foreign Broadcast Information Service—China—93–133 (July 14, 1993), and 1992 Central Intelligence Agency Report to the Joint Economic Committee, Hearings on Global Economic and Technological Change: Former Soviet Union and Eastern Europe and China, Pt. 2 (102 Cong., 2d Sess.).

de jure nor de facto government control over the export activities of ZX. Accordingly, we preliminarily determine that ZX is not part of the ''PRC enterprise'' under review and is entitled to a separate rate.

Separate-Rate Determinations for Non-Responsive Companies

We have determined that those companies for which we initiated a review and which did not respond to the questionnaire do not merit separate rates. See the *Use of Facts Otherwise Available* section, below.

Use of Facts Otherwise Available

We preliminarily determine that, in accordance with sections 776(a) and (b) of the Act, the use of adverse facts available is appropriate for all companies which did not respond to our requests for information. Furthermore, we preliminarily determine that Premier did not demonstrate that it cooperated to the best of its ability in providing certain information, and we have applied adverse facts available to calculate a portion of Premier's margin. Finally, we preliminarily determine that Chin Jun, CMC and Xiangfan cooperated to the best of their ability in providing information. Thus, for these companies, although we are using facts available, we have not relied on adverse information to calculate antidumping margins (for a complete discussion of the company specific facts available decisions see the Memorandum to Susan Kuhbach: ''Facts Available,'' dated June 30, 1998).

1. Companies that did not respond to the questionnaire: Where the Department must base its determination on facts available because a respondent failed to cooperate by not acting to the best of its ability to comply with a request for information, section 776(b) of the Act authorizes the Department to use inferences adverse to the interests of that respondent in choosing facts available. Section 776(b) of the Act also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record. Information from prior segments of the proceeding constitutes secondary information and section 776(c) of the Act provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action (''SAA'') provides that ''corroborate'' means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see*, H.R. Doc. 316, Vol. 1, 103d Cong., 2d Sess. 870 (1994)).

To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. Thus, in an administrative review, if the Department chooses as total adverse facts available a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin for that time period. With respect to the relevance aspect of corroboration, however, the Department will consider information reasonably at its disposal as to whether there are circumstances that would render a margin inappropriate. Where circumstances indicate that the selected margin is not appropriate as adverse facts available, the Department will disregard the margin and determine an appropriate margin (*see, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (Feb. 22, 1996) (where the Department disregarded the highest margin as adverse facts available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin)).

We have preliminarily assigned a margin of 29.40 percent to those companies for which we initiated a review and which did not respond to the questionnaire. This margin, calculated for sales by Wafangdian Bearing Factory during the 1994–95 review, represents the highest overall margin calculated for any firm during any segment of this proceeding. As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 29.40 percent rate is corroborated. As noted in the *Separate Rates Determination* section above, we have also preliminarily determined that the non-responsive companies do not merit separate rates. Therefore, the facts available for these companies forms the basis for the PRC rate, which is 29.40 percent for this review.

2. Premier: Premier, a Hong Kong-based reseller of TRBs, claims that it attempted to get factors of production data from its suppliers. One supplier provided data, but the overwhelming majority did not. A second PRC bearing manufacturer, that was not a supplier of Premier, but produced certain models sold by Premier, agreed that Premier could submit its factors of production data. For the remaining models sold in the United States by Premier, no factors data was reported.

We have preliminarily determined that Premier has not demonstrated that it cooperated to the best of its ability to respond to our antidumping duty questionnaire. This preliminary finding is based on the fact that, while Premier has stated that it attempted to obtain factors data from its PRC-based suppliers, it has not provided evidence of these attempts or corresponding documentation of its suppliers' refusal to provide the requested information. Prior to the final results of review, we intend to seek documentation of Premier's claim that it attempted to solicit from all of its PRC-based suppliers the information requested in the questionnaire and to make a judgement as to whether Premier has acted to the best of its ability.

As in prior reviews, we have also preliminarily determined that there is little variation in factor utilization rates among the TRB producers from which we have received factors of production data (*see, e.g., TRBs 95–96 Review*). Therefore, as facts available, we have used the factors data provided by Premier, including information from manufacturers which did not supply Premier during the POR, when calculating normal value for those sales without supplier specific factors data. With respect to Premier's U.S. sales for which no factors data were reported, we are applying, as adverse facts available, a margin of 25.56 percent, the highest overall margin ever applicable to Premier. This approach is consistent with our final results in the prior review (*see, TRBs 95–96 Review*). As discussed above, it is not necessary to question the reliability of a calculated margin from a prior segment of the proceeding. Further, there are no circumstances indicating that this margin is inappropriate as adverse facts available. Therefore, we preliminarily find that the 25.56 percent rate is corroborated.

3. Chin Jun: Chin Jun, another Hong Kong-based reseller of TRBs, provided factors data from three of its PRC-based suppliers covering a substantial majority of its U.S. sales during the POR. For certain other models it sold to the United States, Chin Jun provided factors data from other PRC suppliers that did not supply Chin Jun during the POR. For the remainder of the models it sold

in the United States Chin Jun reported no factors data.

We preliminarily determine that Chin Jun has demonstrated that it cooperated to the best of its ability to respond to our antidumping duty questionnaire. This preliminary finding is based on the fact that Chin Jun has stated that it attempted to obtain from its PRC-based suppliers factors data for the remaining U.S. sales and has provided documentary evidence of such attempts. However, we intend to seek further clarification from Chin Jun about its actions to obtain factors data and to make a judgement as to whether its efforts were to the best of its ability.

As in prior reviews, we have also preliminarily determined that there is little variation in factor utilization rates among the TRB producers from which we have received factors of production data (*see, e.g., TRBs 95–96 Review*). Therefore, as facts available, we have used the factors data provided by the companies that supplied Chin Jun during the POR to Chin Jun's sales of models for which no supplier and model match was available. With respect to Chin Jun's U.S. sales for which no factors data were reported, because we have preliminarily determined that Chin Jun has cooperated to the best of its ability, we are applying, as facts available, the weighted-average margin calculated for those U.S. sales for which acceptable data were reported.

4. CMC: CMC did not report packing factors for bearings supplied by one of its suppliers. For these sales, we are applying, as facts available, the packing factors used for other CMC sales.

5. Xiangfan: At verification, we learned that Xiangfan had calculated its labor input using standard process time rather than the actual hours of employee time, and that this resulted in substantial under reporting of the labor factor. In addition, Xiangfan failed to report electricity consumed at one stage of the manufacturing process. As facts available, we used information collected at verification to recalculate the labor input and to increase the amount of electricity factor.

United States Sales

Both Chin Jun and Premier reported that they maintain inventories of TRBs in Hong Kong and sell TRBs worldwide. Therefore, their PRC-based suppliers have no knowledge when they sell to these firms that the shipments are destined for the United States. Accordingly, Chin Jun and Premier are the first parties to sell the merchandise to the United States and we have calculated United States price based on their sales.

For sales made by Chin Jun, we based the U.S. sales on CEP in accordance with section 772(b) of the Act because the first sale to an unaffiliated purchaser occurred after importation of the merchandise into the United States. For sales made by Wafangdian, Liaoning, Luoyang, Zhejiang, Wanxiang, Premier, Xiangfan, and ZX (the new shipper), we based the U.S. sales on EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold to unaffiliated purchasers in the United States prior to importation into the United States and because the CEP methodology was not indicated by other circumstances. CMC made both EP and CEP sales.

We calculated EP based on the FOB, CIF, or C&F port price to unaffiliated purchasers. From these prices we deducted amounts, where appropriate, for brokerage and handling, foreign inland freight, ocean freight, and marine insurance. We valued the deduction for foreign inland freight using surrogate data based on Indian freight costs. (We selected India as the surrogate country for the reasons explained in the *Normal Value* section of this notice.) When marine insurance and ocean freight were provided by PRC-owned companies, we valued the deductions using the surrogate data of international providers. When marine insurance and ocean freight were provided by market economy companies, we deducted the actual expense values reported by the respondents for these services.

We calculated CEP based on the packed, ex-warehouse price from the U.S. subsidiary to unaffiliated customers. We made deductions, where appropriate, from the starting price for CEP for international freight, foreign brokerage and handling, foreign inland freight, marine insurance, customs duties, U.S. brokerage, U.S. inland freight insurance and U.S. inland freight. In accordance with section 772(d)(1) of the Act, we made further deductions from the starting price for CEP for the following selling expenses that related to economic activity in the United States: commissions to unaffiliated resellers; credit expenses; indirect selling expenses, including inventory carrying costs; and repacking in the United States. In accordance with section 772(d)(3) of the Act, we have deducted from the starting price an amount for profit.

Normal Value

Section 773(c)(1) of the Act provides that the Department shall determine normal value (''NV'') using a factors-of-production methodology if: (1) the merchandise is exported from an NME, and (2) the information does not permit the calculation of NV under section 773(a) of the Act. The Department has treated the PRC as an NME in all previous antidumping cases. In accordance with section 771(18)(C)(i) of the Act, any determination that a foreign country is an NME shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Moreover, parties to this proceeding have not argued that the PRC tapered roller bearing industry is a market-oriented industry. Consequently, we have no basis to determine that the information would permit the calculation of NV using PRC prices or costs. Therefore, except as noted below, we calculated NV based on factors of production in accordance with sections 773(c)(3) and (4) of the Act and 19 CFR 351.408(c).

Although Premier and Chin Jun are Hong Kong companies, we also calculated NV for them based on factors-of-production data. We did not use these respondents' third-country sales in calculating NV because their PRC-based suppliers knew at the time of sale that the subject merchandise was destined for exportation. Section 773(a)(3)(A) of the Act provides that under such conditions NV may be determined in the country of origin of the subject merchandise.

Accordingly, we calculated NV for Premier and Chin Jun on the basis of PRC production inputs and surrogate country factor prices.

Under the factors of production methodology, we are required to value the NME producer's inputs in a comparable market economy country that is a significant producer of comparable merchandise. We chose India as the most comparable surrogate on the basis of the criteria set out in 19 CFR 353.52(b). See the Memorandum to Susan Kuhbach from Jeff May: ''Tapered Roller Bearings (''TRBs'') from the PRC: Non Market Economy Status and Surrogate Country Selection,'' dated December 5, 1997, for a further discussion of our surrogate selection. We chose Indonesia as a second-choice surrogate based on the same criteria. Also, information on the record indicates that both India and Indonesia are significant producers of TRBs.

We used publicly available information from India to value the various factors of production with the exception of the following: hot-rolled alloy steel bars for the production of cups and cones, and steel scrap from the production of cups and cones. For these

values we used publicly available information from Indonesia because we found the Indian data for those inputs unreliable (*see,* Memorandum to Susan Kuhbach: ''Selection of a Surrogate Country and Steel Value Sources,'' dated June 30, 1998).

We valued the factors of production as follows (for a complete description of the factor values used, see the Memorandum to Susan Kuhbach: ''Factors of Production Values Used for the Preliminary Results,'' dated June 30, 1998):

1. Steel Inputs. For hot-rolled alloy steel bars used in the production of cups and cones, we used import prices from the Harmonized Tariff Schedule (''HTS'') category 7228.3000 obtained from the *Foreign Trade Statistical Bulletin* (January–October 1997), Imports, Jakarta, Indonesia. For cold-rolled steel rods used in the production of rollers and cold-rolled steel sheet for the production of cages, we used Indian import data under Indian tariff subheading 7228.50 and 7209.42 respectively. This data was obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports* (April 1995–March 1997). As in previous administrative reviews, we eliminated from our calculation steel imports from NME countries and imports from market economy countries that were made in small quantities. For steel used in the production of cups, cones, and rollers, we also excluded imports from countries that do not produce bearing quality steel (*see,* e.g., TRBs 95–96 Review). We made adjustments to include freight costs incurred using the shorter of the reported distances from either the closest PRC port to the TRBs factory, or from the domestic supplier to the TRBs factory (*see,* Notice of Final Determination of Sales at Less Than Fair Value: Collated Roofing Nails From the People's Republic of China, 62 FR 51410 (October 1, 1997) and Sigma Corporation v. United States, 117 F. 3d 1401 (Fed. Cir. 1997)).

With the exception of data for steel used in the production of cages, the data obtained for steel inputs was from a period contemporaneous with the POR, thus no further adjustments were necessary. For the steel data used in the production of cages we inflated the weighted average per kilogram value by the Indian wholesale price index (''WPI'') as published by the International Monetary Fund (''IMF'').

Several companies in this review purchased steel from market economy suppliers and paid for the steel with market economy currencies. In these instances we valued the steel input using the actual prices reported for imported inputs from a market economy (*see,* Memorandum to Richard Moreland: ''Market Economy Inputs,'' dated June 30, 1998). Where the TRB producer purchased the steel from a PRC trading company and paid for the steel in Renminbi, we did not use the market economy price to the trading company and instead used surrogate data. This is consistent with Department policy. We note, however, that this policy has been challenged in the CIT and the Department is currently addressing it on remand (*see, Olympia Industrial, Inc.* v. *United States,* Slip-Op. 98–49 (CIT 1998)). In light of this, we will reexamine this issue prior to the final results of this review. We invite interested parties to comment.

We valued scrap recovered from the production of cups and cones using Indonesian import statistics from HTS category 7204.2900. Scrap recovered from the production of rollers and cages was valued using import data from the Indian tariff subheading 7204.29 and 7204.4100 respectively.

2. Labor. We calculated the labor input using wage information from the United Nations' *1996 Yearbook of Labour Statistics* (''*YLS*''). We adjusted these wages to reflect inflation through the POR using an Indian consumer price index (''CPI'') published by the IMF. We used the CPI, rather than the WPI, for calculating the inflation adjustment to labor because the Department views the CPI as more representative of changes in wage rates, while the WPI is more representative of prices for material goods (*see,* e.g., Heavy Forged Hand Tools From the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews, 62 FR 11813, 11816 (March 13, 1997) and Manganese Metal from the People's Republic of China; Final Results and Partial Rescission of Antidumping Duty Administrative Review, 63 FR 12440, 12446 (March 13, 1998); *see* also, Memorandum to Susan Kuhbach: ''Selection of surrogate labor wage rates for preliminary results of review,'' dated June 30, 1998).

3. Overhead, SG&A Expenses, and Profit. For factory overhead, we used information obtained from the fiscal year 1996–97 annual reports of eight Indian bearing producers. We calculated factory overhead and SG&A expenses (exclusive of labor and electricity) as percentages of direct inputs (also exclusive of labor) and applied it to each producer's direct input costs. For profit, we totaled the reported profit before taxes for the eight Indian bearing producers and divided it by the total calculated cost of production (''COP'') of goods sold. This percentage was applied to each respondent's total COP to derive a company-specific profit value (*see,* Memorandum to Susan Kuhbach: ''Selection of overhead, SG&A and profit surrogate values for preliminary results of review,'' dated June 30, 1998).

4. Packing. For export packing, we used surrogate values for each packing material using values obtained from the *Monthly Statistics of the Foreign Trade of India, Vol. II—Imports by Commodity* (April 1996 through May 1997).

5. Electricity. For electricity costs, we used a simple average of 1995 regional electricity prices in India for large industries as reported in *India's Energy Sector,* September, 1996, published by the Centre for Monitoring Indian Economy Pvt. Ltd. We adjusted the value to reflect inflation through the POR using the WPI (*see,* also the Overhead, SG&A Expenses, and Profit section, above).

6. Inland Freight. We valued truck freight using a rate derived from the April 20, 1994 issue of *The Times of India.* We adjusted the rate to reflect inflation through the POR using the WPI. We valued rail freight using rates published by the Indian Railway Conference Association in 1995. We calculated an average rate per kilometer and adjusted the rate to reflect inflation through the POR using the WPI.

7. Ocean Freight. We calculated a value for ocean freight based on 1996 rate quotes from Maersk Inc. Because the information obtained was from a period contemporaneous with the POR, no further adjustments were necessary.

8. Marine Insurance. We calculated a value for marine insurance based on the CIF value of the TRBs shipped. We obtained the rate used through queries made directly to an international marine insurance provider.

Partial Termination of Review

The petitioner requested reviews for Far East Enterprising Company, Scanwell Consolidators, Ltd., Triumph Express Service Int'l Limited, Zhong Shan Transportation Co., Ltd., China Travel Service Limited, and Kenwa Shipping Co., Ltd. On October 6, 7, 17, 23, 30, and November 11, 1997, respectively, they reported no shipments of subject merchandise to the United States during the POR. We independently confirmed with U.S. Customs that there were no shipments from these companies. Therefore, we have terminated the review with respect to these companies (*see,* Calcium Hypochlorite From Japan: Termination of Antidumping Duty Administrative Review, 62 FR 18086 (April 14, 1997)).

Preliminary Results of the Review

We preliminarily determine that the following dumping margins exist for the period June 1, 1996, through May 30, 1997:

Manufacturer/exporter	Margin (percent)
Wafangdian	0.00
Luoyang	1.82
CMC	0.02
Xiangfan	14.93
Zhejiang	2.27
Wanxiang	0.00
Liaoning	0.68
Premier	3.99
Chin Jun	0.21
ZX (the new shipper)	0.00
PRC Rate	29.40

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Interested parties may also request a hearing within thirty days of publication. If requested, a hearing will be held 37 days after publication. Interested parties may submit case briefs within thirty days of publication. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the case briefs. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. With respect to EP sales for these preliminary results, we divided the total dumping margins (calculated as the difference between NV and EP) for each importer/customer by the total number of units sold to that importer/customer. If these preliminary results are adopted in our final results of administrative and new shipper review, we will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise in each of that importer's/customer's entries under the order during the review period. Although this will result in assessing different percentage margins for individual entries, the total antidumping duties collected for each importer/customer under the order for the review period will be almost exactly equal to the total dumping margins.

For CEP sales, we divided the total dumping margins for the reviewed sales by the total entered value of those reviewed sales for each importer/customer. If these preliminary results are adopted in our final results of administrative review, we will direct Customs to assess the resulting percentage margin against the entered Customs values for the subject merchandise on each of that importer's/customer's entries during the review period. While the Department is aware that the entered value of sales during the POR is not necessarily equal to the entered value of entries during the POR, use of entered value of sales as the basis of the assessment rate permits the Department to collect a reasonable approximation of the antidumping duties which would have been determined if the Department had review those sales of merchandise actually entered during the POR.

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Act: (1) for the PRC companies named above the cash deposit rates will be the rates for these firms established in the final results of this review, except that for exporters with de minimis rates, i.e., less than 0.50 percent, no deposit will be required; (2) for all remaining PRC exporters, all of which were found not to be entitled to separate rates, the cash deposit will be 29.40 percent; and (3) for non-PRC exporters Premier and Chin Jun the cash deposit rates will be the rates established in the final results of this review; (4) for non-PRC exporters of subject merchandise from the PRC, other than Premier and Chin Jun, the cash deposit rate will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with thisrequirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 771(i)(1) of the Act.

Dated: June 30, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18301 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054, A–588–604]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Reviews and Recission in Part.

SUMMARY: In response to requests from respondents, the Department of Commerce (the Department) is conducting administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A–588–604), and of the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A–588–054). The review of the A–588–054 finding covers two manufacturers/exporters and one reseller/exporter of subject merchandise to the United States during the period October 1, 1996 through September 30, 1997. The review of the A–588–604 order covers two manufacturers/exporters and one reseller/exporter, and the period October 1, 1996 through September 30, 1997.

We preliminarily determine that sales of TRBs have been made below the normal value (NV). If these preliminary results are adopted in our final results of administrative reviews, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between United States price (USP) and the normal value. Interested parties are invited to comment on these preliminary results. Parties which submit argument in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument.

EFFECTIVE DATE: July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Charles Ranado or Stephanie Arthur,

AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone: (202) 482–3518 or, 482–6312, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations are to the Department's regulations, 19 CFR part 351 (62 FR 27296 (May 19, 1997)).

Background

On August 18, 1976, the Treasury Department published in the **Federal Register** (41 FR 34974) the antidumping finding on TRBs from Japan, and on October 6, 1987, the Department published the antidumping duty order on TRBs from Japan (52 FR 37352). On October 2, 1997, the Department published the notice of ''Opportunity to Request Administrative Review'' for both TRBs cases covering the period October 1, 1996 through September 30, 1997 (62 FR 51628).

In accordance with 19 CFR 351.213(b), on October 28, 1997, NTN Corporation (NTN) requested that we conduct a review of its sales in the A–588–604 case. In addition, on October 31, 1997, Koyo Seiko Co., Ltd. (Koyo) requested that we conduct a review of its sales in the A–588–054 case, and Fuji Heavy Industries, Ltd. (Fuji) and NSK Ltd. (NSK) requested that we conduct a review of their sales in both the A–588–054 and A–588–604 TRB cases. On November 15, 1997, we published in the **Federal Register** a notice of initiation of these antidumping duty administrative reviews covering the period October 1, 1996 through September 30, 1997 (62 FR 58513).

Scope of the Reviews

Imports covered by the A–588–054 finding are sales or entries of TRBs, four inches or less in outside diameter when assembled, including inner race or cone assemblies and outer races or cups, sold either as a unit or separately. This merchandise is classified under Harmonized Tariff Schedule (HTS) item numbers 8482.20.00 and 8482.99.30.

Imports covered by the A–588–604 order include TRBs and parts thereof, finished and unfinished, which are flange, take-up cartridge, and hanger units incorporating TRBs, and roller housings (except pillow blocks) incorporating tapered rollers, with or without spindles, whether or not for automotive use. Products subject to the A–588–054 finding are not included within the scope of the A–588–604 order, except those manufactured by NTN. This merchandise is currently classifiable under HTS item numbers 8482.99.30, 8483.20.40, 8482.20.20, 8483.20.80, 8482.91.00, 8483.30.80, 8483.90.20, 8483.90.30, and 8483.90.60. The HTS item numbers listed above for both the A–588–054 finding and the A–588–604 order are provided for convenience and Customs purposes. The written descriptions remain dispositive.

The period for each review is October 1, 1996 through September 30, 1997. The review of the A–588–054 finding covers TRB sales by two manufacturers/exporters (Koyo and NSK) and one reseller/exporter (Fuji). The review of the A–588–604 order covers TRB sales by two manufacturers/exporters (NTN and NSK) and one reseller/exporter (Fuji). As explained in the ''Recission in Part'' section of this notice, we are terminating our reviews in both the A–588–054 and A–588–604 cases for two of the four firms.

Recission in Part

In accordance with section 351.213(d)(1) of the Department's regulations, on January 9, 1998, NSK withdrew its request for review in both the A–588–054 and A–588–604 cases. In addition, on January 23, 1998, Fuji withdrew its request for review in both the A–588–054 and A–588–604 cases. Because we received timely requests for the withdrawal of review from both NSK and Fuji, and because no other party to the proceedings requested a review for NSK and Fuji in either the A–588–054 or A–588–604 cases, in accordance with 19 CFR 351.213(d)(1), we are rescinding both the A–588–054 and A–588–604 reviews for NSK and Fuji.

Use of Facts Available

We preliminary determine, in accordance with section 776(a) of the Act, that the use of facts available is appropriate in one type of situation. We used partial facts available in instances where we were unable to use some portion of a response in calculating the dumping margin. For partial facts available, we extrapolated information from the company's response and used that information in our calculations. Koyo's response indicates that for certain sales to original equipment manufacturers (OEM sales) there were no pre-sale freight expenses. However, from the information reported, we were unable to identify those OEM sales for which Koyo incurred no pre-sale freight expenses; therefore, we have applied non-adverse facts available and recalculated the expense adjustment. For further information, please see the preliminary analysis memorandum on file for Koyo.

Export Price and Constructed Export Price

Because all of Koyo's sales and certain of NTN's sales of subject merchandise were first sold to unaffiliated purchasers after importation into the United States, in calculating U.S. price we used constructed export price (CEP) as defined in section 772(b) of the Act, for all of Koyo's sales and certain of NTN's sales. We based CEP on the packed, delivered price to unaffiliated purchasers in the United States. We made deductions, where appropriate, for discounts, billing adjustments, freight allowances, and rebates. Pursuant to section 772(c)(2)(A) of the Act, we reduced this price for movement expenses (Japanese pre-sale inland freight, Japanese post-sale inland freight, international air and/or ocean freight, marine insurance, Japanese brokerage and handling, U.S. inland freight from the port to the warehouse, U.S. inland freight from the warehouse to the customer, U.S. duty, and U.S. brokerage and handling). We also reduced the price, where applicable, by an amount for the following expenses incurred in the selling of the merchandise in the United States pursuant to section 772(d)(1) of the Act: commissions to unaffiliated parties, U.S. credit, payments to third parties, U.S. repacking expenses, and indirect selling expenses (which included, where applicable, inventory carrying costs, indirect advertising expenses, and indirect technical services expenses). Finally, pursuant to section 772(d)(3) of the Act, we further reduced U.S. price by an amount for profit to arrive at CEP.

NTN claimed an offsetting adjustment to U.S. indirect selling expenses to account for the cost of financing cash deposits during the POR. In past reviews we have accepted such an adjustment, mainly to account for the opportunity cost associated with making cash deposits (*i.e.*, the cost of having money unavailable for a period of time). However, we have changed our practice of accepting such an adjustment. See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, et. al.; Final Results of Antidumping Administrative Review*, 63 FR 33347 (June 18, 1998).

Because certain of NTN's sales of subject merchandise were made to unaffiliated purchasers in the United States prior to importation into the United States and the CEP methodology was not indicated by the facts of record, in accordance with section 772(a) of the Act we used export price (EP) for these sales. We calculated EP as the packed, delivered price to unaffiliated purchasers in the United States. In accordance with section 772(c)(2)(A) of the Act, we reduced this price, where applicable, by Japanese pre-sale inland freight, Japanese post-sale inland freight, international air and/or ocean freight, marine insurance, Japanese brokerage and handling, U.S. brokerage and handling, U.S. duty, and U.S. inland freight.

Where appropriate, in accordance with section 772(d)(2) of the Act, the Department also deducts from CEP the cost of any further manufacture or assembly in the United States, except where the special rule provided in section 772(e) of the Act is applicable. Section 772(e) of the Act provides that, where the subject merchandise is imported by an affiliated person and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, we shall determine the CEP for such merchandise using the price of identical or other subject merchandise if there is a sufficient quantity of sales to provide a reasonable basis for comparison and we determine that the use of such sales is appropriate. If there is not a sufficient quantity of such sales or if we determine that using the price of identical or other subject merchandise is not appropriate, we may use any other reasonable basis to determine CEP. *See* Sections 772(e)(1) and (2) of the Act.

In judging whether the use of identical or other subject merchandise is appropriate, the Department must consider several factors, including whether it is more appropriate to use another ''reasonable basis.'' Under some circumstances, we may use the standard methodology as a reasonable alternative to the methods described in paragraphs 772(e)(1) and (2) of the Act. In deciding whether it is more appropriate to use the standard methodology, we have considered and weighed the burden on the Department in applying the standard methodology as a reasonable alternative and the extent to which application of the standard methodology will lead to more accurate results. The burden of using the standard methodology may vary from case to case depending on factors such as the nature of the further-manufacturing process and the finished products. The increased accuracy gained by applying the standard methodology will vary significantly from case to case, depending upon such factors as the amount of value added in the United States and the proportion of total U.S. sales that involve further manufacturing. In cases where the burden is high, it is more likely that the Department will determine that potential gains in accuracy do not outweigh the burden of applying the standard methodology. Thus, the Department will likely determine that application of the standard methodology is not more appropriate than application of the methods described in paragraphs 772(e)(1) and (2), or some other reasonable alternative methodology. By contrast, if the burden is relatively low and there is reason to believe the standard methodology is likely to be more accurate, the Department is more likely to determine that it is not appropriate to apply the methods described in paragraphs 772(e)(1) or (2) of the Act in lieu of the standard methodology. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Preliminary Results of Antidumping Duty Administrative Reviews,* 62 FR 47452 at 47455 (September 9, 1997).

NTN imported subject merchandise (TRBs parts) which was further processed in the United States. NTN further manufactured the imported scope merchandise into merchandise of the same class or kind as merchandise within the scope of the A–588–604 order. Based on information provided by NTN, we first determined whether the value added in the United States was likely to exceed substantially the value of the subject merchandise. We estimated the value added based on the differences between the averages of the prices charged to the first unaffiliated U.S. customer for the final merchandise sold (finished TRBs) and the averages of the prices paid for the subject merchandise (imported TRBs parts) by the affiliated party, and determined that the value added was likely to exceed substantially the value of the imported TRB parts.

We then examined whether it would be appropriate to use sales of non-further-manufactured merchandise as a basis for comparison, as stated under paragraphs 772(e)(1) and (2) of the Act. Based on the information provided by NTN, we determined that the proportion of its further-manufactured merchandise to its total imports of subject merchandise was relatively low. In NTN's case, any potential gains in accuracy gained from examining NTN's further-manufactured sales are outweighed by the burden of the applying the standard methodology and that it would be appropriate to apply one of the methodologies specified in the statute with respect to NTN's imported TRB parts. Furthermore, other sales are in sufficient quantity for the purpose of determining dumping margins for NTN's imported TRBs which were further manufactured in the United States prior to resale. Therefore, we have used the weighted-average dumping margins we calculated on NTN's sales of non-further-manufactured TRBs.

No other adjustments were claimed or allowed.

Normal Value

A. Viability

Based on 1) the fact that each company's quantity of sales in the home market was greater than five percent of its sales to the U.S. market and 2) the absence of any information that a particular market situation in the exporting country does not permit a proper comparison, we determined that the quantity of the foreign like product for all respondents sold in the exporting country was sufficient to permit a proper comparison with the sales of subject merchandise to the United States, pursuant to section 773(a) of the Act. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the prices at which the foreign like products were first sold for consumption in the exporting country.

B. Arm's-Length Sales

For NTN and Koyo we have excluded from our analysis those sales made to affiliated customers in the home market which were not at arm's length. *See* Section 773(a)(1)(B) of the Act. We determined the arm's-length nature of home market sales to affiliated parties by means of our 99.5 percent arm's-length test in which we calculated, for each model, the percentage difference between the weighted-average prices to the affiliated customer and to all unaffiliated customers and then calculated, for each affiliated customer, the overall weighted-average percentage difference in prices for all models purchased by the customer. If the overall weighted-average price ratio for the affiliated customer was equal to or greater than 99.5 percent, we determined that all sales to this affiliated customer were at arm's length. Conversely, if the ratio for a customer was less than 99.5 percent, we

determined that all sales to the affiliated customer were not at arm's length because, on average, the affiliated customer paid less than unaffiliated customers for the same merchandise, and therefore we excluded all sales to the affiliated customer from our analysis. Where we were unable to calculate an affiliated-customer ratio because identical merchandise was not sold to both affiliated and unaffiliated customers, we were unable to determine if these sales were at arm's length, and, therefore, we excluded them from our analysis (*see, e.g., Certain Stainless Steel Wire Rod from France: Preliminary Results of Antidumping Duty Administrative Review,* 61 FR 8915 (March 6, 1996); *Certain Stainless Steel Wire Rods from France: Final Results of Antidumping Duty Administrative Review,* 63 FR 30185 (June 3, 1998)).

C. Cost-of-Production Analysis

Because we disregarded sales below the cost of production (COP) in our last completed A–588–054 review for Koyo, and in our last completed A–588–604 review for NTN, we have reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of NV in these reviews may have been made at prices below the COP, as provided by section 773(b)(2)(A)(ii) of the Act (*see Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan,* 63 FR 2558 (January 15, 1998)). Therefore, pursuant to section 773(b)(1) of the Act, we initiated a COP investigation of sales by Koyo in the A–588–054 case and NTN in the A–588–604 case.

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the costs of materials and fabrication employed in producing the foreign like product, plus selling, general, and administrative expenses (SG&A) and the cost of all expenses incidental to placing the foreign like product in condition packed ready for shipment. We relied on the home market sales and COP information provided by Koyo and NTN except in those instances where the data were not appropriately quantified or valued (*see* the company-specific COP/CV preliminary results memoranda, on file in Import Administration's Central Records Unit, Room B–099 of the main Commerce building).

After calculating COP, we tested whether home market sales of TRBs were made at prices below COP within an extended period of time in substantial quantities and whether such prices permitted the recovery of all costs within a reasonable period of time. We compared model-specific COPs to the reported home market prices less any applicable movement charges, discounts, and rebates.

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of a respondent's home market sales for a model are at prices less than the COP, we do not disregard any below-cost sales of that model because we determine that the below-cost sales were not made in ''substantial quantities.'' Where 20 percent or more of a respondent's home market sales of a given model are at prices less than COP, we disregard the below-cost sales because 1) they are made within an extended period of time in substantial quantities, in accordance with sections 773(b)(2)(B) and (C) of the Act, and 2) based on comparisons of prices to weighted-average COPs for the POR, they were at prices which would not permit the recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act.

The results of our cost tests for Koyo and NTN indicated that for certain home market models, less than 20 percent of the sales of the model were at prices below COP. We therefore retained all sales of the model in our analysis and used them as the basis for determining NV. Our cost test for these respondents also indicated that, within an extended period of time (normally one year, in accordance with section 773(b)(2)(B) of the Act), for certain home market models more than 20 percent of the home market sales were sold at prices below COP and were not sold at prices which would permit recovery of all costs within a reasonable period of time. In accordance with section 773(b)(1) of the Act, we therefore excluded these below-cost sales from our analysis and used the remaining above-cost sales as the basis for determining NV.

D. Product Comparisons

We compared U.S. sales with contemporaneous sales of the foreign like product in the home market. We considered bearings identical on the basis of nomenclature and determined most similar TRBs using our sum-of-the-deviations model-match methodology which compares TRBs according to the following five physical criteria: inside diameter, outside diameter, width, load rating, and Y2 factor. We used a 20 percent difference-in-merchandise (difmer) cost deviation cap as the maximum difference in cost allowable for similar merchandise, which we calculated as the absolute value of the difference between the U.S. and home market variable costs of manufacturing divided by the U.S. total cost of manufacturing.

E. Level of Trade (LOT)

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same LOT as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and unaffiliated customer. If the comparison-market sales are at at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the act (the CEP offset provision). See *Notice of Final Determination of Sales at Less than Fair Value; Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (November 19, 1997).

We determined that for Koyo there were two home market LOTs and one U.S. LOT (*i.e.,* the CEP LOT). Because there was no home market LOT equivalent to the U.S. LOT, and because NV for Koyo was more remote from the factory than the CEP, we made a CEP offset adjustment to NV.

For NTN we found that there were three home market LOTs and two (EP and CEP) LOTs in the United States. Because there were no home market LOTs equivalent to NTN's CEP LOT, and because NV for NTN was more remote from the factory than the CEP, we made a CEP offset adjustment to NV. We also determined that NTN's EP LOT was equivalent to one of its LOTs in the

home market. Because we determined that there was a pattern of consistent price differences, we made a LOT adjustment to NV for NTN when we compared sales at different LOTs. For a company-specific description of our LOT analysis, see the preliminary analysis memoranda.

F. Home Market Price

We based home market prices on the packed, ex-factory or delivered prices to affiliated purchasers (where an arm's-length relationship was demonstrated) and unaffiliated purchasers in the home market. We made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, and for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. For comparison to EP we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments to NV by deducting home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset U.S. commissions in EP and CEP calculations. No other adjustments were claimed or allowed.

On January 8, 1998, the Court of Appeals for the Federal Circuit (the Court) issued a decision in *Cemex* v. *United States,* 133 F.3d 897 (Fed. Cir. 1998). In that case, based on the pre-URAA version of the Act, the Court discussed the appropriateness of using CV as the basis for foreign market value when the Department finds home market sales to be outside the ordinary course of trade. This issue was not raised by any party in these 1996–97 reviews. However, the URAA amended the definition of sales outside the ''ordinary course of trade'' to include sales below cost. See section 771(15) of the Act. Consequently, the Department has reconsidered its practice in accordance with this court decision and has determined that it would be inappropriate to resort directly to CV, in lieu of foreign market sales, as the basis for NV if the Department finds foreign market sales of merchandise identical or most similar to that sold in the United States to be outside the ordinary course of trade. Instead, the Department will use sales of similar merchandise, if such sales exist. The Department will use CV as the basis for NV only when there are no above-cost sales that are otherwise suitable for comparison. Therefore, in this proceeding, when making comparisons in accordance with section 771(16) of the Act, we considered all products sold in the home market as described in the Scope of the Investigation section of this notice, above, that were in the ordinary course of trade for purposes of determining appropriate product comparisons to U.S. sales. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, based on the characteristics listed in Sections B and C to our antidumping questionnaire. We have implemented the Court's decision in this case, to the extent that the data on the record permitted. *See, e.g., Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part,* 63 FR 33037, 33038 (June 17, 1998).

We calculated CV based on the cost of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with 772(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. For selling expenses, we used the weighted-average home market selling expenses. To the extent possible, we calculated CV by LOT, using the selling expenses and profit determined for each LOT in the comparison market. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for COS adjustments and LOT differences. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses. For comparisons to CEP, we made COS adjustments by deducting home market direct selling expenses. We also made adjustments, where applicable, for home market indirect selling expenses to offset commissions in EP and CEP comparisons.

Preliminary Results of Review

As a result of our reviews, we preliminarily determine the following weighted-average dumping margins exist for the period October 1, 1996 through September 30, 1997:

Manufacturer/Exporter	Margin (percent)
For the A–588–054 Case:	
Koyo Seiko	7.62
For the A–588–604 Case:	
NTN	18.83

Parties to these proceedings may request disclosure within five days of the date of publication of this notice and may request a hearing within thirty days of publication. Any hearing, if requested, will be held 37 days after the date of publication, or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in the case briefs and comments, may be filed no later than 35 days after the date of publication of this notice. Parties who submit argument in these proceedings are requested to submit with the argument (1) a statement of the issues and (2) a brief summary of the argument. The Department will issue final results of these administrative reviews, including the results of our analysis of the issues in any such written comments or at a hearing, within 120 days of issuance of these preliminary results.

The Department shall determine, and the U.S. Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b)(1), we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of antidumping duties calculated for the examined sales made during the POR to the total customs value of the sales used to calculate those duties. This rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of the review.

Furthermore, the following deposit requirements will be effective upon completion of the final results of these administrative reviews for all shipments of TRBs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative reviews, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rates for the reviewed companies will be those rates established in the final results of these reviews;

(2) For previously reviewed or investigated companies not listed above,

the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the less-than-fair-value investigations, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate for the A–588–054 case will be 18.07 percent, and 36.52 percent for the A–588–604 case (*see Final Results of Antidumping Duty Administrative Reviews; Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan and Tapered Roller Bearings, Four Inches or less in Outside Diameter, and Components Thereof, From Japan*, 58 FR 64720 (December 9, 1993)).

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This determination is issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213.

Dated: July 2, 1998.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 98–18309 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Montana State University-Bozeman; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 98–010. Applicant: Montana State University-Bozeman, Bozeman, MT 59717. Instrument: Optical Helium Cryostat. Manufacturer: Institute of Physics, National Academy of Sciences of Ukraine, C.I.S. Intended Use: See notice at 63 FR 12451, March 13, 1998.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) Rapid cool-down (30–60 min.), (2) minimal initial vacuum (10^{-3} Torr), (3) portable operation and (4) low evaporation (2–3 liters per cooling cycle). The National Institute of Standards and Technology advised June 25, 1998 that (1) These capabilities are pertinent to the applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value to the foreign instrument for the applicant's intended use.

We know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–18306 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Stanford University; Notice of Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Docket Number: 97–095R. Applicant: Stanford University, Palo Alto, CA 94304. Instrument: Ultrasound Bone Densitometer. Manufacturer: McCue Plc, United Kingdom. Intended Use: See notice at 62 FR 65679, December 15, 1997.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States. Reasons: The foreign instrument provides: (1) Reduced transducer size (½ inch) appropriate for use with children's feet, (2) external calipers for precise placement of the transducers and (3) available normative standards from studies indicating a precision of 3–5% for repeated measurements. These capabilities are pertinent to the applicant's intended purposes and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–18305 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Texas at Austin, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 97–086R. Applicant: University of Texas at Austin, 78712. Instrument: 3–D Motion Analysis System, Model Vicon 140. Manufacturer: Oxford Metrics, Ltd., United Kingdom. Intended Use: See notice at 62 FR 53594, October 15, 1997. Reasons: The foreign instrument provides precise time-matched data collection for analog samples and video motion data by using a single clock and phase-locking analog signals with the motion data. Advice received from: National Institutes of Health, June 8, 1998.

Docket Number: 98–016. Applicant: University of Wisconsin-Madison, Madison, WI 53706–1490. Instrument: High Speed Length Controller, Model 308B. Manufacturer: Crystallox, Ltd., United Kingdom. Intended Use: See notice at 63 FR 15831, April 1, 1998. Reasons: The foreign instrument

provides measurement of the contractile force of muscle cells by mechanically deforming the length of the muscle fiber. Advice received from: National Institutes of Health, June 8, 1998.

Docket Number: 98–017. Applicant: University of Colorado Health Sciences Center, Denver, CO 80262. Instrument: High Intensity Xenon Flashlamp System, Model MJL–C1. Manufacturer: Hi-Tech Scientific, Germany. Intended Use: See notice at 63 FR 15831, April 1, 1998. Reasons: The foreign instrument provides: (1) A three-lens quartz condenser, (2) a flash repetition rate of 0.05–10 Hz and (3) pulse length from 400–1500 ns. Advice received from: National Institutes of Health, June 8, 1998.

The National Institutes of Health advises in its memoranda that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 98–18304 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 070298G]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene public meetings.

DATES: The meetings will be held on July 20–24, 1998.

ADDRESSES: These meetings will be held at the Lafayette Hilton and Towers, 1521 West Pinhook Road, Lafayette, LA; telephone: 318–235–6111.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: (813) 228–2815.

SUPPLEMENTARY INFORMATION:

Council

July 22

8:30 a.m.—Convene.

8:45 a.m. - 9:30 a.m.—Receive presentation on Fisheries Issues of Mutual Interest to Mexico and U.S.A.

9:30 a.m. - 12:00 noon—Receive public testimony on: (1) Total Allowable Catch (TAC) (2) Draft Mackerel Amendment 9; and, (3) Draft Essential Fish Habitat (EFH) Amendment.

Draft Mackerel Amendment 9 contains the following alternatives: (1) Possible changes to the fishing year for Gulf group king mackerel; (2) Possible prohibitions of sale of Gulf mackerel caught under the recreational allocation; (3) Possible reallocations of TAC for the commercial fishery for Gulf group king mackerel in the Eastern Zone; (4) Possible reallocations of TAC for Gulf group king mackerel between the recreational and commercial sectors to 70 percent recreational and 30 percent commercial; (5) Possible establishment of two (2) subdivisions of TAC for the commercial, hook-and-line allocation of Gulf group king mackerel by area for the Florida west coast; (6) Possible subdivisions of TAC for commercial Gulf group king mackerel in the Western Zone (Alabama through Texas) by area, season, or a combination of area and season; (7) Possible trip limits for vessels fishing for Gulf group king mackerel in the Western Zone; (8) Possible additional restrictions on the use of net gear to harvest Gulf group king mackerel off the Florida west coast; including a phase-out, a moratorium on additional net endorsements with requirements for continuing existing net endorsements, restrictions on the transferability of net endorsements, and restriction of the use of nets to primarily the waters off Monroe and Collier Counties; (9) Possible increase in the minimum size limit for Gulf group king mackerel to 24 or 26 inches fork length; (10) Possible re-establishment of an annual allocation or a TAC percentage of Gulf group Spanish mackerel for the purse seine fishery with consideration of trip limits and area restrictions; (11) Possible retention and sale of cut-off (damaged) legal-sized king and Spanish mackerel within established trip limits.

Following is a summary of the Draft EFH Amendment: (1) EFH is identified and described based on areas where various life stages of 21 selected managed species and the coral complex commonly occur. The selected species are shrimp; red drum; reef fish; coastal migratory pelagic species; stone crab; spiny lobster; and the coral complex; (2) The selected species represent about a third of the species under management by the Council. Collectively, these species commonly occur throughout all of the marine and estuarine waters of the Gulf of Mexico. Consequently, EFH for the remaining managed species would be included with that of the species discussed. EFH for the remaining managed species will be further addressed in future Fishery Management Plan (FMP) amendments, as appropriate; (3) EFH is defined as everywhere that the above managed species commonly occur. Because these species collectively occur in all estuarine and marine habitats of the Gulf of Mexico, EFH is separated into estuarine and marine components. For the estuarine component, EFH includes all estuarine waters and substrates (mud, sand, shell, rock, and associated biological communities), including the sub-tidal vegetation (seagrasses and algae) and adjacent inter-tidal vegetation (marshes and mangroves). In the marine waters of the Gulf of Mexico, EFH includes virtually all marine waters and substrates (mud, sand, shell, rock, and associated biological communities) from the shoreline to the seaward limit of the Exclusive Economic Zone (EEZ); (4) Threats to EFH from fishing and nonfishing activities are identified; (5) Options to conserve and enhance EFH are provided and research needs are identified; (6) No management measures and, therefore, no regulations are proposed at this time. Fishing-related management measures to minimize any identified impacts are deferred to future amendments when the Council has the information necessary to decide if the measures are practicable.

1:30 p.m. - 4:00 p.m.—Take final action on the EFH Amendment.

4:00 p.m. - 5:30 p.m.—Take final action on Mackerel Amendment 9.

July 23

8:15 a.m. - 8:30 a.m.—(Closed Session) Appointment of Reef Fish Stock Assessment Panel Member.

8:30 a.m. - 9:30 a.m.—Receive an update on Bycatch Reduction Device (BRD) evaluations.

9:30 a.m. - 9:45 a.m.—Consider an amendment to the Statement of Organizational Practices and Procedures (SOPPs) to revise or temporarily suspend Section VI, term of office for chairs.

9:45 a.m. - 5:00 p.m.—Receive a presentation on the Options Paper for the Generic Sustainable Fisheries Act (SFA) Amendment.

July 24

8:30 a.m. - 8:45 a.m.—Receive a report of the Shrimp Management Committee.

8:45 a.m. - 9:00 a.m.—Receive a report of the Budget Committee.

9:00 a.m. - 9:15 a.m.—Receive a report of the Ad Hoc Vessel Monitoring Committee.

9:15 a.m. - 9:30 a.m.—Receive a report of the Ad Hoc Sustainable Fisheries Committee and Law Enforcement Committee.

9:30 a.m. - 10:00 a.m.—Receive a report on the Council Chairman's Meeting.

10:00 a.m. - 10:15 a.m.—Receive a report on the NMFS Billfish/Highly Migratory Species Advisory Panels meetings.

10:15 a.m. - 10:30 a.m.—Receive a report on the U.S. Coast Guard Enforcement Workshop.

10:30 a.m. - 10:45 a.m.—Receive a report on the Gulf and South Atlantic Fisheries Development Foundation (G&SAFDF) Shrimp Effort Meeting.

10:45 a.m. - 11:00 a.m.—Receive a report on the G&SAFDF Red Snapper Meeting.

11:00 a.m. - 11:15 a.m.—Receive the South Atlantic Fishery Management Council (SAFMC) Marine Reserve Workshop Report.

11:15 a.m. - 11:30 a.m.—Receive the SAFMC Liaison Report.

11:30 a.m. - 11:45 a.m.—Receive Enforcement Reports.

11:45 a.m. - 12:00 noon—Receive Directors' Reports.

12:00 noon - 12:15 p.m.—Other business to be discussed.

July 20

8:00 a.m. - 12:00 noon—Convene a joint meeting of the Shrimp, Stone Crab, and Spiny Lobster Management Committees to consider the Options Paper on the Sustainable Fisheries Act Amendment.

1:00 p.m. - 2:00 p.m.—Convene the Shrimp Management Committee to consider reports on overfishing of shrimp stocks, the Tortugas shrimp fishery, and fishing violations in the Tortugas Shrimp Sanctuary.

2:00 p.m. - 3:00 p.m.—Convene the Mackerel Management Committee to consider actions of the SAFMC on Amendment 9 and take final action. Also to consider further regulatory action in setting TAC.

3:00 p.m. - 4:00 p.m.—Convene the Ad Hoc Vessel Monitoring Committee to receive an update on Vessel Monitoring System Trials.

4:00 p.m. - 5:00 p.m.—Convene the Budget Committee to receive a status report on the CY 1998 Budget and to consider cost saving policies.

5:00 p.m. - 5:45 p.m.—Convene a joint meeting of the Ad Hoc Sustainable Fisheries Committee and the Law Enforcement Committee to consider allowable gear regulations.

July 21

8:00 a.m. - 12:00 noon—Convene a joint meeting of the Mackerel, Reef Fish, and Red Drum Management Committees to review the Options Paper on the SFA Amendment.

1:30 p.m. - 4:30 p.m.—Convene the Habitat Protection Committee to consider recommendations for final action on the Draft EFH Generic Amendment.

Although other issues not contained in this agenda may come before the Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by July 13, 1998.

Dated: July 6, 1998.

Richard W. Surdi,

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

[FR Doc. 98–18308 Filed 7–9–98; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Forms, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS), Appendix F, Material Inspection and Receiving Report; DD Forms 250, 250C, 250–1; OMB Number 0704–0248.

Type of Request: Extension.

Number of Respondents: 34,180.

Responses Per Respondent: 228.

Annual Responses: 7,800,000.

Average Burden Per Response: 8 minutes (average).

Annual Burden Hours: 988,000.

Needs and Uses: The collection of this information is necessary to process inspection and receipt of materials and payments to contractors under Government contracts. The information collection includes the requirements of DFARS Appendix F, Material Inspection and Receiving Report; the related clause at DFARS 252.246–7000; and the DD Form 250; DD Form 250C; and, DD Form 250–1. The clause at DFARS 252.246–7000 is used in contracts that require separate and distinct deliverables. The clause requires the contractor to prepare and furnish to the Government a material inspection and receiving report (DD Form 250) in a manner and to the extent required by DFARS Appendix F. The report is required for material inspection and acceptance, shipping, and payment.

Affected Public: Business or Other For-Profit; Not-For-Profit Institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, CA 22202–4302.

Dated: July 6, 1998.

Paticia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–18313 Filed 7–9–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–49]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the

requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–49, with attached transmittal, policy justification and sensitivity of technology.

Dated: July 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

22 June 1998

In reply refer to:
I-67379/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-49, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Israel for defense articles and services estimated to cost $26 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-49

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) **Prospective Purchaser:** Israel

(ii) **Total Estimated Value:**

Major Defense Equipment*	$ 25 million
Other	$ 1 million
TOTAL	$ 26 million

(iii) **Description of Articles or Services Offered:** Sixteen HARPOON missiles, containers, spare and repair parts, support and test equipment, supply support, publications, training, contractor technical assistance and other related elements of logistics support.

(iv) **Military Department:** Navy (AQY)

(v) **Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:** none

(vi) **Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:** See Annex attached.

(vii) **Date Report Delivered to Congress:** 22 June 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Israel - HARPOON Missiles

The Government of Israel has requested a possible sale of 16 HARPOON missiles, containers, spare and repair parts, support and test equipment, supply support, publications, training, contractor technical assistance and other related elements of logistics support. The estimated cost is $26 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Middle East.

Israel will use these HARPOON missiles to augment their current HARPOON missile inventory as well as use them with their SAAR 4 and five patrol boats. Israel, which already has HARPOON missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Boeing Company, St. Louis, Missouri. Under this sale, the contractor will incur offset obligations under an existing industrial cooperation agreement.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel to Israel. However, it is estimated one or two contractor representatives will be required for up to two years on an interim basis.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 98-49

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The HARPOON missile contains sensitive technology and has the following classified components, including applicable technical and equipment documentation and manuals:

a. Guidance Section Components
b. Missile Characteristics and Performance Data

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures or equivalent systems which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

3. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

[FR Doc. 98–18315 Filed 7–9–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 98–44]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Assistance Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT:

Ms. J. Hurd, DSAA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 98–44, with attached transmittal, policy justification and sensitivity of technology.

Dated: July 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000–04–M

DEFENSE SECURITY ASSISTANCE AGENCY

WASHINGTON, DC 20301-2800

22 June 1998

In reply refer to:
I-68290/98

Honorable Newt Gingrich
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 98-44, concerning the Department of the Army's proposed Letter(s) of Offer and Acceptance (LOA) to Singapore for defense articles and services estimated to cost $620 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Transmittal No. 98-44

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: Singapore

(ii) Total Estimated Value:

Major Defense Equipment*	$220 million
Other	$400 million
TOTAL	$620 million

(iii) Description of Articles or Services Offered:
Eight AH-64D APACHE attack helicopters (excluding AH-64D Longbow Fire Control Radar), 216 HELLFIRE II laser guided missiles (including 16 training and eight dummy missiles), four spare HELLFIRE launchers, two spare T-700-GE-701C engines, two spare Target Acquisition Designation Sight Systems, 9,120 Hydra-70 rockets, spare and repair parts, communications equipment, support equipment, tools and test sets, chaff dispensers, Integrated Helmet and Display Sight System, 30mm cartridges, electronic equipment test facility spares, publications, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support.

(iv) Military Department: Army (VAQ, VAS, BDB, and PEK)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:
See Annex attached.

(vii) Date Report Delivered to Congress: 22 June 1998

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Singapore - AH-64D APACHE Attack Helicopters

The Government of Singapore has requested the purchase of eight AH-64D APACHE attack helicopters(excluding AH-64D Longbow Fire Control Radar), 216 HELLFIRE II laser guided missiles (including 16 training and eight dummy missiles), four spare HELLFIRE launchers, two spare T-700-GE-701C engines, two spare Target Acquisition Designation Sight Systems, 9,120 Hydra-70 rockets, spare and repair parts, communications equipment, support equipment, tools and test sets, chaff dispensers, Integrated Helmet and Display Sight System, 30mm cartridges, electronic equipment test facility spares, publications, personnel training and training equipment, U.S. Government and contractor technical support and other related elements of logistics support. The estimated cost is $620 million.

This notification does not contain the AH-64D Longbow Fire Control Radar. Any future sale of the Longbow Fire Control Radar to Singapore will be notified via 36(b)5 notification.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for stability and economic progress in Southeast Asia.

Singapore desires these articles to fulfill their commitments to self-defense and self-reliance. The sale will contribute to our foreign policy and security objectives by providing a credible defensive capability to a key regional friend. Singapore will have no difficulty absorbing these helicopters into its armed forces.

The principal contractors are: Boeing-Mesa, Mesa, Arizona; Lockheed Martin Electronics and Missiles, Orlando, Florida; Lockheed Martin Federal Systems, Incorporated, Owego, New York; and General Electric, Lynn, Massachusetts. There are no proposed offset agreements related to this proposed sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to Singapore.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 98-44

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The AH-64D APACHE Attack Helicopter includes the following classified or sensitive components:

a. M130 Chaff-flare Dispenser - a multi-purpose system which dispenses decoys to confuse threat radar and missile IR seekers. Radar cross section and frequency coverage are sensitive elements. Hardware is Unclassified. Technical publications for authorized maintenance levels are Unclassified. Aircraft optimization is the critical element; reverse engineering is not a major concern.

b. AN/ALQ-144A(V)3 Infrared Countermeasure Set - an active, continuous operating, omni-directional, electrically fired infrared jammer system designed to confuse or decoy threat IR missile systems, in conjunction with low reflective paint and engine suppressors. Hardware is classified Confidential. Technical manuals for authorized maintenance levels are classified Secret. Reverse engineering and development of counter-countermeasures are concerns if the hardware and releasable technical data were compromised.

c. AN/APR-39A(V)1 Radar Warning Receiver - provides warning of a radar directed air defense threat to permit appropriate countermeasures. It is programmed with appropriate threat data. Hardware is classified Confidential. Technical manuals for the maintenance levels are classified Confidential. Technical performance data is classified Secret. Aircraft optimization is the critical element. Reverse engineering is not a major concern.

d. AN/ALQ-136(V)5 Radar Jammer Countermeasure Sets - an omni-directional radar jammer which provides protection against threat radar detecting devices. Equipment is programmed with appropriate threat data provided by purchasing country. Hardware is classified Confidential. Releasable technical manuals for the maintenance are classified Secret; releasable technical performance data is classified Secret. Technology involved in design, manufacturing and testing of the jammer is sensitive. Reverse engineering is a primary concern.

e. The Target Acquisition and Designation Sight/Pilot Night Vision Sensor (TADS/PNVS) with Optical Improvements (OIP)

system provides day, night, limited adverse weather target information, as well as night navigation capabilities. The PNVS provides thermal imaging that permits nap-of-the-earth flight to, from, and within the battle area, while TADS provides the co-pilot gunner with search, detection, recognition, and designation by means of Direct View Optics (DVO), television, and Forward Looking Infrared (FLIR) sighting systems that may be used singularly or in combinations. Hardware is Unclassified. Technical manuals for authorized maintenance levels are Unclassified. Reverse engineering is not a major concern.

f. The AGM-114 (K-3) HELLFIRE air-to-surface laser missile hardware and documentation are unclassified. Missile performance parameters and characteristics, including susceptibility to countermeasures, are classified up to Secret and considered very sensitive. Missile hardware is considered sensitive and knowledge of the warhead timing mechanism would be useful in development of countermeasures. Technology contained within the missile is sensitive and Unclassified. The sensitivity of the system is primarily in the software programs which enable the missile to operate in a countermeasures environment. Training, maintenance, operations and related documentation are unclassified and not considered sensitive.

2. This sale is consistent with the U.S. foreign policy and national security objectives outlined in the Policy Justification. Moreover, the benefits to be derived from this sale, as outlined in the Policy Justification, outweigh the potential damage that could result if the sensitive technology were revealed to unauthorized persons.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware in this sale, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

[FR Doc. 98–18316 Filed 7–9–98; 8:45 am]
BILLING CODE 5000–04–C

DEPARTMENT OF DEFENSE

Office of the Secretary; Membership of the Office of the Secretary of Defense Performance Review Board

AGENCY: Department of Defense.

ACTION: Notice.

This notice announces the appointment of the members of the Performance Review Board (PRB) of the Office of the Secretary of Defense, the Joint staff, the U.S. Mission to the North Atlantic Treaty Organization, the Defense Advance Research Projects Agency, the Defense Commissary Agency, the Defense Security Service, the Defense Security Assistance Agency, the Ballistic Missile Defense Organization, the Defense Field Activities and the U.S. Court of Appeals of the Armed Forces. The publication of PRB membership is required by 5 U.S.C. 4314(c)(4).

The PRB provides fair and impartial review of Senior Executive Service performance appraisals and makes recommendations regarding performance ratings and performance awards to the Secretary of Defense.

EFFECTIVE DATE: July 1, 1998.

FOR FURTHER INFORMATION CONTACT: Christopher Koehle, Assistant Director for Staffing, Classification and Executive Resources, Directorate for Personnel and Security, Washington Headquarters Services, Office of the Secretary of Defense, Department of Defense, The Pentagon, (703) 588–0414.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 4314(c)(4), the following executives are appointed to the Office of the Secretary of Defense PRB: specific PRB panel assignments will be made from this group. Executives listed will serve a one-year renewable term, effective July 1, 1998.

Office of the Secretary of Defense

Chairman

Robert R. Soule

Members

Julie Aviles
Cindy Bogner
James F. O'Bryon
Frederic Celec
Donald Dix
Jim Dominy
Robert Drake
Michele Flourney
Joseph Friedl

John Gehrig
Stanley Gontarek
Doug Hansen
Charles Infosino
James L. Johnson
Jeanne Karstens
Thomas L. Link
Dr. John F. Mazzuchi
Gail H. McGinn
Michael A. Parmentier
Vincent P. Roske
John Roth
Caral Spangler
Norma St. Claire
Robert Taylor
Michael Thibault
Mary Tompkey
John T. Tyler
Austin Yamada

Dated: July 6, 1998.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–18314 Filed 7–9–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Proposal To Issue and Modify Nationwide Permits; Public Hearing

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of public hearing

SUMMARY: On July 1, 1998, the Corps of Engineers published a Notice document containing its proposal to issue 6 nationwide permits (NWPs), modify 6 existing NWPs, add one new NWP condition, and modify 6 existing NWP conditions. The Corps also suspended the use of NWP 29 to authorize single family housing causing the loss of greater than ¼ acre of waters of the United States and proposed to permanently modify NWP 29 to lower the acreage limit to ¼ acre. The Corps will hold a public hearing on the NWPs contained in that proposal. In addition, at least one public hearing will be held in each Corps Division, the primary focus of which is to solicit comments on regional issues relating to the proposed new and modified NWPs, especially regional conditioning. The hearing is open to the public. Comments may be submitted in person at the hearing or in writing at the Chief of Engineers at the address given below. Filing of a written statement would be helpful and facilitate the job of the court reporter. The hearing will be transcribed. Persons wishing to testify are requested to limit their statements to 10 minutes. The hearing will be held in accordance with the Corps public hearing regulations in 33 CFR Part 327. The legal authority for this hearing is Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 10 of the Rivers and Harbors Act (33 U.S.C. 403). The hearing record will remain open until August 31, 1998.

DATES: The hearing will commence at 10:00 AM on August 19, 1998, and end at 4:00 PM or before, if all speakers present have had an opportunity to speak. Written comments to supplement the hearing record may be submitted until August 31, 1998.

ADDRESSES: The hearing will be held at the National Guard Association Building, One Massachusetts Avenue, NW, Washington, D. C. Written comments may be submitted to HQUSACE, CECW-OR, Washington, D. C. 20314–1000.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson or Mr. Sam Collinson, CECW–OR, at (202) 761–0199.

In addition, Division Engineers will be holding regional public hearings to receive comments on regional issues relating to the new and modified NWPs, especially regional conditioning. Regional public hearings will be held in the following cities:

- Albany, New York.
- Cincinnati, Ohio.
- Galveston, Texas.
- Honolulu, Hawaii.
- Jacksonville, Florida.
- New York, New York.
- Omaha, Nebraska.
- Raleigh, North Carolina.
- Sacramento, California.
- Seattle, Washington.
- St. Louis, Missouri.

The dates and times for the regional public hearings will be announced by Corps districts in their public notices.

Dated: July 1, 1998.

Approved:

Charles M. Hess

Chief, Operations, Construction, and Readiness Division, Directorate of Civil Works.

[FR Doc. 98–18386 Filed 7–9–98; 8:45 am]

BILLING CODE 3710–92–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Pantex Plant, Amarillo, Texas

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Pantex Plant, Amarillo, Texas.

DATE AND TIME: Tuesday, July 28, 1998: 8:30 a.m.–12:30 p.m.

ADDRESSES: Pantex Plant, Building 16–12, Amarillo, Texas.

FOR FURTHER INFORMATION CONTACT: Jerry S. Johnson, Assistant Area Manager, Department of Energy, Amarillo Area Office, P.O. Box 30030, Amarillo, TX 79120 (806) 477–3121.

SUPPLEMENTARY INFORMATION: *Purpose of the Committee*: The Board provides input to the Department of Energy on Environmental Management strategic decisions that impact future use, risk management, economic development, and budget prioritization activities.

Tentative Agenda

8:30 a.m.
Welcome—Agenda Review—Approval of Minutes
8:45 a.m.
Co-Chair Comments
9:00 a.m.
Security System Upgrade Presentation
10:00 a.m.
Updates—Occurrence Reports—DOE
10:30 a.m.
National Pollutant Discharge Elimination System Compliance Presentation
11:30 a.m.
Ex-Officio Reports
12:00 p.m.
Task Force/Subcommittee Minutes
12:30 p.m.
Closing Remarks/Adjourn

PUBLIC PARTICIPATION: The meeting is open to the public, and public comment will be invited throughout the meeting. Written statements may be filed with the Committee either before or after the meeting. Written comments will be accepted at the address above for 15 days after the date of the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Jerry Johnson's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at any time throughout the meeting.

MINUTES: The minutes of this meeting will be available for public review and

copying at the Pantex Public Reading Rooms located at the Amarillo College Lynn Library and Learning Center, 2201 South Washington, Amarillo, TX phone (806) 371–5400. Hours of operation are from 7:45 am to 10:00 pm, Monday through Thursday; 7:45 am to 5:00 pm on Friday; 8:30 am to 12:00 noon on Saturday; and 2:00 pm to 6:00 pm on Sunday, except for Federal holidays. Additionally, there is a Public Reading Room located at the Carson County Public Library, 401 Main Street, Panhandle, TX phone (806) 537–3742. Hours of operation are from 9:00 am to 7:00 pm on Monday; 9:00 am to 5:00 pm, Tuesday through Friday; and closed Saturday and Sunday as well as Federal Holidays. Minutes will also be available by writing or calling Jerry S. Johnson at the address or telephone number listed above.

Issued at Washington, DC, on July 6, 1998.

Althea T. Vanzego,

Acting Deputy Advisory Committee Management Officer.

[FR Doc. 98–18405 Filed 7–9–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–309–000]

Algonquin Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet, to become effective August 1, 1998:

Fourth Revised Sheet No. 714
First Revised Sheet No. 715

Algonquin asserts that the purpose of this filing is to comply with the Commission's Order No. 587–G, Standards for Business Practices of Interstate Natural Gas Pipelines issued on April 16, 1998 in Docket No. RM96–1–007, 83 FERC ¶61,029 (1998). Algonquin asserts that the revised tariff sheet included herewith reflects Version 1.2 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

Algonquin states that copies of the filing were served on all affected customers, interested state commissions and all parties to the proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18359 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–308–000]

Algonquin LNG, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Algonquin LNG, Inc. (ALNG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet, to become effective August 1, 1998:

Third Revised Sheet No. 83.

ALNG asserts that the purpose of this filing is to comply with the Commission's Order No. 587–G, Standards for Business Practices of Interstate Natural Gas Pipelines issued on April 16, 1998 in Docket No. RM96–1–007, 83 FERC ¶ 61,029 (1998). ALNG asserts that the revised tariff sheet included herewith reflects Version 1.2 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations.

ALNG states that copies of the filing were served on all affected customers, interested state commissions and all parties to the proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18358 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–285–000]

ANR Pipeline Company; Notice of Proposed Changes In FERC Gas Tariff

July 6, 1998.

Take notice that, on June 30, 1998, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheet, to be effective August 1, 1998:

Third Revised Sheet No. 149A

ANR states that the purpose of this filing is to comply with Order No. 587–G. That order required that the compliance filing be made at least 30 days prior to August 1, 1998 to update to Version 1.2 any tariff references to prior versions of the Gas Industry Standard Board's standards.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18374 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–d–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–298–000]

Black Marlin Pipeline Company; Notice of Filing of Tariff Sheets

July 6, 1998.

Take notice that on July 1, 1998, Black Marlin Pipeline Company (Black Marlin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1998.

Third Revised Sheet No. 201A
First Revised Sheet No. 209A

Black Marlin states that the instant filing is in compliance with the Commission's Order No. 587–G issued April 16, 1998 in Docket No. RM96–1–007 (Order No. 587–G).

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18348 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–305–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Canyon Creek Compression Company (Canyon) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 193, to be effective August 1, 1998.

Canyon states that the purpose of the filing is to comply with the Commission's Order No. 587–G issued April 16, 1998 in Docket No. RM96–1–007.

Canyon states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18355 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–303–000]

Caprock Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Caprock Pipeline Company (Caprock) tendered for filing to be a part of its FERC Gas Tariff, First Revised Volume No. 1, Fourth Revised Sheet No. 29A, to be effective August 1, 1998.

Caprock states that the purpose of the filing is to comply with the Commissioner's Order issued on April 16, 1998, in Docket No. RM96–1–007.

Caprock states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest the filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18353 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–52–006]

Columbia Gulf Transmission Company; Notice of Refund Report

July 6, 1998.

Take notice that on July 30, 1998, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing its refund report in Docket No. RP97–52, *et al.*, pursuant to Section 154.501(e) of the Commission's regulations.

Columbia Gulf states that on June 5, 1998, Columbia Gulf made refunds pursuant to its General NGA Section 4 Rate Case Stipulation and Agreement in the referenced docket, which was approved by the Commission on April 29, 1998. *See* 83 FERC ¶ 61,094 (1998). The settlement was effective June 1, 1998. Pursuant to Section 154.501 of the Commission's regulations, the refunds include applicable interest through June 4, 1998. Parties who received refunds also received a schedule of the computation of the principal and interest amounts.

Columbia Gulf states that copies of its filing have been mailed to affected customers and state commissions.

Any person desiring to protest the filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before July 13, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18368 Filed 6–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–295–000]

Florida Gas Transmission Company; Notice of Filing of Tariff Sheets

July 6, 1998.

Take notice that on July 1, 1998, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets:

Sixth Revised Sheet No. 102B
Fourth Revised Sheet No. 135

FGT Asserts that the instant filing is in compliance with the Commission's Order No. 587–G issued April 16, 1998, in Docket No. RM96–1–007 (Order No. 587–G). FGT also states that it is filing the tariff sheets to become effective on August 1, 1998.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18345 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–282–000]

Garden Banks Gas Pipeline, LLC; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on June 30, 1998, Garden Banks Gas Pipeline, LLC (GBGP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 136, with an effective date of August 1, 1998.

GBGP states that the filing is being made in compliance with Order No. 587–G issued by the Commission on April 16, 1998, in Docket No. RM96–1–007. GBGP states the purpose of the filing is to incorporate Version 1.2 of the GISB standards into its tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18371 Filed 6–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–286–000]

Granite State Gas Transmission, Inc.; Notice of Tariff Filing

July 6, 1998.

Take notice that on June 30, 1998 Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Seventh Revised Sheet No. 289, to be effective on August 1, 1998.

Granite State asserts that its tariff filing is submitted in comply with Order No. 587–G, issued April 16, 1998 (Docket No. RM96–1–007) which directed interstate pipelines to adopt Gas Industries Standards Board Version 1.2 in their tariffs prior to August 1, 1998.

Granite State asserts that copies of its filing have been served on its firm and interruptible transportation customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18375 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–642–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Application

July 6, 1998.

Take notice that on June 30, 1998, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed an application pursuant to Section 7(b) of the Natural Gas Act and the Commission's Regulations thereunder, for permission and approval to abandon a natural gas exchange service available for use by Michigan Consolidated Gas Company (MichCon) and Panhandle Eastern Pipe Line Company (Panhandle), all as more fully set forth in the application on file with the Commission and open to public inspection.

Great Lakes states that this service authorized in Docket No. CP76–69,[1] which is currently available to MichCon and Panhandle under Rate Schedule X–5 of Great Lakes' FERC Gas Tariff, Original Volume No. 2, will be abandoned as of March 1, 1999, subject to the Commission's approval. No abandonment of facilities is requested.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 27, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., 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 a 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 or its designee on this application if no petition 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 petition for leave 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 provided for, unless otherwise advised, it will be unnecessary for Great Lakes to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18365 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

[1] *See*, 54 FPC 1969 (1975).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–152–011]

Kansas Pipeline Company; Notice of Compliance Filing

July 6, 1998.

Take notice that on June 29, 1998, Kansas Pipeline Company (KPC), tendered for filing as part of its FERC Gas Tariff, Volume No. 1, the following tariff sheets to become effective May 11, 1998:

Original Volume No. 1

Original Sheet No. 2
Original Sheet No. 538
Original Sheet No. 600

KPC states that the tarriff sheets reflect compliance with the Commission's April 30, 1998 Order on Rehearing, which directed KPC to sign new service agreements with its customers. The Order further directed KPC to file contracts only in circumstances where the contracts are materially different from the Company's tariff.

KPC states that the tariff sheets reflect the Commission's Regulations which state that any service contract that deviates in any material respect from the form of service agreement in the pipeline's tariff must be filed with the Commission and such non-conforming service agreement must be referenced in the pipeline's tariff. This filing references the non-conforming service agreement with Missouri Gas Energy, a division of Southern Union Company.

Any person desiring to be heard or to make any protest with reference to said filing should on or before July 16, 1998, file with the Federal Energy Regulatory Commission, Washington, DC 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 (19 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 proceedings. 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 Section 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing 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 authorization requested 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 KPC to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18362 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–300–000]

KN Interstate Pipeline Company; Notice of Filing Tariff Sheets

July 6, 1998.

Take notice that on July 1, 1998, KN Interstate Pipeline Company (KNI) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1–B, Third Revised Sheet No. 89A, and First Revised Volume No. 1–D, Third Revised Sheet No. 71A, to be effective August 1, 1998.

KNI states that the purpose of the filing is to comply with the Commission's Order No. 587–G issued on April 16, 1998 in Docket No. RM96–1–007.

KNI states that copies of the filing are being mailed to its transportation customers and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18350 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–302–000]

KN Wattenberg Limited Liability Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, KN Wattenberg Limited Liability Company (KN Wattenberg) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 67, to be effective August 1, 1998.

KN Wattenberg states that the purpose of the filing is to comply with the Commission's Order issued on April 16, 1998 in Docket No. RM96–1–007.

KN Wattenberg states that copies of the filing are being mailed to its transportation customers and interested state regulatory agencies.

Any person desiring to be heard to or protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18352 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–288–000]

Michigan Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Michigan Gas Storage Company (MGSCo) tendered for filing as part of its FERC Gas Tariff, (First Revised Volume No. 1, Fourth Revised Sheet No. 1, Second Revised Sheet No. 54A and Original Sheet No. 72) with an effective date of August 1, 1998.

MGSCo states that the proposed sheets are being filed pursuant to Order No. 587–G, regarding GISB standards.

MGSCo states that copies of this filing are being served on all customers and applicable state regulatory agencies and on all those on the official service list in Docket No. RP97–152–000.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18377 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM98–10–16–000]

National Fuel Gas Supply Corporation; Notice of Tariff Filing

July 6, 1998.

Take notice that on June 30, 1998, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet to become, effective July 1, 1998:

Eleventh Revised Sheet No. 9

National asserts that the purpose of this filing is to comply with the Commission's order issued February 16, 1996, in Docket Nos. RP94–367–000, *et. al.* Under Article I, Section 4, of the settlement approved in that order, National must redetermine quarterly the Amortization Surcharge to reflect revisions in the Plant to be Amortized, interest and associated taxes, and a change in the determinants. The recalculation produced an Amortization Surcharge of 11.29 cents per dth.

Further, National states that under Article II, Section 2, of the settlement, it is required to recalculate the maximum Interruptible Gathering (IG) rate monthly and to charge that rate on the first day of the following month if the result is an IG rate more than 2 cents above or below the IG rate as calculated under Section 1 of Article II. The recalculation produced an IG Rate of 11 cents per dth.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18361 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–304–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Natural Gas Pipeline Company of America (Natural) tendered for filing to be a part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Fourth Revised Sheet No. 409, to be effective August 1, 1998.

Natural states that the purpose of the filing is to comply with the Commission's Order No. 587–G issued April 16, 1998 in Docket No. RM96–1–007.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18354 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–310–000]

Natural Gas Pipeline Company of America; Notice of Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Natural Gas Pipeline Company of America (natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective August 1, 1998.

Natural states that the purpose of this filing is to modify Natural's pro forma service Agreement and related tariff provisions governing discounting of rates to provide for certain types of volume-related discounts. These revisions would be applicable to all of Natural's jurisdictional services. Natural is also proposing a tariff change to provide for greater flexibility in negotiating the allocation of revenues received from the replacement shipper when the original shipper releases capacity. These changes were made in response to and in conformity with certain determinations regarding contracting practices made by the Federal Energy Regulatory Commission in Docket No. RP96–184.

Natural states that copies of the filing have been mailed to Natural's customers, interested state regulatory agencies and all parties set out on the official service list in Docket No. RP96–184.

Any person desiring to be heard or to protest the filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18360 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–635–000]

Natural Gas Pipeline Company of America; Notice of Request Under Blanket Authorization

July 6, 1998.

Take notice that on June 25, 1998, Natural Gas Pipeline Company of America (Applicant), 747 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP98–635–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for approval to construct and operate new facilities in Cape Girardeau County, Missouri, as a new delivery point to deliver firm transportation quantities of natural gas for service to Proctor and Gamble Paper Products Company, under Applicant's blanket certificate issued in Docket No. CP82–402–000, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant proposes to construct and operate a dual six-inch side tap on Applicant's thirty and thirty-six-inch Gulf Coast lines, approximately eleven miles of six-inch diameter pipeline, and a six-inch meter and appurtenant facilities for an interconnection with Proctor and Gamble. Applicant states that these facilities will be constructed to deliver up to 25,000 MMBtu per Day of natural gas, pursuant to Part 284, Subpart G firm transportation to Proctor and Gamble at its existing Cape Girardeau Plant. Applicant further states that the estimated cost of the proposed facilities is $4.41 million, of which $3.73 million will be reimbursed by Proctor and Gamble as a contribution-in-aid. Applicant asserts that it has sufficient capacity to provide service at the proposed delivery point without detriment or disadvantage to Applicant's other customers.

Any person or Commission staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18363 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1247–019]

NorAm Energy Services, Inc.; Notice of Filing

July 6, 1998.

Take notice that on June 4, 1998, NorAm Energy Services, Inc. (NES), filed a Notice of Change in Status regarding the acquisition by certain affiliates of generation. NES states in the Notice that this change in status should not affect NES' authority to make sales at market-based rates pursuant to its Rate Schedule FERC No. 1, as revised. NES also requests that it be permitted to report future changes in status to the Commission in an updated market analysis that NES will file with the Commission every three years.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before July 13, 1998. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18366 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–294–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Northern Border Pipeline Company (Northern Border) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to be effective August 1, 1998.

First Revised Sheet Number 236A
Second Revised Sheet Number 274
Third Revised Sheet Number 304F

Northern Border states that this filing is made in compliance with Order No. 587–G, issued in Docket No. RM96–1–007 on April 16, 1998. These tariff sheets reflect the GISB standards adopted in Order No. 587–G as well as Commission mandated standards governing the provision of information on Northern Border's web site.

Northern Border states that copies of this filing are being served on all affected customers.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18344 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–292–000]

Northern Natural Gas Company; Notice of Proposed Changes to FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Northern Natural Gas Company (Northern), tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheet to be effective August 1, 1998.

First Revised Third Revised Sheet No. 204

Northern states that the above-listed tariff sheet is filed in compliance with Order No. 587–G issued April 16, 1998 in Docket No. RM96–1–007 (Order No. 587–G).

Northern states that copies of the filing were served upon Northern's customers and interested State Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Davie P. Boergers,

Acting Secretary.

[FR Doc. 98–18381 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–283–000]

Ozark Gas Transmission System; Notice of Tariff Filing

July 6, 1998.

Take notice that on June 30, 1998, Ozark Gas Transmission System (Ozark), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, with an effective date of August 1, 1998:

First Revised Sheet No. 13B
Third Revised Sheet No. 43
Second Revised Sheet No. 43A
Third Revised Sheet No. 43B
Second Revised Sheet No. 45

Ozark states that it is submitting these revised tariff sheets to incorporate the Gas Industry Standards Board (GISB) Version 1.2 Standards adopted by Order No. 587–G. Ozark proposes an August 1, 1998 effective date for these sheets.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission

in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18372 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–299–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective August 1, 1998.

Panhandle states that it is proposing to suspend the $0.01 per Dt. Stranded Transportation Cost Reservation Surcharge applicable to Rate Schedules FT, EFT and LFT and the 0.06¢ per Dt. Stranded Transportation Cost Volumetric Surcharge applicable to Rate Schedule SCT. Panhandle will file a reconciliation report as soon as practicable and provide invoice credits, with carrying charges, to applicable shippers for any excess collections through July 31, 1998.

Panhandle states that copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18349 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–640–000]

Point Arguello Natural Gas Line Company; Notice of Application

July 6, 1998.

Take notice that on June 29, 1998, Point Arguello Natural Gas Line Company (Point Arguello), 4000 Executive Parkway, San Ramon, California 94583, filed in Docket No. CP98–640–000 an application pursuant to Section 7(c) of the Natural Gas Act to permit Point Arguello to transport natural gas over its existing facilities from near the Gaviota Gas Processing Plan, Gaviota, California to Platform Hermosa, in the Point Arguello Field on the Outer Continental Shelf, offshore Santa Barbara, California, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Point Arguello states that its pipeline was built to transport natural gas associated with the crude oil production from the Point Arguello Field onshore to the Gaviota Gas Processing Plant. It is stated that without the pipeline natural gas not used in the offshore platform operations would have been flared or reinjected into the producing reservoirs. Point Arguello indicates that changes are occurring in the management of the oil production of the Point Arguello Field. It is stated that, in order to extend the economic life of the field, the oil producers are proposing to reconfigure their operations to reduce costs and streamline operations by moving the oil stabilization operations from onshore to the offshore oil platforms and to inject all surplus gas produced from the field into the reservoir. It is also stated that no further gas processing will be required at the Gaviota plant.

It is indicated that the producers plan to reinject the surplus gas because gas production rates continue to decline and, as a result, levels of hydrogen sulfide are increasing, precluding the gas from being transported to shore. It is also expected that, in the near future, gas production rates will not be sufficient to support the offshore platform operations. As a result, Point Arguello proposes to transport gas from onshore to offshore.

To implement this reversal of flow, Point Arguello proposes to reactivate an existing 100 yards of pipe near the gas processing plant and to install a valve in order to provide a direct connection with Southern California Gas Company. No other facility changes are involved. No changes to Point Arguello's cost of service tariff is proposed.

Any person desiring to be heard or to make any protest with reference to said application should on or before July 27, 1998, 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. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and permission for abandonment are 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 Point Arguello to appear or be represented at the hearing.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18364 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–287–000]

Shell Gas Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on June 30, 1998, Shell Gas Pipeline Company (SGPC) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Fourth Revised Sheet No. 137, with an effective date of August 1998.

SGPC states that the filing is being made in compliance with Order No. 587–G issued April 16, 1998, in Docket No. RM96–1–007. SGPC states the purpose of the filing is to incorporate Version 1.2 of the GISB standards into its tariff.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18376 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–307–000]

Stingray Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Stingray Pipeline Company (Stingray) tendered for filing to be part of its FERC Gas Tariff, Third Revised Volume No. 1, Third Revised Sheet No. 199, to be effective August 1, 1998.

Stingray states that the purpose of the filing is to comply with the Commission's Order No. 587–G issued April 16, 1998 in Docket No. RM96–1–007.

Stingray states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18357 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–306–000]

TCP Gathering Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, TCP Gathering Company (TCP) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 103A, a tariff sheet to be effective August 1, 1998.

TCP states that the purpose of the filing is to comply with the Commission's Order issued on April 16, 1998 in Docket No. RM96–1–007.

TCP states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18356 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–289–000]

Texas Gas Transmission Corporation; Notice of Filing of Tariff Sheets

July 6, 1998.

Take notice that on June 30, 1998, Texas Gas Transmission Corporation (Texas Gas) tendered for filing, as part of its FERC Gas Tariff, First Revised Volume No. 1, to be effective August 1, 1998:

Eighth Revised Sheet No. 207
Second Revised Sheet No. 207A

Texas Gas states that the instant filing is being made to comply with the Commission's Order No. 587–G dated April 16, 1998 by incorporating by reference the Gas Industry Standards Board's most recent version standards (Version 1.2).

Texas Gas states that copies of this filing are being served upon Texas Gas' jurisdictional customers and interested state commissions and upon all parties on the official service list in Docket No. RP97–183.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18378 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–301–000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, Fourth Revised Sheet No. 203, to be effective August 1, 1998.

Trailblazer states that the purpose of the filing is to comply with the Commission's Order No. 587–G issued April 16, 1998 in Docket No. RM96–1–007.

Trailblazer states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18351 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–284–000]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

July 6, 1998.

Take notice that on June 6, 1998, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing certain revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1. The proposed effective date of such tariff sheets is August 1, 1998.

Transco states that the instant filing is submitted pursuant to Section 39 of the General Terms and Conditions of Transco's FERC Gas Tariff which provides that Transco will file to adjust its Great Plains Volumetric Surcharge (GPS) 30 days prior to each GPS Annual Period beginning August 1. The GPS Surcharge is designed to recover: (i) the cost of gas purchased from Great Plains Gasification Associates (or its successor) which exceeds the Spot Index (as defined in Section 39 of the General Terms) and (ii) the related cost of transporting such gas.

The revised GPS Surcharge included therein consists of two components—the Current GPS Surcharge calculated for the period August 1, 1998 through July 31, 1999, plus the Great Plains Deferred Account Surcharge (Deferred Surcharge). The determination of the Deferred Surcharge is based on the balance in the current GPS subaccount plus interest accumulated by April 30, 1998. Appendix B to the filing includes workpapers supporting the calculation of the revised GPS Surcharge of $0.0179 per dt reflected on the tendered tariff sheets.

Transco states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18373 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–291–000]

Transwestern Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Transwestern Pipeline Company (Transwestern) tendered for filing to become part of Transwestern's FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to be effective August 1, 1998.

Sixth Revised Sheet No. 49
Third Revised Sheet No. 63A

Transwestern states that the above-listed tariff sheets are filed in compliance with Order No. 587–G issued April 16, 1998 in Docket No. RM96–1–007 (Order No. 587–G).

Transwestern states that copies of the filing were served upon Transwestern's customers and interested State Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18380 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–296–000]

Trunkline LNG Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Trunkline LNG Company (TLNG) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1–A, the following tariff sheet to be effective August 1, 1998.

First Revised Sheet No. 115

TLNG states that the purpose of this filing is to comply with the Commission's Order No. 587–G, Standards for Business Practices of Interstate Natural Gas Pipelines issued on April 16, 1998 in Docket No. RM96–1–007, 83 FERC ¶ 61,029 (1998). The revised tariff sheet included herewith reflects Version 1.2 standards promulgated by the Gas Industry Standards Board which were adopted by the Commission and incorporated by reference in the Commission's Regulations. Specifically, in addition to upgrading the version of previously adopted standards, newly adopted Standards 1.4.6, 2.4.6, 4.3.5, 4.3.16 and 5.3.30 are incorporated by reference and Standard 4.3.4 has been deleted.

TLNG states that copies of the filing are being served on all affected customers, applicable state regulatory agencies and all parties to this proceeding.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18346 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–297–000]

Tuscarora Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Tuscarora Gas Transmission Company (Tuscarora) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet, effective August 1, 1998.

Second Revised Sheet No. 37A

Tuscarora states that the purpose of this filing is to comply with Order No. 587–G issued April 16, 1998, in Docket No. RM96–1–007. In Order No. 587–G the Commission required pipelines (i) to adopt the most recent version of the GISB standards by changing all references in their tariffs to Version 1.2 and (ii) to comply with the electronic communication requirements in new Section 284.10(c)(3)(ii)–(v).

Tuscarora states that copies of its filing were mailed to all affected customers and the state commissions of Nevada, Oregon and California.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18347 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG98–13–000]

Tuscarora Gas Transmission Company; Notice of Filing

July 6, 1998.

Take notice that on June 26, 1998, Tuscarora Gas Transmission Company (Tuscarora) filed standards of conduct under Order Nos. 497 *et seq.*[1] and Order Nos. 566, *et seq.*[2] Tuscarora states that several of its affiliates are engaged in marketing activities and that it ''currently does not provide transportation service to any of these affiliated entities'' but that its proposed standards of conduct would govern any future transactions between Tuscarora and its affiliates ''that trigger the marketing affiliate rules.''

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before July 21, 1998. 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

[1] Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing,* 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date,* 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date,* 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), rehearing denied, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); Tenneco Gas v. FERC (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992), Order No. 497–D, *order on remand and extending sunset date,* 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date,* 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification,* 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date,* 59 FR 3284 (June 26, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing,* 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing,* 59 FR 65707 (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

intervene. Copies of this filing are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18367 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–281–000]

Venice Gathering System, L.L.C.; Notice of Tariff Filing

July 6, 1998.

Take notice that on June 30, 1998, Venice Gathering System, L.L.C. (VGS), through its operator Dynegy Midstream Services, Limited Partnership, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, with an effective date of August 1, 1998:

First Revised Sheet No. 111
First Revised Sheet No. 179
First Revised Sheet No. 185
First Revised Sheet No. 186
First Revised Sheet No. 196

VGS states that it is submitting these revised tariff sheets to incorporate the Gas Industry Standards Board (GISB) Version 1.2 Standards adopted by Order No. 587–G. VGS proposes an August 1, 1998 effective date for these sheets.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18370 Filed 7–10–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–290–000]

Viking Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on June 30, 1998, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the tariff sheets listed on Attachment A (Primary Case) to the filing and Attachment B (Pro Forma Case) to the filing.

Viking requests an effective date of August 1, 1998 for the tariff sheets listed on Attachment A and, accordingly, requests that the Commission suspend this filing for the minimal statutory period to allow the tariff sheets listed on Attachment A to go into effect on August 1, 1998.

Viking respectfully requests that the Commission allow Viking's Pro Forma Case to become effective only after a final Commission order on this proceeding. Should the Commission accept Viking's Pro Forma Case, Viking will submit actual tariff sheets in place of the Pro Forma tariff sheets to be effective on a prospective basis.

Viking states that the purpose of this filing is to revise Viking's rates for jurisdictional services to reflect current and projected costs and changes in demand on Viking's system. Viking is also filing to remove crediting of penalty and IT revenues and to implement a tracker to recover load management costs.

In its Pro Forma Case, Viking is proposing to roll-in the facilities installed during the 1996 and 1997 expansion projects approved by the Commission in Docket Nos. CP96–32–000 and CP97–93–000, respectively. Both projects are appropriate for rolled-in rate treatment due to the significant reliability and operational benefits they provide to pre-expansion customers, and in light of the minimal rate impacts they produce in real terms.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18379 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–280–000]

Warren Transportation, Inc.; Notice of Tariff Filing

July 6, 1998.

Take notice that on June 30, 1998, Warren Transportation, Inc. (WTI), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with an effective date of August 1, 1998:

First Revised Sheet No. 95
First Revised Sheet No. 148
First Revised Sheet No. 155
First Revised Sheet No. 156
First Revised Sheet No. 166

WTI states that it is submitting these revised tariff sheets to incorporate the Gas Industry Standards Board (GISB) Version 1.2 Standards adopted by Order No. 587–G. WTI proposes on August 1, 1998 effective date for these sheets.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18369 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–293–000]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

July 6, 1998.

Take notice that on July 1, 1998, Williams Gas Pipelines Central, Inc. (Williams), tendered for filing to become part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, with the proposed effective date of August 1, 1998:

Second Revised Sheet No. 6
Third Revised Sheet No. 6A

Williams states that this filing is being made pursuant to Article 14 of the General Terms and Conditions of its FERC Gas Tariff, Original Volume No. 1. Williams hereby submits its third quarter, 1998, report of GSR costs.

Williams states that a copy of its filing was served on all of Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18382 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–2590–000, et al,]

MAD River Power Authority, et al.; Electric Rate and Corporate Regulation Filings

July 2, 1998.

Take notice that the following filings have been made with the Commission:

1. MAD River Power Authority

[Docket No. ER98–2590–000]

Take notice that on June 5, 1998, MAD River Power Authority tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment Date: July 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Otter Lane Hydro, LLC

[Docket No. ER98–2619–000]

Take notice that on June 18, 1998, Otter Lane Hydro, LLC tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment date: July 13, 1998, in accordance with Standard-Paragraph E at the end of this notice.

3. Freshwater Hydro, Inc.

[Docket No. ER98–2631–000]

Take notice that on June 9, 1998, Freshwater Hydro Power Associates tendered for filing a Notice of Withdrawal in the above-referenced docket.

Comment date: July 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Sempra Energy Trading Corp.

[Docket No. ER98–3513–000]

Take notice that on June 26, 1998, Sempra Energy Trading Corp., tendered for filing a revised code of conduct. The revised code would supplement Sempra Energy Trading Corp.'s market-based rate schedule.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Indianapolis Power & Light Company

[Docket No. ER98–3514–000]

Take notice that on June 26, 1998, Indianapolis Power & Light Company (IPL), tendered for filing a letter agreement extending by one year to August 31, 1999, the service IPL currently provides to PSI Energy, a public utility subsidiary of Cinergy, under an existing interconnection agreement.

Copies of this filing were sent to the Indiana Utility Regulatory Commission and Cinergy.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Enova Energy, Inc.

[Docket No. ER98–3515–000]

Take notice that on June 26, 1998, Enova Energy, Inc. (Enova Energy), tendered for filing its compliance filing in the above-referenced docket a revised code of conduct. The revised code would supplement Enova Energy's market-based rate schedule.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Boston Edison Company

[Docket No. ER98–3516–000]

Take notice that on June 29, 1998, Boston Edison Company (Boston Edison), tendered for filing (a) an unexecuted network integration transmission service agreement between Boston Edison and various affiliates of Sithe Energies, Inc., (collectively known as Sithe New England) and (b) an unexecuted network operating agreement between Boston Edison and Sithe New England. Both agreements provide for service pursuant to Boston Edison's open access transmission tariff.

Boston Edison requests that the agreements become effective September 1, 1998.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. The Detroit Edison Company

[Docket No. ER98–3517–000]

Take notice that on June 29, 1998, the Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (the Service Agreement) for Firm and Non-Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and Tenaska Power Services dated as of June 10, 1998. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of June 10, 1998.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER98–3518–000]

Take notice that on June 18, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated June 18, 1998 with First Energy Trading & Power Marketing, Inc., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds First Energy Trading & Power Marketing, Inc., as a customer under the Tariff.

DLC requests an effective date of June 18, 1998, for the Service Agreement.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Company

[Docket No. ER98–3519–000]

That notice that on June 29, 1998, Arizona Public Service Company (APS), tendered for filing a revised Exhibit I to APS–FERC Rate Schedule No. 192, between APS and the City of Williams (Williams), for the Operating Years 1997 and 1998.

Current rate levels are unaffected, revenue levels are unchanged from those currently on file with the Commission, and no other significant change in service to these or any other customer results from the revisions proposed herein. No new or modifications to existing facilities are required as a result of these revisions.

Copies of this filing have been served on the City of Williams and the Arizona Corporation Commission.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Consumers Energy Company

[Docket No. ER98–3520–000]

Take notice that on June 29, 1998, Consumers Energy Company (CECo), tendered for filing Amendment No. 1, to its Service Agreement for Network Integration Transmission Service with the City of Eaton Rapids (Eaton Rapids). CECo also tenders for filing the Agreement in executed form to be substituted for original unexecuted agreement.

Copies of the filing were served upon the Michigan Public Service Commission and Eaton Rapids.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Niagara Mohawk Power Corporation

[Docket No. ER98–3521–000]

Take notice that on June 29, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Open Access Transmission Service Agreement between NMPC and the Power Authority of the State of New York (NYPA), to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where NMPC's transmission system connects to its retail distribution system west of NMPC's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

NMPC requests an effective date of June 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER98–3522–000]

Take notice that on June 29, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and Engage Energy US, L.P. This Transmission Service Agreement specifies that Engage Energy US, L.P., has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and Engage Energy US, L.P., to enter into separately scheduled transactions under which NMPC will provide firm transmission service for Engage Energy US, L.P., as the parties may mutually agree.

NMPC requests an effective date of June 18, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and Engage Energy, US, L.P.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Electric Power Company

[Docket No. ER98–3523–000]

Take notice that on June 29, 1998, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing a Non-Firm Transmission Service Agreement and a Short-Term Firm Transmission Service Agreement between itself and Northern/AES Energy, L.L.C., (Northern/AES Energy). The Transmission Service Agreements allow Northern/AES to receive transmission services under Wisconsin Electric's FERC Electric Tariff, Volume No. 7, which is pending Commission consideration in Docket No. OA97–578.

Wisconsin Electric requests the effective date coincident with its filing and waiver of the Commission's notice requirements in order to allow for economic transactions as they appear.

Copies of the filing have been served on Northern/AES, the Public Service Commission of Wisconsin and the Michigan Public Service Commission.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER98–3524–000]

Take notice that on June 29, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Transmission Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Constellation Power Source (Constellation).

Cinergy and Constellation are requesting an effective date of June 17, 1998.

Copies of this filing have been served upon Constellation Power Source, the Public Service Commission of Maryland, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, and the Indiana Utility Regulatory Commission.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. PECO Energy Company

[Docket No. ER98–3525–000]

Take notice that on June 29, 1998, PECO Energy Company (PECO), filed an executed Transmission Agency Agreement between PECO and Columbia Energy Power Marketing Corporation (hereinafter Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Transmission Agency Agreement submitted to the Commission on October 3, 1997, as part of the joint filing by the Pennsylvania Public Utility Commission and the Pennsylvania PJM Utilities at Docket No. ER98–64–000. This filing merely submits an individual executed copy of the Transmission Agency Agreement

between PECO and an alternative supplier participating in PECO's Retail Access Pilot Program.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Shamrock Trading, LLC

[Docket No. ER98–3526–000]

Take notice that on June 17, 1998, Shamrock Trading, LLC (Shamrock), petitioned the Commission for acceptance of Shamrock Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Shamrock intends to engage in wholesale electric power and energy purchases and sales as a marketer. Shamrock is not in the business of generating or transmitting electric power. Shamrock is wholly owned by Michael P. FitzPatrick. Shamrock is not affiliated with any other company.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. PJM Interconnection, L.L.C.

[Docket No. ER98–3527–000]

Take notice that, on June 29, 1998, PJM Interconnection, L.L.C. (PJM), pursuant to Section 205 of the Federal Power Act and ordering paragraph (V), of the Commission's order in Pennsylvania-New Jersey-Maryland Interconnection, 81 FERC ¶ 61,257 (1997), tendered for filing a market monitoring plan.

PJM states that it served a copy of its filing on all PJM members, all parties in Docket No. ER97–3189–000, and each of the state utility commissions in the PJM region.

PJM requests an effective date for the market monitoring plan of September 1, 1998.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Jersey Central Power & Light Company, Metropolitan Edison Company, and Pennsylvania Electric Company

[Docket No. ER98–3528–000]

Take notice that on June 29, 1998, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Constellation Power Source (CON), dated June 26, 1998. This Service Agreement specifies that CON has agreed to the rates, terms and conditions of GPU Energy's Capacity, Energy and Capacity Credit Sales Tariff (Sales Tariff) designated as FERC Electric Tariff, Second Revised Volume No. 1. The Sales Tariff allows GPU Energy and CON to enter into separately scheduled transactions under which GPU Energy will make available for sale, capacity, energy and capacity credits.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of June 26, 1998, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. PECO Energy Company

[Docket No. ER98–3529–000]

Take notice that on June 29, 1998, PECO Energy Company (PECO), filed an executed Installed Capacity Obligation Allocation Agreement between PECO and Columbia Energy Power Marketing Corporation, (Supplier). The terms and conditions contained within this Agreement are identical to the terms and conditions contained with the Form of Installed Capacity Allocation Agreement filed by PECO with the Commission on October 3, 1997 at Docket No. ER98–28–000. This filing merely submits an individual executed copy of the Installed Capacity Obligation Allocation Agreement between PECO and an alternate suppliers participating in PECO's Pilot.

Copies of the filing were served on the Supplier and the Pennsylvania Public Utility Commission.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

21 Duquesne Light Company

[Docket No. ER98–3530–000]

Take notice that on June 29, 1998, Duquesne Light Company (DLC), filed a Service Agreement dated June 18, 1998 with Merchant Energy Group of the Americas, Inc., under DLC's FERC Coordination Sales Tariff (Tariff). The Service Agreement adds Merchant Energy Group of the Americas, Inc., as a customer under the Tariff.

DLC requests an effective date of June 18, 1998, for the Service Agreement.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Niagara Mohawk Power Corporation

[Docket No. ER98–3532–000]

Take notice that on June 29, 1998, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an executed Non-Firm Point-To-Point Transmission Service Agreement between Niagara Mohawk and Engage Energy US, L.P. This Transmission Service Agreement specifies that Engage Energy US, L.P. has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and Engage Energy US, L.P., to enter into separately scheduled transactions under which Niagara Mohawk will provide non-firm transmission service for Engage Energy US, L.P. as the parties may mutually agree.

Niagara Mohawk requests an effective date of June 18, 1998. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and Engage Energy US, L.P.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Western Resources, Inc.

[Docket No. ER98–3533–000]

Take notice that on June 29, 1998, Western Resources, Inc. tendered for filing an agreement between Western Resources and Oklahoma Gas & Electric Company. Western Resources states that the purpose of the agreement is to permit the customer to take service under Western Resources' market-based power sales tariff on file with the Commission.

Western Resources requests that the service agreement become effective June 26, 1998.

Copies of the filing were served upon Oklahoma Gas & Electric Company and the Kansas Corporation Commission.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. CNG Energy Services Corporation

[Docket No. ER98–3534–000]

Take notice that on June 29, 1998, CNG Energy Services Corporation (CNGES), filed a Notice of Cancellation of its Rate Schedule FERC No. 1. CNGES requests that the Commission act in an expedited manner and accept the notice of cancellation by no later than July 20, 1998.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Southern Company Services, Inc.

[Docket No. ER98–3535–000]

Take notice that on June 29, 1998, Southern Company Services, Inc. (SCS), acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company (MPCO), and Savannah Electric and Power Company (collectively referred to as Southern Company), filed a service agreement for network integration transmission service between SCS, as agent for Southern Company, and Southern Wholesale Energy, a Department of SCS, as agent for MPCO; five (5) non-umbrella service agreements for firm point-to-point transmission service between SCS, as agent for Southern Company, and Sonat Power and Marketing L.P. (two such agreements) and Oglethorpe Power Corporation (three such agreements); ten (10) umbrella service agreements for short-term firm point-to-point transmission service between SCS, as agent for Southern Company, and (i) Duke/Louis Dreyfus, L.L.C., (ii) Florida Power and Light Company, (iii) Vitol Gas & Electric LLC (Vitol), (iv) PECO Energy Company Power Team (PECO), (v) Virginia Electric and Power Company (VEPCO), (vi) Entergy Power Marketing Corp. (EPMC), (vii) Municipal Electric Authority of Georgia, (viii) Oglethorpe Power Corporation, (ix) Tennessee Valley Authority, and (x) Carolina Power & Light; three (3) non-firm point-to-point transmission service agreements with (i) the City of Gainesville, Florida, (ii) Municipal Electric Authority of Georgia, and (iii) Public Service Electric and Gas Company; and a Notice of Cancellation of service agreements under the Open Access Transmission Tariff of Southern Company.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Niagara Mohawk Power Corporation

[Docket No. ER98–3536–000]

Take notice that on June 29, 1998, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed, amended Transmission Service Agreement between NMPC and the Power Authority of the State of New York (NYPA), to permit NYPA to deliver power and energy from NYPA's FitzPatrick Plant, Bid Process Suppliers and Substitute Suppliers to the points where NMPC's transmission system connects to its retail distribution system East of NMPC's constrained Central-East Interface. This Transmission Service Agreement specifies that NYPA has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000.

NMPC requests an effective date of June 1, 1998. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon New York Public Service Commission and NYPA.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Illinois Power Company

[Docket No. ER98–3543–000]

Take notice that on June 29, 1998, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing Firm and Non-Firm Transmission Service Agreements under which American Steel Foundries Division of Amsted Industries, Inc., will take transmission service pursuant to its open access transmission tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of June 1, 1998.

Comment date: July 17, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. UtiliCorp United Inc.

[Docket No. ES98–36–000]

Take notice that on June 17, 1998, UtiliCorp United Inc. (UtiliCorp), filed an application seeking an order under Section 204(a) of the Federal Power Act authorizing UtiliCorp to issue corporate guaranties in support of Debt Securities in an amount of up to and including $175,000,000 (Cdn) to be issued in one or more series by West Kootenay Power, Ltd. (WPK) or a direct or indirect subsidiary of WKP, at some time(s) before June 30, 1999, and for exemption from competitive bidding and negotiated placement requirements. WKP is a wholly-owned subsidiary of UtiliCorp British Columbia Ltd., which in turn is a wholly-owned subsidiary of UtiliCorp.

Comment date: July 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

29. Cleco Corporation

[Docket No. ES98–37–000]

Take notice that on June 24, 1998, Cleco Corporation submitted an application under Section 204 of the Federal Power Act for authorization to issue short-term debt, outstanding at any one time, in an aggregate principal amount of not more than $250 million, starting with the date of the letter order.

Comment date: July 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

30. United States Department of Energy Southwestern Power Administration

[Docket No. NJ98–2–001]

Take notice that on June 23, 1998, United States Department of Energy Southwestern Power Administration (Southwestern), filed a Petition for Declaratory Order Regarding Standards of Conduct Filing With a Partial Waiver and an Exemption In Lieu of Filing Fee (Petition). In the Petition, Southwestern submits standards of conduct under Order Nos. 889 *et seq.*[1] and requests a waiver of the separation of functions requirement of the standards of conduct.

Comment date: July 17, 1998, 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 these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18342 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–M

[1] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 ¶ 31,035 (April 24, 1996); Order No. 889–A, *order on reh'q* 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B *reh'g denied*, 62 FR 64715 (December 9, 1997), III FERC Stats. & Regs. ¶ 31,253 (November 25, 1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER98–1569–002, et al.]

PP&L, Inc., et al.; Electric Rate and Corporate Regulation Filings

July 1, 1998.

Take notice that the following filings have been made with the Commission:

1. PP&L, Inc.

[Docket No. ER98–1569–002]

Take notice that on June 15, 1998, PP&L tendered for filing its compliance filing in the above-referenced docket.

Comment date: July 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. Eric C. Woychik, The Utility Reform Network, Utility Consumers Action Network, and Consumers Union v. California Independent System Operator and California Electricity Oversight Board

[Docket No. EL98–51–000]

Take notice that on June 3, 1998, Eric C. Woychik, The Utility Reform Network, Utility Consumers Action Network, and Consumers Union tendered for filing a complaint against the California Independent System Operator and California Electricity Oversight Board for failure to comply with the Commission's past decisions and orders with respect to the governance structure of Cal ISO.

Comment date: July 31, 1998, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall be due on or before July 31, 1998.

3. Entergy Services, Inc.

[Docket No. ER98–3489–000]

Take notice that on June 26, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Northern States Power Company.

Entergy Services requests that the agreement be made no later than June 30, 1998.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER98–3490–000]

Take notice that on June 26, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Short-Term Firm Point-to-Point Transportation Agreement between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Virginia Electric & Power Company.

Entergy Services requests that the agreement be made effective no later than June 15, 1998.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER98–3491–000]

Take notice that on June 26, 1998, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Transportation Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Tennessee Valley Authority.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Electric and Gas Company

[Docket No. ER98–3492–000]

Take notice that on June 26, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an agreement for the sale of capacity and energy to Consolidated Edison Company of New York, Inc. (ConEd), pursuant to the PSE&G Market Based Power Sales Tariff, Original Volume No. 6, presently on file with the Commission.

PSE&G further requests waiver of the Commission's Regulations such that the agreement can be made effective as of May 26, 1998.

Copies of the filing have been served upon ConEd and the New Jersey Board of Public Utilities.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

7. Public Service Electric and Gas Company

[Docket No. ER98–3493–000]

Take notice that on June 26, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an Wholesale Power Service Agreement for the sale of capacity and energy to Northern/AES Energy, LLC (Northern/AES), pursuant to the PSE&G Market Based Power Sales Tariff, Original Volume No. 6., presently on file with the Commission.

PSE&G requests waiver of the Commission's notice requirements such that the agreement can be made effective as of May 26, 1998.

Copies of the filing have been served upon Northern/AES and the New Jersey Board of Public Utilities.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Public Service Electric and Gas Company

[Docket No. ER98–3494–000]

Take notice that on June 26, 1998, Public Service Electric and Gas Company (PSE&G), of Newark, New Jersey tendered for filing an Wholesale Power Service agreement for the sale of capacity and energy to Phibro, Inc. (Phibro), pursuant to the PSE&G Wholesale Power-Market Based Sales Tariff, presently on file with the Commission.

PSE&G requests waiver of the Commission's notice requirements, and request that the agreement to become effective on May 26, 1998.

Copies of the filing have been served upon Phibro and the New Jersey Board of Public Utilities.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Southern Indiana Gas and Electric Company

[Docket No. ER98–3495–000]

Take notice that on June 26, 1998, Southern Indiana Gas and Electric Company (SIGECO), tendered for filing a service agreement for Market-Based Rate Power Sales under its Market Based Rate Tariff with Columbia Energy Power Marketing Corporation.

SIGECO requests waive of the Commission's notice requirements to allow the service agreement to become effective June 5, 1998.

Copies of the filing were served upon each of the parties to the service agreement.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. Central Maine Power Company

[Docket No. ER98–3496–000]

Take notice that on June 26, 1998, Central Maine Power Company (CMP), tendered for filing an executed service agreement for sale of capacity and/or energy entered into with NP Energy, Inc.

CMP requests waiver of the Commission's notice requirements to allow the service agreement to become effective as of June 26, 1998.

Copies of this filing have been served upon the Maine Public Utilities Commission and the persons identified on the service list.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. Oklahoma Gas and Electric Company

[Docket No. ER98–3497–000]

Take notice that on June 26, 1998, Oklahoma Gas and Electric Company (OG&E), tendered for filing service agreements for Short-Term Power Sales under OG&E's power sales tariff.

Copies of this filing have been served upon the affected parties, the Oklahoma Corporation Commission, and the Arkansas Public Service Commission.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER98–3498–000]

Take notice that on June 26, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Tractebel Energy Marketing, Inc. (TEM).

Cinergy and TEM are requesting an effective date of May 31, 1998.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. San Diego Gas & Electric Company

[Docket No. ER98–3499–000]

Take notice that on June 26, 1998, San Diego Gas & Electric Company (SDG&E), tendered for filing in the above-referenced docket a revised code of conduct. The revised code would amend SDG&E's market-based power sales tariff.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Cinergy Services, Inc.

[Docket No. ER98–3500–000]

Take notice that on June 26, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Statoil Energy Trading, Inc. (SET).

Cinergy and SET are requesting an effective date of June 1, 1998.

Copies of this filing have been served upon Statoil Energy Trading, Inc., the Virginia State Corporation Commission, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, and the Indiana Utility Regulatory Commission.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Cinergy Services, Inc.

[Docket No. ER98–3501–000]

Take notice that on June 26, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Statoil Energy Trading, Inc. (SET).

Cinergy and SET are requesting an effective date of June 1, 1998.

Copies of this filing have been served upon Statoil Energy Trading, Inc., the Virginia State Corporation Commission, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission, and the Indiana Utility Regulatory Commission.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Medical Area Total Energy Plant, Inc.

[Docket No. ER98–3502–000]

Take notice that on June 26, 1998, Medical Area Total Energy Plant, Inc. (MATEP), tendered for filing a Wholesale Power Service Agreement between MATEP and MATEP LLC, for service under MATEP's Rate Schedule FERC No. 1, its Market-Based Power Sales Tariff. This Tariff was accepted for filing by the Commission on April 20, 1998, in Docket No. ER98–1992–000.

MATEP requests an effective date of June 1, 1998, for the service agreement.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Cinergy Services, Inc.

[Docket No. ER98–3503–000]

Take notice that on June 26, 1998, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Transmission Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff), entered into between Cinergy and Tractebel Energy Marketing, Inc., (TEM).

Cinergy and TEM are requesting an effective date of May 31, 1998.

Copies of this filing have been served upon Tractebel Energy Marketing, Inc., the Texas Public Utility Commission, the Public Utilities Commission of Ohio, the Kentucky Public Service Commission and the Indiana Utility Regulatory Commission.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Carolina Power & Light Company

[Docket No. ER98–3504–000]

Take notice that on June 26, 1998, Carolina Power & Light Company (CP&L), tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Service executed between CP&L and e′ prime and Tractebel Energy Marketing, Inc.; and Service Agreements for Short-Term Firm Point-to-Point Transmission Service with e′ prime and Tractebel Energy Marketing, Inc. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc.

[Docket No. ER98–3505–000]

Take notice that on June 26, 1998, Montana-Dakota Utilities Co., a division of MDU Resources Group, Inc. (Montana Dakota), tendered for filing an Agreement Covering Operation and Maintenance with Moreau-Grand Electric Cooperative, Inc., Mor-Gran-Sou Electric Cooperative, Inc., and Rushmore Electric Power Cooperative, Inc.

Copies of the filing were served on the cooperatives and on the interested state utility regulatory agencies.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. PJM Interconnection, L.L.C.

[Docket No. ER98–3506–000]

Take notice that on June 26, 1998, PJM Interconnection, L.L.C. (PJM), tendered for filing amendments to the Operating Agreement of the PJM Interconnection, L.L.C., and the PJM Open Access Transmission Tariff.

The amendments provide for greater access to, and a reallocation of costs with respect to, the operation of the PJM Interchange Energy Market, also known as the PJM Spot Market or PJM Power Exchange.

PJM requests an effective date of August 26, 1998, for the amendments to the Operating Agreement and PJM Tariff.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. Southern California Edison Company

[Docket No. ER98–3508–000]

Take notice that on June 26, 1998, Southern California Edison Company (Edison), tendered for filing Notice of Cancellation of FERC Rate Schedule Nos. 207.6, 207.6.1, 207.16, 207.16.1, 207.24, 207.25, 272.11, and 272.12, effective April 1, 1998.

Notice of the proposed cancellation has been served upon the City of Vernon, California, and the Public Utilities Commission of the State of California.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. Southern California Edison Company

[Docket No. ER98–3509–000]

Take notice that on June 26, 1998, Southern California Edison Company (Edison), tendered for filing Notice of Cancellation of FERC Rate Schedule No. 33.31 and all supplements thereto.

Edison requests waiver of prior notice requirements and requests that the notice of cancellation become effective May 5, 1998.

Copies of the proposed cancellation have been served upon Southern California Water Company and the Public Utilities Commission of the State of California.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Central Hudson Gas & Electric Corporation

[Docket No. ER98–3510–000]

Take notice that on June 26, 1998, Central Hudson Gas & Electric Corporation (CHG&E), tendered for filing pursuant to Section 35.12 of the Federal Energy Regulatory Commission's (Commission), Regulations in 18 CFR a Service Agreement between CHG&E and Vitol Gas & Electric LLC. The terms and conditions of service under this Agreement are made pursuant to CHG&E's FERC Open Access Schedule, Original Volume No. 1 (Transmission Tariff), filed in compliance with the Commission's Order No. 888 in Docket No. RM95–8–000 and RM94–7–001 and amended in compliance with Commission Order dated May 28, 1997. CHG&E also has requested waiver of the 60-day notice provision pursuant to 18 CFR Section 35.11.

A copy of this filing has been served on the Public Service Commission of the State of New York.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. FPL Energy Maine Hydro LLC, FPL Energy Mason LLC, FPL Energy Wyman LLC, FPL Energy Wyman IV LLC, FPL Energy AVEC LLC, and FPL Energy Power Marketing, Inc.

[Docket Nos. ER98–3511–000, ER98–3562–000, ER98–3563–000, ER98–3564–000, ER98–3565–000, and ER98–3566–000]

Take notice that on June 26, 1998, FPL Energy Maine Hydro LLC, FPL Energy Mason LLC, FPL Energy Wyman LLC, FPL Energy Wyman IV LLC, FPL Energy AVEC LLC, and FPL Energy Power Marketing, Inc. (Applicants), tendered for filing proposed rate schedules that would permit them to make sales of energy, capacity, and ancillary services at market-based rates. The Applicants seek such authority in connection with the purchase of certain generating assets from Central Maine Power Company.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Southern California Edison

[Docket No. ER98–3512–000]

Take notice that on June 26, 1998, Southern California Edison Company (Edison), tendered for filing amendments to the existing Firm Transmission Service Agreements (Amendments) between Edison and the City of Azuza (Azuza), California to convert existing transmission loss provisions to the California Independent System Operator (ISO) Tariff loss provisions.

The Amendments convert transmission loss provisions in the existing agreements to the California Independent System Operator's (ISO), Tariff loss provisions, pursuant to Section 6.2.1.5 of the Edison-Azuza 1997 Restructuring Agreement (Restructuring Agreement).

Edison is requesting that the Amendments become effective on April 1, 1998, the date the ISO assumed operational control of Edison's transmission facilities, which is concurrent with the effective date of the Restructuring Agreement.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. New York Power Authority

[Docket No. NJ97–4–002]

Take notice that New York Power Authority on March 2, 1998, tendered for filing its compliance filing in the above-referenced docket.

Comment date: July 13, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Colorado Springs Utilities

[Docket No. NJ97–9–003]

Take notice that on June 24, 1998, Colorado Springs Utilities (Colorado Springs), tendered for filing revised standards of conduct in response to the Commission's March 26, 1998, Order (82 FERC ¶ 61,297 (1998)). [1]

Comment date: July 16, 1998, in accordance with Standard Paragraph E at the end of this notice.

28. Long Sault, Inc.

[Docket No. OA96–11–002]

Take notice that on June 17, 1998, Long Sault, Inc. tendered for filing a refund report in the above-referenced docket.

Comment date: July 13, 1998, 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

[1] On April 28, 1998, the Commission granted Colorado Springs an extension, until June 24, 1998, to make its revised filing.

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection.

David P. Boergers,

Acting Secretary.

[FR Doc. 98–18300 Filed 7–9–98; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5493–5]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR (202) 564–7153.

Weekly receipt of Environmental Impact Statements Filed June 29, 1998 Through July 2, 1998 Pursuant to 40 CFR 1506.9.

EIS No. 980256, FINAL EIS, AFS, WY, CO, Tie Camp Timber Sale, Harvesting Timber and Road Construction, Medicine Bow-Routt National Forest, Brush Creek/Hayden Ranger District, Carbon County, WY and Jackson County, CO, Due: August 10, 1998, Contact: Kathy Rodriguez (302) 325–5258.

EIS No. 980257, FINAL EIS, BLM, OR, Northeast Oregon Assembled Land Exchange Resource Management Plan (RMP), Implementation, Site Specific, John Day, Umatilla, Granda Ronde, Power River Basins, Grant, Umatilla, Morrow, Wheeler, Baker, Wallowa and Union, OR, Due: August 10, 1998, Contact: Dick Cosgriffe (541) 416–6731.

EIS No. 980258, FINAL EIS, TVA, MS, Red Hills Power Project, Proposal to Purchase 440 megawatts (MW) of Electrical Energy, COE Section 404 Permit, Town of Ackerman, Choctaw County, MS , Due: August 10, 1998, Contact: Charles P. Nicholson (423) 632–3582.

Amended Notices

EIS No. 980255, FINAL EIS, EPA, AL, Sand Mountain Region On-Site Sewage Pollution, Wastewater Disposal Site, Dekalb, Etowah, Marshall and Jackson Counties, AL, Due: August 3, 1998, Contact: Heinz J. Mueller (404) 562–9617. This EIS was inadvertently omitted from the 07–02–98 **Federal Register**. The official 30 days NEPA review period is calculated from 07–02–98.

Dated: July 7, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–18439 Filed 7–9–98; 8:45 am]

BILLING CODE 6550–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–5493–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared June 22, 1998 Through June 26, 1998 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the OFFICE OF FEDERAL ACTIVITIES AT (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1998 (63 FR 17856).

Draft EISs

ERP No. D–DOA–F39034–00 Rating EC2, Lincoln-Pipestone Rural Water (LPRW), Development and Expansion of Existing System North/Lyon County Phase and Northeast Phase Expansion Project, Yellow Medicine, Lincoln and Lyon Counties, MN and Deuel County, SD.

Summary: EPA expressed environmental concerns regarding the lack of full disclosure of reasonable foreseeable development and cumulative impacts. EPA expressed support for the preferred alternative and mitigation measures which must be implemented.

ERP No. DA–JUS–A82111–00 Rating LO, Cannabis Eradication in the Contiguous United States and Hawaii, Updated Information on Herbicidal Eradication New Scientific Data.

Summary: EPA had no objections to the preferred alternative which allows for use of the full range of eradication methods based on site-specific condition.

ERP No. RD–NOA–B91024–ME Rating EC2, American Lobster Fishery Management Plan, Implementation, To Prevent Overfishing of American Lobster, Exclusive Economic Zone (EEZ) off the New England and Mid-Atlantic, ME.

Summary: EPA had environmental concerns with the proposed action. EPA's concerns were based on the need to lengthen the planning duration to 10 years; additional information requested in which agencies would be responsible for enforcing proposed reduced fishing times; and the role played by point and non-point pollution in the decline of the lobster fishery.

Final EISs

ERP No. F–FHW–E40330–TN, I–40 Reconstruction, I–40/I–240 Directional (Midtown) Interchange to TN–300 Interchange, Funding and Possible COE 404 Permit, Shelby County, TN.

Summary: EPA continues to express concern regarding noise impacts.

ERP No. F–NOA–E39041–SC, Marine Environmental Health Research Laboratory (MEHRL), Construction and Operation of Premiere, High Technology and Marine Research Center, Approval of Permits, Charleston County, SC.

Summary: EPA had environmental concerns regarding the proposed action. These concerns were based on the ventilation system having visual, noise, and chemical fumes impacts.

ERP No. F–NSF–A81164–00, Amundsen-Scott South Pole Station, Proposal to Modernize through Reconstruction and Replacement of Key Facilities, Antarctica.

Summary: EPA had no environmental objections to the proposed project.

ERP No. F–UAF–G11033–NM, Holloman Air Force Base, Proposed Expansion of German Air Force Operations, for the Beddown of 30 Aircrafts and Construction of Facilities for 640 Personnel, NM.

Summary: EPA continues to express environmental concerns for the Air Force proposed action and requested that mitigation measures as described in the FEIS to minimize impacts be implemented and made part of the Record of Decision and incorporated into that document to become binding stipulations to the proposed action.

ERP No. FA–FHW–E40108–NC, Smith Creek Parkway, Updated and Supplemental Information, Construction from Third Street to Kornegay Avenue, U.S. Coast Guard Permit, COE Section 10 and 404 Permits, Wilmington, Hanover County, NC.

S*Summary:* EPA continues to express concern because of the two crossing of Smith Creek that would contribute additional pollutant loading to an already stressed system.

ERP No. FS–AFS–J65211–CO, Illinois Creek Timber Sale, Timber Harvesting, Implementation, Amended Land and Resource Management Plan, Grand Mesa, Uncompahgre and Gunnison National Forests, Taylor River/Cebolla Ranger District, Gunnison County, CO.

Summary: EPA had no comment on this supplement to the final EIS. No

formal comment letter was sent to the preparing agency.

Dated: July 7, 1998.

William D. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 98–18440 Filed 7–9–98; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that at 11:02 a.m. on Tuesday, July 7, 1998, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's supervisory activities.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Ellen S. Seidman (Director, Office of Thrift Supervision), concurred in by Director Julie L. Williams (Acting Comptroller of the Currency), Director Joseph H. Neely (Appointive), and Chairman Donna Tanoue, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii) of the ''Government in the Sunshine Act'' (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), and (c)(9)(A)(ii)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: July 7, 1998.

Federal Deposit Insurance Corporation.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 98–18520 Filed 7–7–98; 5:02 pm]

BILLING CODE 6714–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 63 FR 36691, July 7, 1998.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 A.M., Wednesday, July 8, 1998.

CANCELLATION OF THE MEETING: Notice is hereby given of the cancellation of the Board of Directors meeting scheduled for July 8, 1998.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 98–18472 Filed 7–7–98; 4:50 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY

Background. Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. McLaughlin—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, without revision, of the following report:

1. Report title: Ongoing Intermittent Survey of Households

Agency form number: FR 3016

OMB Control number: 7100-0150

Effective Date: August 10, 1998.

Frequency: on occasion

Reporters: households and individuals

Annual reporting hours: 130 burden hours

Estimated average hours per response: 3.12 minutes

Number of respondents: 500

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, and 15 U.S.C. 1691b) and is given confidential treatment (5 U.S.C. 552(b)(6)).

Abstract: The Federal Reserve uses this voluntary survey to obtain household-based information specifically tailored to the Federal Reserve's policy, regulatory, and operational responsibilities, and the survey is necessary to provide information on developing events in the financial markets. Intermittently, on request, the University of Michigan's Survey Research Center includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The frequency and content of the questions depends on changing economic and legal developments.

Board of Governors of the Federal Reserve System, July 6, 1998

Jennifer J. Johnson

Secretary of the Board.

[FR Doc. 98–18409 Filed 7–9–98; 8:45AM]

Billing Code 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement 98098]

Technology Translation and Transfer of Effective HIV Prevention Interventions; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1998 funds for a cooperative agreement program for the technology translation and transfer of effective HIV prevention interventions. This program addresses the ''Healthy People 2000'' priority area of Human Immunodeficiency Virus (HIV) Infection.

In order to slow the spread of HIV/AIDS, researchers have developed and tested prevention interventions that aim to reduce sex-related and drug-related

risk behaviors. As a result of these studies, a number of interventions with credible evidence of effectiveness have been identified. This project will be a case study of the translation and transfer of an effective intervention in a non-research setting.

The purpose of this project is to enhance access to and use of effective interventions by service providers nationwide. Recipients will develop prevention packages that are readily useable by service providers. Recipients will develop prevention packages and refine them as they are piloted in the field setting. This will serve as a case study of the technology transfer process.

The specific purposes of this program are to: (1) Translate an individual or small group HIV prevention intervention (especially those targeted to persons at increased risk of HIV infection) with credible evidence of effectiveness, i.e., an effective intervention. This first activity is to be done in collaboration with health departments, community-based organizations, or other service delivery providers who can provide feedback and advice; (2) Develop a prevention package that includes training materials and technical assistance protocols as well as the intervention itself; and (3) Study the process of technology transfer, using the prevention package in a field setting.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes or Indian tribal organizations.

However, since the purpose of this technology translation and transfer project is to build on **successful** research projects, applicants must clearly demonstrate that their intervention has been tested under rigorous study design criteria (including the use of a control or comparison group) and found to be effective with significant positive results for changing HIV risk behavior. The applicant must have evidence that a report on this effective intervention has been submitted for publication or has been published in a peer-reviewed journal.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $400,000 is available in FY 1998 to fund approximately 2 awards. It is expected that the average award will be $190,000, ranging from $180,000 to $200,000. It is expected that the awards will begin on or about September 30, 1998, and will be made for a 12-month budget period within a project period of 2 years. Funding estimates may vary and are subject to change based on availability of funds. An application requesting greater than $200,000 will not be considered for review and will be returned to the applicant.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds. Continued funding for year 2 will be dependent on the completion of required activities for year 1. Applicants should anticipate that a portion of year 2 funding may be used in the field setting (approximately $20,000) as needed to implement the program.

Use of Funds

Collection of new or supplemental intervention research data, data entry and analysis, purchase of furniture or computers, and rental of facilities will not be funded under this program.

D. Program Requirements

In conducting activities to achieve the purpose of this announcement, the recipient will be responsible for the activities under 1, Recipient Activities, and CDC will be responsible for the activities listed under 2, CDC Activities.

1. Recipient Activities

a. Develop the intervention portion of the prevention package.

(1) The recipient will develop the package in collaboration with representatives of HIV prevention service delivery programs, e.g., health departments, community-based organizations (CBOs).

(2) Prevention packages should include:

(a) Language and format that are understandable and attractive to service providers who are nonresearchers.

(b) A full description of the intervention, including the background and the target population.

(c) A list and description of the core elements for the pre-implementation, implementation, and maintenance phases.

(d) Protocols for implementing the intervention and ensuring its quality and consistency.

(e) Specific guidelines for overcoming barriers to implementation.

(f) A list of all staff, facility, and material resources needed to conduct the intervention, including level of staff skill and time commitment, and cost breakdowns.

(g) A time line of specific steps for setting up the intervention.

(h) A bibliography of publications based on the intervention.

b. Develop the training and technical assistance portion of the prevention package.

(1) The recipient should develop training materials that can be used in preparing providers to use the prevention package. These materials will assist the user with pre-implementation and implementation tasks necessary to undertake the intervention during year 2. The materials should emphasize experiential learning and other active methods associated with skill building.

(2) The recipient should develop an outline for providing technical assistance which identifies the likely technical assistance requests that users may make and an appropriate response for each request.

c. Produce a limited number of draft prevention packages.

The recipient will produce draft packages using less costly materials than those to be used in the final product, but without changing the overall effect, e.g., less heavy stock paper for binding covers but with same logo or design, notebook rather than bound.

d. Identify an organization or field setting for case study.

(1) Compile a list of HIV prevention service agencies in the recipient's state or within close proximity to the recipient's city which target populations for whom the intervention is appropriate (for this announcement, such agencies will be referred to as potential users);

(2) Create approaches to establish linkages with the potential users and strategies to market the prevention package to them.

(3) Select ways to inform potential users who express interest about the availability of a case study experience.

(4) Develop a written agreement with the organization selected for the case study (for this announcement, such organization will be referred to as the user).

e. Develop the evaluation plan.

(1) Data should be both quantitative and qualitative and should include

observations and reports that permit assessment of the fit between the:

(a) core elements specified in the prevention package and the content of the implementation.

(b) methods specified in the prevention package and the delivery of the intervention, but no behavioral or health outcomes data should be collected.

(2) Process data should include observations and reports of:

(a) barriers to implementation and how they impacted the case study

(b) solutions to barriers

(c) cost containment strategies.

During the second year, the recipient will complete the development of training materials, technical assistance outlines, and process evaluation protocols necessary to initiate the case study. Data collection will take place throughout the case study or for approximately 6 months (based on an estimated delivery of one program per week). The final three months of the project will be used to analyze the process data and refine the prevention package.

2. CDC Activities.

a. Host a meeting with the successful applicants within 60 days of the notice of grant award to discuss implementation of the project.

b. Provide technical assistance in the general operation of this HIV prevention project.

c. Consult on the choice of user for a case study with the prevention package.

d. Monitor and evaluate scientific and operational accomplishments of this project through frequent telephone contact and review of technical reports and interim data analyses.

e. Conduct site visits to assess program progress and mutually solve problems, as needed.

f. At the end of the two year project, CDC, in addition to the authors, may distribute the package.

E. Application Content

Develop applications in accordance with PHS Form 5161–1 (OMB Number 0937–0189) and the instructions and format provided below.

Submit the original and two copies of PHS Form 5161–1 (OMB Number 0937–0189) and the original and two copies of the application. The application may not exceed 20 double-spaced pages, excluding abstract, index, and appendices. Submit the original and each copy of the application UNSTAPLED and UNBOUND. Print all material double-spaced, in a 12-point or larger font size on 8½'' by 11'' paper, with at least 1'' margins, and printed on one side only. Provide a one-page abstract of the proposal and a complete index to the application and its appendices. Beginning with the first page of text, number all pages clearly and sequentially. Number each page of the appendices also, e.g., for Appendix #1, the pages should be numbered: A1–1, A1–2, A1–3. Replace double-sided article reprints with a one-sided copy.

Include a general introduction, followed by one narrative subsection for each of the numbered content elements per application, in the order in which the elements appear below. Label each narrative subsection with the element title and include all the information needed to evaluate that element of the application (except for curriculum vitae, references, and letters of support, which are appropriate for the appendices). The application content elements are:

1. Effective intervention

a. Identify the principal investigator(s) and name and location of the agency(ies) that originally developed, conducted, and evaluated the small group or individual level intervention research.

b. Provide written permission from the original developers of the intervention to develop and market materials that may be original or derived for the prevention package.

c. Describe the study's positive results on behavioral or health outcomes, including how these results are both statistically and practically significant.

d. Include in the appendix, a copy of any reports that describe the study design and the positive behavioral or health outcomes of a small group or individual level intervention that have been submitted for publication or published in peer reviewed journals. This portion of the appendix should be labeled as ''Intervention Study Design and Results.''

e. Substantiate the need for a prevention package in terms of risk of target population and potential for generalizability to other target groups.

f. Describe the feasibility of implementation by other organizations, particularly those with limited resources.

2. Prevention package

a. Describe the prevention package. Include descriptions of:

(1) Target populations for whom the intervention would be appropriate;

(2) Pre-implementation phase, including specific steps for setting up the intervention, necessary collaborators, necessary materials, other resources, staff commitment (numbers and time) and skills for conducting the intervention, and training materials;

(3) Implementation phase, including protocols for implementing the intervention and ensuring quality and consistency and providing technical assistance, identification of barriers to implementation and how they may be overcome, and process evaluation methods; and

(4) Maintenance phase, including how to deal with issues of staff turnover and retraining.

b. Explain how staff from HIV prevention programs (e.g., health departments and CBOs) within the applicant's state or within close proximity to the applicant's home city will be involved in the development of the package. Describe the planned procedures for how these collaborators will be identified.

c. Present a time line for developing the prevention package.

3. Field site for implementation of the package in year two (2)

a. Discuss a plan to identify and recruit potential users within your state or within close proximity to your home city and indicate any which already have shown interest in or may be interested in implementing this intervention.

b. Elaborate on the criteria and mechanism for selecting the user(s) who will implement the package.

Note: The agency that originally conducted the intervention is excluded from consideration as a potential user, as is any agency that currently or previously implemented the intervention.

4. Strategy to assist implementation

a. Describe the strategy to facilitate implementation of the package, including provision of training and direct technical assistance from the recipient to the selected user(s).

b. Discuss procedures to involve user(s) in implementing the package, including use of user's existing staff and resources, and to identify barriers to implementation and how to overcome them. Feasibility and sustainability of the intervention with existing resources are important for the successful adoption and maintenance of the package.

5. Plan to evaluate the implementation process

Describe the plan for evaluating the process of implementing the prevention package. The plan should address (unless not applicable): (1) methods, (2) quality assurance monitoring of intervention delivery including documentation of intervention episodes, (3) employee recruitment and retention, (4) participant recruitment, (5) accuracy

and completeness of record keeping, and (6) costs of intervention delivery.

6. Capacity

a. Demonstrate capacity to conduct the proposed activities including the process evaluation.

b. Describe the proposed staffing, show percentages of each staff member's commitment to this and other projects, and division of duties and responsibilities for this project; include brief position descriptions for existing and proposed personnel.

c. Demonstrate that the staff have the expertise to complete this project, including ability to produce the intervention product(s). Demonstration of this capability would include examples of previously developed fact sheets, web sites, or samples from other intervention packages.

d. Name the staff members who are key to the completion of the project. Provide a brief description of the strengths each brings to this project. Include their curriculum vitae in the appendix.

e. Describe access to graphics expertise for production and editing of the intervention package.

f. Describe equipment and facilities to be used for the proposed activities.

7. Budget

Provide a detailed, line-item budget for the project; justify each line-item, including the need for any proposed consultants and contractors. Plan for at least two trips to Atlanta to meet with CDC representatives.

F. Submission and Deadline

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before August 17, 1998, submit the application to: Maggie Slay Warren, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 98098, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–15, Atlanta, Georgia 30305–2209.

If your application does not arrive in time for submission to the independent review group, it will not be considered in the current competition unless you can provide proof that you mailed it on or before the deadline (i.e., receipt from U.S. Postal Service or a commercial carrier; private metered postmarks are not acceptable).

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Behavioral Intervention (20 percent)

The applicant must clearly demonstrate the effectiveness of the proposed small-group or individual-level intervention in a report that has been submitted for publication or has been published in a peer-reviewed journal. This is an absolute criterion. If this evidence is not present, score as zero.

a. The intervention is directed to small groups or individuals, especially persons at increased risk of infection.

b. The applicant provides justification if proposing to conduct the intervention with any groups other than the initial target population.

c. The applicant addresses the feasibility of implementing the prevention package by organizations with limited resources.

2. Prevention Package (15 percent)

Level of detail in the description or outline of the proposed package, including materials, protocols, and guidelines. Clarity of described format and concepts; intended audiences; and objectives. Justification of the appropriateness of the package's objectives, format, and concepts to the intended users' needs and capabilities. Adequacy of input from HIV prevention programs into the development of the package. Adequacy of planned materials' review, pretesting, and revision of materials as needed. Adequacy of time scheduled for completing the proposed steps of the package's development.

3. Plan to Identify Field Site(s) to Implement the Package (10 percent)

Quality of plan to identify appropriate and eligible intended users and interest them in adopting the package during year 2 of the project. Selection of proactive methods to identify and solicit intended users. Adequacy of criteria and mechanism for selecting the users for implementing the package in year 2, including match of the intervention's target population with the user's community planning priorities. Recognition that the agency that originally conducted the intervention is excluded from implementing the package.

4. Strategy to Assist Implementation (15 percent)

Clarity of the strategy to assist selected users in adopting and implementing the behavioral intervention. Understanding of barriers to implementation and how to overcome them. Plan to assist selected users in implementing the intervention by using their existing resources and staff, including provision of on-call technical assistance. Plan to help selected users find additional funds for implementing the package, if relevant.

5. Plan to Evaluate Implementation Process (15 percent)

Feasibility and appropriateness of the applicant's plan to evaluate the selected user's implementation of the intervention as specified in the replication package. Thorough and realistic selection of process measures to evaluate.

6. Demonstrated Capacity (15 percent)

Overall ability of the applicant to perform the proposed activities as reflected in their staff's and consultants' qualifications and availability. The extent to which the applicant's demonstrates that proposed staff have experience with material development and dissemination and demonstrated familiarity with HIV behavioral interventions, in general, and the intervention to be publicized, in particular. The nature and extent of any partnership between researchers and HIV prevention programs. Adequacy of existing support staff, equipment, and facilities.

7. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (10 percent)

This includes:

a. The proposed plan for the inclusion of both women and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with communities and recognition of mutual benefits.

8. Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

_____YES
_____No
Comments:_____

9. Budget (not scored)

Extent to which the budget is reasonable, itemized, clearly justified,

and consistent with the intended use of the funds. Extent to which the budget includes itemizations, justifications, scope, and deliverables for consultants or contractors.

H. Other Requirements

Technical Reporting Requirements

An original and two copies of semi-annual progress reports are required. Timelines for the semi-annual reports will be established at the time of award. Final financial status and performance reports are required no later than 90 days after the end of the project period. All reports are submitted to the Grants Management Branch, CDC.

At the completion of 2 years of funding, recipients will be expected to share prevention packages with representatives of the original agencies that conducted the interventions on which the products are based, if different from those of the recipient.

The following additional requirements are applicable to this program. For a complete description of each, see Attachments.

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women, Racial and Ethnic Minorities in Research
AR98–4 HIV/AIDS Confidentiality Provisions
AR98–5 HIV Program Review Panel Requirements
AR98–7 Executive Order 12373 Review
AR98–8 Public Health System Reporting Requirements
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317(k), of the Public Health Service Act [42 U.S.C. 241 and 247b], as amended. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where to Obtain Additional Information

To receive additional written information, call (888) 472-6874. You will be asked to leave your name, address, and telephone number. Please refer to Program Announcement 98098 when you request information. For a complete program description, information on application procedures, an application package, and business management technical assistance, contact: Maggie Slay Warren, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Announcement 98098, Centers for Disease Control and Prevention (CDC), Room 300, 255 East Paces Ferry Road, NE., M/S E–15, Atlanta, GA 30305–2209 telephone (404) 842–6797. Email address http://www.MCS9@CDC.gov

See also the CDC home page on the Internet: *http://www.cdc.gov*

For program technical assistance, contact: Robert Kohmescher, 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–44, Atlanta, GA 30333 telephone (404) 639–8302 email: www.rnk1@cdc.gov

Please refer to Announcement number 98098 when requesting information and submitting an application.

Dated: July 6, 1998.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–18389 Filed 7–9–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Notice of Program Announcement No. ACF/ACY/CB–98–05]

New Child Welfare Demonstration Project Proposals Submitted by States for Waivers Pursuant to Section 1130 of the Social Security Act (the Act); Titles IV–E and IV–B of the Act; Public Law 103–432

AGENCY: Administration for Children and Families, HHS.

ACTION: Notice.

SUMMARY: This notice lists new proposals for child welfare waiver demonstration projects submitted to the Department of Health and Human Services pursuant to the guidance contained in Information Memorandum ACYF–CB–IM–98–01 dated February 13, 1998, public notice of which was given in the **Federal Register** of March 4, 1998, Vol. 63, No. 42, page 10637.

COMMENTS: We will accept written comments on these proposals, but will not provide written responses to comments. We will neither approve nor disapprove any new proposal for at least 30 days after the date of this notice to allow time to receive and consider comments. Direct comments as indicated below.

ADDRESSES: For specific information or questions on the content of a project or requests for copies of a proposal, contact the State contact person listed for that project.

Comments on a proposal should be addressed to: Michael W. Ambrose, Administration on Children, Youth and Families, Children's Bureau, 330 C Street, SW, Mary E. Switzer Building, Room 2058, Washington, D.C., 20201. FAX: (202) 260–9345.

SUPPLEMENTARY INFORMATION:

I. Background

Under Section 1130 of the Social Security Act (the Act), the Secretary of Health and Human Services (HHS) may approve child welfare waiver demonstration project proposals with a broad range of policy objectives.

In exercising her discretionary authority, the Secretary has developed a number of policies and procedures for reviewing proposals. The most recent expression of these policies and procedures may be found in the February 13, 1998 Information Memorandum cited above, a copy of which may be found at the ACF website at http://www.acf.dhhs.gov/program/cb/demonstrations or may be obtained from the National Clearinghouse on Child Abuse and Neglect Information, (800) 394–3366, internet address <nccanch@calib.com>. We are committed to a thorough and expeditious review of state proposals to conduct child welfare demonstrations.

II. Listing of New Proposals

As part of our procedures, we are publishing a notice in the **Federal Register** of all new proposals. This notice contains summaries of 17 proposals received by April 30, 1998. Each of the proposals contains an assurance that the proposed demonstration effort will be cost neutral to the federal government over the life of the proposed effort; and each proposal contains an evaluation component designed to assess the effectiveness of the project.

State: Arkansas

Description: The State of Arkansas proposes to use title IV–E funds to enhance mental health services available for children in foster care and children at risk of being placed in foster care, and thereby reduce barriers to permanency for those children. The State intends, in October, 1998, to implement a system for mental health managed care for all title XIX eligible children, and all children in DCFS foster care. Under this demonstration, the State would use title IV–E funds to

provide supplemental payment to the managed care capitated rate to (1) allow for previously unallowable services to title IV–E eligible children (Managed Care component); (2) provide specialized, collaborative case management services to a group of randomly selected foster children (some of whom may not be IV–E eligible) and children who are at risk for being placed in foster care because of their service needs, to identify and address barriers to permanency (FOCUS component); and (3) provide training to child welfare staff as well as others in the community to enhance participation in the project from agencies and persons outside DCFS.

Arkansas proposes to conduct a process evaluation as well as an evaluation to produce outcome data, and a cost/benefit analysis. The evaluation design for the collaborative case management services portion of the project is proposed as a design based on random assignment of children or families to treatment or control conditions.

The State requests waivers of title IV–E to allow the State to conduct a portion of the Demonstration on less than a Statewide basis, to allow the State to expend title IV–E funds for children and families who are not normally eligible, to allow the State to make payments for services that are not normally covered under Part E of title IV of the Act, and to allow the State to expend title IV–E funds for training of persons who are not normally eligible. The State also has requested a title XIX waiver under the authority of section 1915(b) of the Social Security Act to establish a mental health managed care system to reduce costs, prevent unnecessary and inappropriate utilization, and ensure access to quality mental health care for Medicaid recipients.

Contact Person: Lee Frazier, Director, Arkansas Department of Human Services, 329 Donaghey Plaza South, P.O. Box 1437, Little Rock, Arkansas 72203–1437, Phone: (501) 682–8650, Fax: (501) 682–6836.

State: Connecticut

Description: Connecticut's proposal has two distinct program components. The first proposes to use title IV–E funds to implement a subsidized guardianship program and to change case work practice to provide increased emphasis and support for guardianship as a viable permanency option for cases where reunification or adoption of children living with relative care givers is neither appropriate nor feasible. The second component proposes to conduct pilot demonstrations of a service delivery model in which a single lead agency would organize, manage and provide an array of services to address the specific needs of children who require placement in residential or group homes.

The goal of the proposed guardianship program is to provide another means of attaining permanency for children who would otherwise remain in foster care. The program would be implemented state-wide and would focus on children residing with relative caregivers. It would provide: (1) A monthly subsidy on behalf of the child payable to the guardian equal to the prevailing appropriate foster care rate; (2) a medical subsidy comparable to the medical subsidy for subsidized adoption (if the child has no private health insurance); and (3) a lump sum payment for one-time expenses resulting from the assumption of care for the child (when other resources are unavailable). Waivers would be required to allow for Federal IV–E reimbursement for payments to relative caregivers when a child leaves legal custody of the State agency, and for program administration and services that are not currently allowable under IV–E.

The proposed ''single contact/continuum of care'' program's goal is to test the effectiveness of the service delivery model in which the State's Child and Family agency (DCF) would contract with a single Lead Service Agency that would manage subcontracts and create an expanded network of regular and specialized services for children and youth with behavioral problems who are referred to residential or group homes.

The State hypothesizes that this demonstration project would decrease the length of stay in restrictive settings; increase treatment options for children and families; improve permanency outcomes for children and provide long-term stability in the community; and establish a more flexible, incentive-oriented fiscal environment for service providers. One or two pilot programs would be established to serve 30 children per pilot over a five year project period. The program would be targeted to DCF children aged 7 to 15. A 15 month service period, which includes a minimum of 3 months of aftercare, is projected for each child. Waivers are requested to allow the administrative and services costs to be IV–E reimbursable.

Contact Person: Robert Dakers, Department of Children and Families, 505 Hudson Street, Hartford, CT 06106–7107, Phone: (860) 550–6542, Fax: (860) 566–7947.

State: District of Columbia

Description: The District of Columbia proposes to test the ability of a partnership between the Child and Family Services Agency (CFSA) and neighborhood-based community collaboratives to improve service delivery for children in kinship placements. Teams of CFSA social workers matched with trained collaborative community workers would provide family preservation services to the kinship triad: the kinship caregiver, the parent and the child. CFSA hypothesizes that this public-private partnership would increase the number of children who achieve permanency, speed the permanency process, increase stability in kinship care families, increase outreach and education that promotes child safety and reduce the incidence of further abuse or neglect for children and families receiving these services, and reduce time in out-of-home placements and the number of new foster care placements.

To test its hypotheses, CFSA has requested waivers to permit title VI–E funds to be expended for services and individuals that are not eligible under existing law. The requested waiver would allow the District to be reimbursed for foster care services provided to children who are not IV–E eligible, including those who are living with kinship caregivers, and to allow adoption subsidy payments for children who are not IV–E eligible.

The District's proposed evaluation design would randomly assign eligible kinship triads to experimental and control groups. The experimental group would receive the team approach and the control group would receive traditional services from a social worker. The evaluation would measure: Changes in Child Safety through the number of new allegations, allegations after a case is closed, disruptions in placement, entries or re-entries into non-kinship foster care; Child Well-Being through the Child and Adolescent Functional Assessment Scale; and Child Permanency as indicated by adoption, legal custody or re-unification.

Contact Person: Ernestine Jones, General Receiver, Office of the General Receiver, Child and Family Services Agency, 900 Second Street, N.E., Suite 221, Washington, DC 20002, Phone: (202) 842–0888, Fax: (202) 842–2335.

State: Florida

Description: Florida proposes to demonstrate whether children and families can achieve better outcomes through: privatization, managed care, and Medicaid therapeutic service

integration. In response to a 1996 legislative mandate to private child welfare services, the Florida Department of Children and Families allowed community-based providers to operate five pilot projects. Waivers under a demonstration project would enable these providers to use State funds and federal title IV–E funds to purchase therapeutic services for children who do not meet Medicaid ''medical necessity'' restrictions for therapeutic services. In addition, at least one demonstration site would receive a capitation payment linked to the number of children living in poverty. Each site would then utilize this funding flexibility to reconfigure services. The state hypothesizes that this would expedite all aspects of permanency, improve family capacity to care for children, increase family involvement and the range of supports available to families, and increase youths' preparation for independence.

Florida proposes to compare the performance of selected comparison counties to the performance of the demonstration counties. The State's evaluation design would include outcome evaluation, process evaluation, cost analysis and cost benefit analysis. Outcome measures include safety and protection, permanency goals, stability and functioning and customer satisfaction. Process measures would examine policies, procedures, client flow, staffing expertise and levels, service types, duration, mix, timing and accessibility, assessment processes, and court, community and media relationships. A cost analysis would study all costs associated with the project and comparison counties. The cost-benefit analysis merges cost data with outcome data to determine the overall value of the outcomes.

Contact Person: Margaret Taylor, Florida Department of Children and Families, 1317 Winewood Boulevard, Tallahassee, Florida 32399–0700, Phone: (850) 922–0149, Email: Taylor __Margaret@dcf.state.fl.us.

State: Iowa

Description: Iowa proposes to fund community-based services to improve outcomes for children and families in the child welfare system using title IV-E funds. The State plans to build on the existing Decategorization Project areas and Innovation Zones to increase the capacity of local organizations to care for children and families and build service strategies for children and families in the child welfare system. The State believes this demonstration would efficiently reduce the amount of time children spend in out-of-home care and move children into permanent placements more quickly.

The State proposes to implement this demonstration in several counties or clusters and use a comparison group of counties to evaluate both the impact and the cost of using title IV-E funds flexibly. Under the State's plan, counties would present proposals for participating in the IV-E demonstration that focus on: (1) Diverting children from out-of-home care, including foster care, group care, residential care, and mental health or juvenile justice institutions; (2) providing for permanency for children quickly and effectively; and/or (3) reducing re-entry into out-of-home care. For each county's or cluster's proposal, the State is proposing that the eligibility determination for title IV-E be eliminated under the demonstration. To assess the demonstration project, the State proposes to compare demonstration counties or clusters to children in comparison counties or clusters. The evaluation would produce process, outcome, and cost/benefit information.

The State is requesting waivers of certain provisions of title IV-E which would allow Iowa to: (1) Use title IV-E funds to pay for additional services for children and families; and (2) spend title IV-E funds on children and families who would not normally be eligible for title IV-E.

Contact Person: Mary Nelson, Division Administrator for Adult, Children and Family Services, Iowa Department of Human Services, Hoover State Office Building, Des Moines, IA 50319–0114, Phone: (515) 281–5521, Fax: (515) 281–4597.

State: Kansas

Description: Kansas proposes to fund a demonstration project intended to ''support and enhance'' the new performance-based administration of the Kansas Child Welfare System. The Kansas Department of Social and Rehabilitation Services (SRS) intends to conduct a multi-faceted project consisting of a subsidized guardianship program, integrated child welfare training, enhanced drug/alcohol services, and subsidized family reintegration upon return home (aftercare). In addition, the initiative would compare the new case rate, performance-based payment system (already in place statewide) with the traditional fee-for-service payment system in order to determine which payment method produces better outcomes.

The State hypothesizes that: (1) The subsidized guardianship project would facilitate the permanency of children when adoption and reunification with their family is not feasible; (2) an integrated child welfare training project for private and public social service professionals aimed at supporting an integrated social service model with a ''single worker per family'' concept would provide social service staff with the tools needed to meet the needs of families, including preventing out-of-home placement; (3) a strengthened approach to drug and alcohol dependency assessment and treatment planning directed to IV-E eligible children and families would decrease the number of disruptions to placement and decrease the length of stay in out-of-home placement; and (4) a project making resources and services such as respite care, family support services, parenting education, family, individual, and group therapy, available to families upon reintegration of a child would prevent further disruption.

The proposed evaluation design would compare the fee-for-service delivery system to the case rate performance based delivery system. Since the SRS has already shifted all of the adoption and foster care delivery systems into the latter, it would be necessary to randomly select children to be placed ''outside the case rate.'' The random selection process would be applied to selected area offices which collectively represent 40% of the children served, and three of the five foster care regions. The State would measure outcomes such as amount of time for children to be placed with adoptive families, percentage of finalized adoptions within 12 months, disrupted placements, number of siblings placed together, number of placement changes, new substantiated claims of abuse or neglect, percentage of children placed within Regional boundaries, percentage of children returned to family or achieving permanence, re-entry into foster care, percentage of children achieving permanency and family satisfaction with services.

The proposed project would be cost neutral and would run for five years.

Contact Person: Teresa Markowitz, Commissioner, Kansas Department of Social and Rehabilitation Services, 915 SW Harrison Street, Topeka, Kansas 66612, Phone: (785) 368–6448, Fax: (785) 368–8159, Email: tamasrcfs.wpo.state.ks.us.

State: Maine

Description: Maine proposes a two-phase demonstration project. The first phase would involve the design and implementation of an adoption training

curriculum for mental health professionals and other service providers who would become expert in working with families in need of post-adoption services. The second aspect of the demonstration would phase in the purchase and delivery of post-adoption support services for families who adopt special needs children. The overall goals of the project are to increase the number of special needs children who are adopted and to decrease the number of disrupted adoptions. It is the State's hypothesis that increasing the array of supportive services available to families who elect adoption would promote family stability and reduce disruptions, as well as encourage other community members to consider adopting children with special needs. The State has proposed a five-year demonstration period.

The demonstration would be conducted in four test sites, two urban and two rural, from among the Department of Human Services district offices. At present, Maine has about 535 IV–E eligible children free for adoption.

The evaluation design calls for establishing a control and experimental group in each pair of selected sites, i.e., one urban control, one urban experimental, one rural control and one rural experimental. The State expects that a total of 200 children and families (100 control and 100 experimental) would participate in the study over the life of the demonstration. The experimental group would receive the expanded post-adoption services, while the control group would receive the current service mix.

Outcome measures would include the number of special needs adoptions, the incidence of disrupted adoptions, the average length of stay in foster care and the stability of the adoptive families.

Waivers are requested to enable the State to use title IV–E funds to provide services which are not normally allowed under title IV–E Adoption Assistance or title IV–E Foster Care.

Contact Person: Dawn Stiles, Department of Human Services, State House Station #11, Augusta, Maine 04333, Phone: (207) 287–5060, Fax: (207) 287–5282, TDD: (207) 287–4479.

State: Mississippi

Description: Mississippi proposes to expand the use of title IV–E funds to non-IV–E eligible children and families and to use title IV–E funds for any items or activities that would eliminate or reduce harm to children and families. The demonstration proposes to implement a Child-Focused Family Centered Practice Methodology, which emphasizes the safety and best interests of children through the elimination of harm-causing factors. The proposed project involves using title IV–E funds to provide services for children and families whether children are in State custody or not, including children in residential care. This project would involve the identification of services, the development of a service delivery system, the development of a business plan, the building of multi-disciplinary case management teams, and ongoing evaluation and program modification. It is the State's hypothesis for the demonstration that the expenditure of funds to benefit any child, regardless of IV–E eligibility, to reduce or eliminate factors that cause harm to that child, would demonstrate a reduction in harm to children. The demonstration would result in safer children due to the reduction of harm to children who are a part of the demonstration. The State has proposed a five year demonstration period. The demonstration would be conducted in eight selected counties, which are located in two Division of Family and Children's Services' (DFCS) regions.

The State proposes an evaluation design in which eligible children and families would be randomly assigned to experimental and control groups. The experimental group would receive a combination of existing or modified services along with newly created services. The control group would be served by the existing services only. The evaluation would compare results from the experimental group and control group. Outcome measures include: decrease in the proportion of children who experience subsequent abuse or neglect; increase in the proportion of children who remain permanently with their parental family; among those children placed outside of their parental home, increase in the proportion who are in placements in the community of their parental family and who are placed with relatives; decrease in the proportion of children placed in foster care; decrease in the average number of placements for children in foster care; decrease in the amount of time spent in foster care; an increase among children awaiting adoption in the proportion of children adopted and the speed of the process; where two or more siblings are placed outside of their parental home, increase in the proportion of sibling groups where siblings are placed in the same setting; and increase in the well-being of children.

Waivers are requested to allow the State to use title IV–E funds for children and families who are not normally eligible under title IV–E and to use title IV–E funds, including funds which would be reimbursed as costs of administration, for the provision of services.

Contact Person: Henry Goodman, Department of Human Services, 750 North State Street, Jackson, Mississippi 39202, Phone: (601) 873–6144, Fax: (601) 359–4477.

State: Montana

Description: Montana's Department of Public Health and Human Services (DPHHS) is requesting approval of a Child Welfare Demonstration Project, which would allow title IV–E funds to be used for a subsidized guardianship program. The demonstration would authorize a subsidized guardianship program for eligible children; provide a monthly guardianship subsidy, Medicaid and non-recurring costs associated with establishing legal guardianship, and provide federal financial participation in the costs of administration and training associated with the guardianship program.

Montana postulates that guardianship provides the child and family a legally recognized relationship, increases the sense of family by granting the caretakers in the family the right and responsibility to make important decisions regarding a child in their home, provides a more stable placement than does long term foster care and is less costly, due in part to a reduction in the administrative costs associated with foster care. The demonstration project would be statewide, for five years, and would include children on the state's seven reservations. The project would serve children 12 years old or older and would mirror the adoption assistance program as much as possible. The project is expected to be cost neutral. Comparison of the costs associated with the demonstration group and the control group will be used to determine the fiscal effect of the demonstration.

The Montana DPHHS is also considering joining a consortium of states in Region VIII, which would seek to demonstrate the impact of allowing IV–E funds to be provided as a direct pass through of federal funds to one or more tribes in Montana and in each of the other consortium States.

The State requests waivers to allow title IV–E funds to be used for children who are not IV–E eligible and for services which are not ordinarily reimbursable under title IV–E. The DPHHS intends to use random assignment of children to either a service or a control group, and will use an independent contractor to conduct the required evaluation.

Contact Person: Hank Hudson, Administrator, Child and Family

Services Division, Department of Public Health and Human Services, State of Montana, P.O. Box 8005, Helena, Montana 59604–8005, Phone: (406) 444–5900, Fax: (406) 444–2547.

State: Nebraska

Description: The Nebraska Health and Human Services System proposes to test local approaches to child welfare system change through a demonstration project. It is the State's hypothesis that the combination of flexible use of title IV–E funds and local integrated networks would: (1) Promote positive social and health outcomes and prevent negative outcomes for children and families; (2) improve the well-being of children who are at risk of, or actually require out-of-home placement; and (3) improve the family functioning and participation of child welfare involved families. The project would involve entities across the State, including three which have existing relationships with the State system, by forming local integrated networks to facilitate a better use of resources. The State would provide technical assistance, support and expectations for systems management. The effort is part of an ongoing Network Development Strategy that is being implemented Statewide.

The state estimates that a total of 3,240 children would be served through the demonstration project. Each site would utilize the flexible funds differently, so the outcome measures for each would be different. Sites are expected to use the waiver authority for purposes which include: promoting the wraparound process for each child and adolescent at high risk of out-of-home placement; focusing on community-based prevention, intensive community-based services, community re-integration of out-of-area high-needs children, and child and community safety and community ownership by developing a Managed Care Child Welfare system in the third year of the project; sustaining and enhancing the local service network, increasing parental, family and civic involvement, co-locating staff and integrated services, expanding choice and opportunities, and increasing communication and networking.

Nebraska is requesting waivers of title IV–E to permit reimbursement for expenditures made on behalf of children who are not IV–E eligible, and for purposes that do not ordinarily qualify for reimbursement under IV–E.

The State proposes to compare the demonstration sites with geographical areas that do not have flexible use of funds. The State would examine child safety, permanence, child and family well-being and community safety and responsibility outcomes.

Contact Person: John Mader, Program Specialist, Protection and Safety Division, Nebraska Health and Human Services System, 2345 North 60th Street, Lincoln, NE 68507, Phone: (402) 471–9364, Fax: (402) 471–9034, Email:john.mader@hhss.state.ne.us.

State: New Hampshire

Description: New Hampshire proposes to use title IV–E funds to hire a substance abuse specialist with expertise regarding child protective services who would conduct substance abuse assessments of parents where alcohol or other drug abuse is believed to be a factor contributing to the child's abuse or neglect. For those families in need of ongoing services, this staff person would also assist them in accessing intensive, community based substance abuse treatment services. It is the State's hypothesis that the provision of these immediate, targeted and intensive services would enable families better to provide a safe, nurturing environment for their children, resulting in the prevention of placement or a reduction in the length of time children remain in out-of-home care. The State has proposed a five year demonstration period.

The demonstration would be conducted in two District Offices of the State's child welfare agency: those located in Manchester and Nashua. December 1997 statistics showed 245 children in foster care in these districts who were IV–E eligible. Of these, 56% had caretakers in which substance abuse was a factor in their maltreatment.

The State proposes an evaluation design in which eligible families would be randomly assigned to experimental and control groups. The experimental group would receive the services of the substance abuse specialist while the control group would receive the current services mix. Outcomes for each group would be tracked. The State would examine outcomes including placement prevention, more timely reunification, more timely alternate permanency planning for children unable to return home, and cost savings as a result of improved permanency planning. The State expects approximately 120 children in the experimental condition and 120 in the control condition.

Waivers are requested in order to (a) serve children not otherwise eligible for IV–E (children at risk of but not in foster care); and (b) provide services not normally covered by IV–E (substance abuse assessment, referral and case management services).

Contact Person: Nancy Rollins, Division for Children, Youth and Families, New Hampshire Department of Health and Human Services, 6 Hazen Drive, Concord, NH 03301–6522, Phone: (603) 271–4451, Fax: (603) 271–4729, Email: nrollins@dhhs.state.us.

State: New Jersey

Description: New Jersey seeks to implement concurrent permanency planning and the use of the fost-adopt model of foster care. In New Jersey, the average length of stay for children who are six years old or less with a goal of adoption is 25 months in their current placement. The State proposes to use title IV–E funding for services and activities designed to reduce to 15 months, the time in foster care preceding the initiation of termination of parental rights/initiation of permanency, for children whose permanency goal is adoption as envisioned by the Adoption and Safe Families Act. The state would hire case managers specifically dedicated to the project to apply the permanency reform/fost-adopt model for both title IV–E eligible and non-eligible children. Funds would also be used for enhanced legal services and substance abuse services.

The proposed demonstration builds upon and further elaborates the permanency reform project underway in Union, Middlesex and Essex counties funded by the Children's Bureau under the Adoption Opportunities program. Now completing its second year of a planned three years of operation, this program utilizes a variety of methods including concurrent permanency planning by child protection and adoption staff, mediation services, recruitment and training of special fost-adopt homes, and use of post-adoption counseling therapists to address the issues of the birth and fost-adopt families. By building on the curriculum development, cross training, outreach to the legal community, and recruitment and support of fost-adopt homes already underway, the demonstration project would facilitate acceleration of the project schedule to Essex county, which contributes the largest number of children to the State's foster care caseload.

New Jersey hypothesizes that allocating case management staff and other resources to the dedicated units would reduce foster care costs and lengths of stay and lead to more adoptive placements and/or more stable relative placements than would occur in the comparison groups over the five years of the project. Assignment to comparison groups will be randomized,

and the evaluation would produce process and outcome data, as well as cost/benefit information.

The State requests waivers to permit the use of title IV–E funds for purposes not ordinarily eligible for federal funding, and for children or families who are not IV–E eligible.

Counties not involved in the project would serve as the control group, and after the first year the project would be extended to other randomly selected counties.

Contact Person: Michele K. Guhl, Deputy Commissioner, Division of Youth and Family Services, P.O. Box 717, Trenton, New Jersey 08625–0717, Phone: (609) 292–6920, Fax: (609) 984–0507.

State: New Mexico

Description: The New Mexico project would provide title IV–E funding as a direct pass through of federal funds to identified Tribes, simulating direct federal funding of Tribes under title IV–E in order to test this concept. In addition, the State is proposing the establishment of a subsidized guardianship program for Tribal children, which the State says would allow permanency while respecting Tribal customs. The demonstration project would test both simulated direct funding and flexible use by Tribes of IV–E funds.

Currently, title IV–E funding is extended by the State to five Indian Tribes through a Joint Powers Agreement (JPA). The JPA spells out procedures to be followed in cases of child abuse and neglect, including how investigations are to be conducted, how and when jurisdiction is to be transferred, and how and when parties are to be notified. It also provides that the State would pay Tribes to cover the foster care maintenance and adoption assistance for IV–E eligible children in Tribal custody.

The State proposes a comparison design for the evaluation. The five Tribes currently operating under JPA's would serve as the comparison sites. Five additional Tribes would be selected as the pilot sites. The selection of the pilot sites would be purposive, based on the Tribes' willingness to participate and their capacity in terms of the human and material resources and infrastructure currently in place to manage the IV–E Program. A five year project is proposed.

Title IV–E waivers are requested to allow for the provision of non-recurring expenses and ongoing assistance payments for guardians assuming responsibility in those instances where Tribal Courts are reluctant to terminate parental rights, to provide Federal Financial Participation for individuals and purposes that are not IV–E eligible.

Contact Person: Maryellen Strawniak, Acting Director, Protective Services Division, PO Drawer 5160, Santa Fe, New Mexico 87502, Phone: (505) 827–8400, Fax: (505) 827–8480.

State: Oklahoma

Description: Oklahoma proposes a project to provide assisted guardianship to the permanency continuum for long-term foster care children for whom adoption or reunification is not an option. The goal of the project is twofold: to determine if quality, permanency outcomes can be achieved for these children; and to assess the impact of providing services, e.g., post-placement services, on achieving these outcomes.

The State anticipates that assisted guardianships would provide a permanency plan option for children in long-term foster care; alleviate the financial barriers for persons who desire to obtain guardianship, thereby enhancing the prospects of permanency for these children; and provide stability for children. In addition, the demonstration would provide an opportunity to test the impact of different levels of services and supports to children and families served by the project in achieving quality permanency outcomes for children. The State also anticipates that the project would reduce the workload for child welfare staff, allowing them time to do expedited permanency planning for the remaining children.

The State currently has approximately 1,100 children statewide in long-term foster care; 15 percent of these children are Native American. Some of the Native American children are in the legal custody of the Department while others are in tribal custody. The State estimates that 550 of these children would be potentially eligible for this project, with approximately 200 children and families actually served under the project. The State proposes three different levels or categories of services and supports to children and families who participate in the demonstration, with each category having 50–100 children and families assigned to it. The State would test the permanency outcomes for children in relation to the level or category of services provided to each family. The State proposes a statewide, five-year demonstration project.

Oklahoma proposes to randomly assign children to one of the following: a control group, which would receive the current service mix; Target Group I, which would receive all identified waiver services and a full range of on-going post placement services; or Target Group II which would receive all initial services included in the waiver, but limited on-going post placement services. To assess the project, Oklahoma proposes to measure outcomes, processes and cost-benefits.

The State requests waivers of title IV–E provisions regarding use of title IV–E funds to pay: a monthly subsidy for children in guardianship arrangements; the cost of legal fees required to obtain guardianship; and the costs of providing a range of services and supports to families and children in guardianship situations (similar to the services received by adoptive families and children).

Contact Person: Mike Moore, Division of Children and Family Services, P.O. Box 25352, Oklahoma City, OK 73125, Phone: (405) 522–4487, Fax: (405) 521–4373.

State: Texas

Description: Texas proposes a Child Welfare Demonstration project with three components over five years. The components affect kinship care, adoption and Texas' Permanency Achieved through Coordinated Efforts (PACE) project.

First, Texas proposes to implement a kinship care program as part of Protective and Regulatory Services (PRS) and requests a waiver of title IV–E to utilize otherwise restricted funds for foster care assistance, in conjunction with title IV–B funds, to provide upfront financial assistance and services for kinship care placements. The state hypothesizes that if families are provided financial assistance for the costs of integrating the child into the home during the first year of care and then supplementing caretaker expenses thereafter to support the child's care, are trained, and take part in support groups, more placements would be made and would succeed, to the benefit of the families and children served by PRS. The length of time in foster care would decline, freeing up funds devoted both to staff and foster care maintenance.

Texas proposes to implement the kinship initiative in El Paso and in Corpus Christi, Laredo and the Lower Rio Grande Valley. To evaluate this component, the State would implement a matched-group comparison of three groups: (1) Those that received the Integration Package, which would consist of startup money, and the Training and Services Package; (2) those that received only the Training and Services Package; and (3) those that receive neither package. The state

would measure: implementation through qualitative means; process outcomes through the provision and use of incentives, provision and use of services and parenting skills and knowledge; and outcome through case flow, duration of time in care, patterns of disruption and rate of dissolution and/or re-entry. A cost-benefit analysis would asses whether the costs of the demonstration project are justified by the benefit produced.

The second proposed component of Texas' demonstration project is to use title IV–E funds for the assessment of prospective adoptive children and families and to allow for joint training with Child Placing Agencies (CPA) of CPA professionals providing adoption and permanency services. The state's hypotheses are that a more comprehensive assessment would reduce the disruption and dissolution rate of PRS adoptions, decrease the average length of time that children spend in foster care prior to adoptive placement, increase satisfaction among children and families, decrease the number of placements before placement in an adoptive home, and increase the number of children leaving foster care for placements with adoptive families. These improvements would speed permanency and reduce expenditure of IV–E funds.

Texas proposes to implement this demonstration project in Harris County, Houston and the counties surrounding Houston. To evaluate this project, the state proposes to compare one region which would receive an Enhanced Training condition and an Enhanced Assessment condition, to other regions and to statewide historical data. The evaluation would include implementation measures of a qualitative nature; process measures including pool of potential families, assessment, quality of placements and extension of training; and outcome measures such as case flow, duration of time in care, patterns of disruption and rate of dissolution and/or reentry into the Child Protective Services System. A cost benefit analysis would assess whether the costs of the project are justified by the benefits produced.

The third component of the proposal is to utilize title IV–E funds flexibly as part of Phase II of the State's PACE project. The state-funded Phase I of PACE is designed to contract for a network of private providers to provide a continuum of services designed to improve substitute care service and enhance PRC permanence initiatives. The State requests a waiver of title IV–E for Phase II of PACE, to pay for foster care services and child and family services on a per-child case rate or capitated rate, to the network of providers established in Phase I. PRS would test the impact of the case rate on an expansion of service delivery model that is developed in Phase I.

The state hypothesizes that the new service delivery system would result in improved child functioning, increased stability of placements, shortened duration of care, reduced rate of return to foster care, and maintenance of least restrictive placements. The state hypothesizes that for Phase II, capitated rates would result in: cost neutrality, the ability to provide a case rate for daily care and supervision reimbursement, increased incentives for providers to provide treatment and services to improve children's level of care (LOC), increased ability to provide wraparound services for children for quicker movement to permanency or for placement in the least restrictive environment and increased incentive to provide preventive services to lessen the need for high cost treatment/residential services. Children would be placed by random assignment into an equal number of PRS and Primary Contractor foster homes.

The state evaluation proposal would compare the outcomes of four subgroups of LOC children in PACE Phase II, to three types of comparison groups: randomly assigned control groups, statistically matched cross-sectional comparison groups, and historical comparison-sectional comparison. The state would measure: implementation through qualitative means; process through continuity of care, expanded services and satisfaction with services; and outcome through change in LOC, change in level of care domains, change in rated individual goals, duration of time, patterns of disruption, rate of reentry and rate of maltreatment recurrence. A cost-benefit analysis would assess whether the costs of the demonstration project are justified by the benefits produced.

Contact Persons: Texas Department of Protective and Regulatory Services, 701 W. 51st Street, P.O. Box 149030, Austin, TX 78714–9030, Karen Eells (Kinship Care & Adoption), Judy Rouse (PACE), Phone: (512) 438–5712, Fax: (512) 438–3394.

State: Washington

Description: Washington State proposes to adopt a managed care approach for services such as mental health and family preservation to children who are IV–E eligible and children who are not. Under the demonstration project, the State would make monthly payments for the care of children with complex needs who have been screened into the project. These funds would be pooled with other resources to contract with local service providers for oversight of treatment plan development, implementation, screening and training. The State postulates that such coordination between the State and various local service providers might result in a better use of resources, while also providing individualized and comprehensive wraparound services. The State hopes that such an approach would enable it to tailor services to meet the real needs of families and children particularly those children with special needs and problems.

Washington State would begin the project in Spokane county and phase in other counties until a maximum of ten counties were included in the demonstration project. The State would randomly assign children to either the control or demonstration. The State proposes to evaluate the project through random assignment comparison, pre/post comparison and a cost-benefit analysis.

The State requests waivers of certain sections of title IV–E and related regulations to allow expenditures on behalf of children and families not normally eligible under title IV–E, and to allow expenditures for services not normally permitted under title IV–E. The State is also considering the possibility that it might request a waiver of title XIX pertaining to Behavioral Rehabilitation Services.

Contact Person: Tammi Erickson, Office Chief, Office of Federal Funding and Victims' Assistance, State of Washington Department of Social and Health Services, P.O. Box 45710, Olympia, WA 98504–5710, Phone: (360) 902–7936, Fax (360) 902–7903.

State: West Virginia

Description: West Virginia proposes a school based services project, the Cabell County Adopt-A-Middle-School project. The project would provide a variety of services for children in middle schools (grades 6, 7, and 8) and their families, whether or not they would otherwise qualify for the title IV–E. The purpose of the service provision is to create a seamless social support system that strengthens the ability of children and families to handle stress affecting their lives by: facilitating school-based support for child victims of abuse and neglect who can be kept in the home and community; providing early identification of youth with delinquent tendencies in order to link the child and family with services prior to the initiation of court action; utilizing home

and community-based services whenever possible; ensuring EPSDT screening and appropriate treatment for children in foster care; and assisting the Department in maintaining linkages with schools for out-of-home placement, facilitate return to school for the child and family, and assist students who are new to the school district due to foster or adoptive placements.

To accomplish these services, WV proposes a two-phase demonstration. Phase one would pair community social services agencies with middle schools in Cabell County as resources for information, assessments, and referrals. Phase two proposes the hiring of full-time prevention coordinators for each school, beginning with two schools and phasing in additional schools as resources permit. Coordinators would be school-based during the school year, would serve as initial case managers and advocates for the child/family, provide direct services, and provide follow-up with families over the summer months.

The State's hypothesis is that middle school-based prevention and early intervention programs would result in a reduction of the number of children in foster care, the average expense and intensity of foster care, and the average number of days children are in foster care. This project would be limited to Cabell County, in southwestern WV, which includes six middle schools. The project is proposed to begin in September 1998 and would run through August 2003.

The State requests waivers of title IV–E to permit reimbursement for amounts expended for children and families and for purposes that are not normally eligible under IV–E.

For evaluation purposes, the state proposes to identify a control-group county. Outcome measures would include the number of children entering foster care, the number of placements in community-based or family settings, and the number of days the children are in foster care. Process evaluation components include frequency and types of intervention activities. An outside evaluator would conduct the evaluation.

Contact Person: Joan E. Ohl, Secretary, Department of Health and Human Resources, Bureau of Children & Families/Office of Social Services, Charleston, West Virginia 25305, Phone: (304) 558–0684, Fax: (304) 558–1130.

Dated: June 25, 1998.

James A. Harrell,

Deputy Commissioner, Administration on Children, Youth and Families.

[FR Doc. 98–18437 Filed 7–9–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0482]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on information collection provisions relating to the regulation of FDA's adverse experience reporting (AER) for licensed biological products and general records.

DATES: Submit written comments on the collections of information by September 8, 1998.

ADDRESSES: Submit written comments on the collections of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonnalynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collections of information listed below.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Adverse Experience Reporting for Licensed Biological Products—21 CFR 600.80, 600.81, and 600.90; and General Records—21 CFR 600.12 (OMB Control Number 0910–0308)—Extension

Under the Public Health Service Act (42 U.S.C. 262), FDA is required to ensure the marketing of only those biological products that are safe and effective. FDA must therefore be informed of all adverse experiences occasioned by the use of licensed biological products. FDA issued the adverse experience reporting requirements to enable FDA to take actions necessary for the protection of the public health in response to reports of adverse experiences related to licensed biological products. The primary purpose of FDA's adverse experience reporting system is to flag potentially serious safety problems with licensed biological products, focusing especially on newly licensed products. Although premarket testing discloses a general safety profile of a new drug's comparatively common adverse effects, the larger and more diverse patient populations exposed to the licensed biological product provides the opportunity to collect information on rare, latent, and long-term effects. Reports are obtained from a variety of sources, including patients, physicians, foreign regulatory agencies, and clinical investigators. Information derived from

the adverse experience reporting system contributes directly to increased public health protection because such information enables FDA to recommend important changes to the product's labeling (such as adding a new warning), to initiate removal of a biological product from the market when necessary, and to assure the manufacturer has taken adequate corrective action if necessary.

Manufacturers of biological products for human use must also keep records of each step in the manufacture and distribution of products including any recalls of the product. The recordkeeping requirements serve preventative and remedial purposes. These requirements establish accountability and traceability in the manufacture and distribution of products, and enable FDA to perform meaningful inspections.

Section 600.12 (21 CFR 600.12) requires that all records of each step in the manufacture and distribution of a product be made and retained for no less than 5 years after the records of manufacture have been completed or 6 months after the latest expiration date for the individual product, whichever represents a later date. In addition, records of sterilization of equipment and supplies, animal necropsy records, and records in cases of divided manufacturing of a product are required to be maintained. Section 600.12(b)(2) requires complete records to be maintained pertaining to the recall from distribution of any product.

Section 600.80(c)(1) (21 CFR 600.80(c)(1)) requires the licensed manufacturer to report each adverse experience that is both serious and unexpected, regardless of source, as soon as possible but in any case within 15 working days of initial receipt of the information. Section 600.80(e) requires licensed manufacturers to submit a 15-day alert report obtained from a postmarketing clinical study only if there is a reasonable possibility that the product caused the adverse experience. Section 600.80(c)(2) requires the licensed manufacturer to report each adverse experience not reported under paragraph (c)(1) at quarterly intervals, for 3 years from the date of issuance of the product license, and then at annual intervals. The majority of the periodic reports will be submitted annually since a large percentage of the current licensed biological products have been licensed longer than 3 years. Section 600.80(i) requires the licensed manufacturers to maintain for a period of 10 years records of all adverse experiences known to the licensed manufacturer, including raw data and any correspondence relating to the adverse experiences. Section 600.81 (21 CFR 600.81) requires the licensed manufacturer to submit information about the quantity of the product distributed under the product license, including the quantity distributed to distributors at an interval of every 6 months. The semiannual distribution report informs FDA of the quantity, the lot number, and the dosage of different products. Section 600.90 (21 CFR 600.90) requires a licensed manufacturer to submit a waiver request with supporting documentation when asking for waiving the requirement that applies to them under §§ 600.80 and 600.81.

Respondents to this collection of information are manufacturers of biological products. In fiscal year (FY) 1996, there were approximately 72 licensed manufacturers, 3 of which submitted waiver requests under § 600.90 and were exempt from these AER requirements. This number excludes those manufacturers who produce blood and blood components and in vitro diagnostic licensed products because they are specifically exempt from the regulations. In FY 1996, there were 1,616 15-day alert reports, 5,903 periodic reports and 464 distribution reports submitted to FDA. The number of 15-day alert report for postmarketing studies as stated in § 600.80(e) was minimal and is included in the total number of 15-day alert reports. The burden hours required to complete the MedWatch Form for § 600.80(c)(1), (e), and (f) are reported under OMB Control No. 0910–0291. FDA estimates the burden of this collection of information as follows:

TABLE 1.—Estimated Annual Reporting Burden[1]

21 CFR Section	No. of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
600.80(c)(1) and 600.80(e)	69	23.4	1,616	1	1,616
600.80(c)(2)	69	85.6	5,903	1	5,903
600.81	69	6.7	464	1	464
600.90	3	1	3	1	3

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

There are approximately 391 licensed manufacturers of biological products. However, the number of recordkeepers listed for § 600.12(a) through (e) excluding (b)(2) is estimated to be 102. This number excludes manufacturers of blood and blood components because their burden hours for recordkeeping have been reported under 21 CFR 606.160 in OMB Control No. 0910–0116. The recordkeeping burden is based on the number of lots released (9,027), the number of recalls made (710) and the total number of AER reports received (7,519) for FY 1996. FDA estimates that the average time associated with recordkeeping per lot is 32 hours, for recalls is 24 hours, and for adverse experience reports is 1 hour. FDA estimates the burden of this recordkeeping as follows:

TABLE 2.—Estimated Annual Recordkeeping Burden[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
600.12	102	88.5	9,027	2,832	288,864
600.12(b)(2)	391	1.8	710	43	16,813
600.80(i)	69	109	7,519	109	7,519

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 29, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–18402 Filed 7–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97N–0510]

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by August 10, 1998.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attention: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Current Good Manufacturing Practice Regulations for Medicated Feeds (21 CFR Part 225) (OMB Control Number 0910–0152—Reinstatement)

Under section 501 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 351), FDA has the statutory authority to issue current good manufacturing practice (cGMP) regulations for drugs, including medicated feeds. Medicated feeds are administered to animals for the prevention, cure, mitigation or treatment of disease, or growth promotion and feed efficiency. Statutory requirements for cGMP's have been codified under part 225 (21 CFR part 225). Medicated feeds that are not manufactured in accordance with these regulations are considered adulterated under section 501(a)(2)(B) of the act. Under part 225, a manufacturer is required to establish, maintain, and retain records for a medicated feed, including records to document procedures required during the manufacturing process to ensure proper quality control is maintained. Such records would, for example, contain information concerning receipt and inventory of drug components, batch production, laboratory assay results (i.e., batch and stability testing), labels, and product distribution.

This information is needed so that FDA can monitor drug usage and possible misformulation of medicated feeds, to investigate violative drug residues in products from treated animals and to investigate product defects when a drug is recalled. In addition, FDA will use the cGMP criteria in part 225 to determine whether or not the systems and procedures used by manufacturers of medicated feeds are adequate to ensure that their feeds meet the requirements of the act as to safety and also meet their claimed identity, strength, quality, and purity, as required by section 501(a)(2)(B) of the act. A license is required when the manufacturer of a medicated feed involves the use of a drug or drugs which FDA has determined requires more control because of the need for a withdrawal period before slaughter or carcinogenic concerns. Conversely, for those medicated feeds for which FDA has determined that the drugs used in their manufacture need less control, a license is not required and the recordkeeping requirements are less demanding. The respondents to this collection of information are commercial feed mills and mixer-feeders.

TABLE 1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSE HOLDERS)[1] [2]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.42(b)(5) through (b)(8)	1,600	24	38,400	0.41	16,000
225.58(c) and (d)	1,600	24	38,400	0.25	9,600
225.80(b)(2)	1,600	24	38,400	0.16	6,400
225.102(b)(1) through (b)(5)	1,600	24	38,400	1.0	38,400
225.110(b)(1) and (b)(2)	1,600	24	38,400	0.25	9,600
225.115(b)(1) and (b)(2)	1,600	24	38,400	0.25	9,600
Total burden hours					89,600

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Commercial feed mills.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSE HOLDERS)[1] [2]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.42(b)(5) through (b)(8)	200	3	600	0.16	100
225.58(c) and (d)	200	3	600	0.16	100
225.80(b)(2)	200	3	600	0.083	50
225.102(b)(1) through (b)(5)	200	3	600	0.5	300
225.110(b)(1) and (b)(2)	200			[3]	
225.115(b)(1) and (b)(2)	200			[3]	

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (REGISTERED LICENSE HOLDERS)[1] [2]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
Total burden hours					550

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Mixer-feeders.
[3] There is no burden because medicated feeds are consumed on site (§ 225.110 *Distribution records*; § 225.115 *Complaint files*).

TABLE 3.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED)[1] [2]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.142	13,000	24	316,800	0.41	132,000
225.158	13,000	24	316,800	0.25	79,200
225.180	13,000	24	316,800	0.16	52,800
225.202	13,000	24	316,800	1.5	475,200
Total burden hours					739,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Commercial feed mills.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN (NONREGISTERED)[1] [2]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
225.142	45,000	3	135,000	0.16	22,500
225.158	45,000	3	135,500	0.16	22,500
225.180	45,000	3	135,500	0.083	11,250
225.202	45,000	3	135,500	0.5	67,500
Total burden hours					123,750

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Mixer-feeders.

The estimate of the times required for record preparation and maintenance is based on agency communications with industry. Other information needed to calculate the total burden hours (i.e., number of recordkeepers, number of medicated feeds being manufactured, etc.) is derived from agency records and experience.

Dated: June 30, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–18398 Filed 7–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 96E–0452]

Determination of Regulatory Review Period for Purposes of Patent Extension; VERLUMA™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for VERLUMA™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biological product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the

length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biological product VERLUMA™ (nofetumomab). VERLUMA™ is indicated for the detection of extensive stage disease in patients with biopsy confirmed, previously untreated small cell lung cancer. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for VERLUMA™ (U.S. Patent No. 4,897,255) from NeoRx Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 9, 1997, FDA advised the Patent and Trademark Office that this human biological product had undergone a regulatory review period and that the approval of VERLUMA™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for VERLUMA™ is 3,360 days. Of this time, 925 days occurred during the testing phase of the regulatory review period, 2,435 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 351 of the Public Health Service Act became effective:* June 11, 1987. The applicant claims September 4, 1987, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 11, 1987, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act:* December 21, 1989. FDA has verified the applicant's claim that the Product License Application (PLA) for VERLUMA™ (PLA 90–0150) was initially submitted on December 21, 1989.

3. *The date the application was approved:* August 20, 1996. FDA has verified the applicant's claim that PLA 90–0150 was approved on August 20, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,298 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 6, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 29, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–18408 Filed 7–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97E–0061]

Determination of Regulatory Review Period for Purposes of Patent Extension; STROMECTOL®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for STROMECTOL® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product STROMECTOL® (ivermectin). STROMECTOL® is indicated for treatment of strongyloidiasis and onchocerciasis. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for STROMECTOL® (U.S. Patent No. 4,199,569) from Merck & Co., Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated March 7, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the

approval of STROMECTOL® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for STROMECTOL® is 2,291 days. Of this time, 2,055 days occurred during the testing phase of the regulatory review period, while 236 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: August 17, 1990. The applicant claims July 17, 1990, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was August 17, 1990, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: April 1, 1996. The applicant claims March 29, 1996, as the date the new drug application (NDA) for STROMECTOL® (NDA 50–742) was initially submitted. However, FDA records indicate that NDA 50–742 was submitted on April 1, 1996.

3. *The date the application was approved*: November 22, 1996. FDA has verified the applicant's claim that NDA 50–742 was approved on November 22, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,026 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 6, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 23, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–18400 Filed 7–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97E–0359]

Determination of Regulatory Review Period for Purposes of Patent Extension; Flowmax™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Flowmax™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Flowmax™ (tamsulosin hydrochloride). Flowmax™ is indicated for the treatment of the signs and symptoms of benign prostatic hyperplasia (BPH). Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Flowmax™ (U.S. Patent No. 4,868,216) from Yamanouchi Pharmaceutical, and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated November 7, 1997, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Flowmax™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that the FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Flowmax™ is 3,529 days. Of this time, 3,163 days occurred during the testing phase of the regulatory review period, 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: August 19, 1987. FDA has verified the applicant's claim that the date the investigational new

drug application became effective was on August 19, 1987.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: April 15, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for Flowmax™ (NDA 20–579) was initially submitted on April 15, 1996.

3. *The date the application was approved:* April 15, 1997. FDA has verified the applicant's claim that NDA 20–579 was approved on April 15, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,669 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before September 8, 1998, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before January 6, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 23, 1998.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 98–18407 Filed 7–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Antimicrobial Drugs and Resistance; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss the development of drug products for the treatment of resistant bacteria, including selective spectrum agents. The purpose of the meeting is to provide information on the agency's plans for future public scientific discussions of issues unique to the development of these drug products and to invite members of the public to provide comments on the agency's plans.

DATES: The public meeting will be held on Tuesday, July 28, 1998, from 2 p.m. to 6 p.m.

ADDRESSES: The public meeting will be held in conference rooms G and H, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Thomas H. Hassall, Center for Drug Evaluation and Research (HFD–104), Food and Drug Administration, 9201 Corporate Blvd., Rockville, MD 20850, 301–827–2489.

SUPPLEMENTARY INFORMATION: FDA will hold a public meeting on July 28, 1998, to discuss its plans for a presentation at a fall 1998 advisory committee meeting and possible future meetings on the development of drug products to treat resistant bacteria, including selective spectrum agents. At the fall 1998 advisory committee meeting, FDA plans to discuss issues unique to the development of such products, including clinical trial design and labeling issues. At the meeting, FDA will present its thoughts on the issues that should be presented to the advisory committee and will solicit public input on the structure of the discussion and additional issues that should be presented.

There is no registration for this meeting, however, space is limited. Persons interested in attending the meeting should contact the person listed above.

An agenda for the public meeting will be available 2 weeks before the meeting, via the Internet using the World Wide Web (WWW). To connect to the CDER home page, type ''http://www.fda.gov/cder'' and go to the ''What's Happening'' section.

Dated: July 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–18397 Filed 7–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

1998 FDA Science Forum—Biotechnology: Advances, Applications, and Regulatory Challenges

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration's (FDA's) Office of Science is announcing the following meeting: ''1998 FDA Science Forum—Biotechnology: Advances, Applications, and Regulatory Challenges.'' The Forum will bring FDA research and review scientists together with representatives of industry, academia, Government agencies, consumer groups, and the public to discuss the impact of the enormous advances in biotechnology on product development and regulation.

Date and Time: The meeting will be held on Tuesday and Wednesday, December 8 and 9, 1998; registration from 7:00 a.m. to 8:30 a.m.; meeting from 8:30 a.m. to 6:00 p.m. on December 8, and 8:30 a.m. to 5:00 p.m. on December 9.

Location: The meeting will be held at the Washington Convention Center, rms. 29–32 (lower level) and Hall C (upper level) 900 Ninth Street, NW., Washington, DC 20001.

Contact: American Association of Pharmaceutical Scientists at <meetings@aaps.org>, 703–518–8429, or Susan A. Homire, Food and Drug Administration, Office of Science (HF–32), 5600 Fishers Lane, Rockville, MD, 20857, 301–827–3366, e-mail <shomire@bangate.fda.gov>.

Registration: Registration information will be available in mid-July. Attendance will be limited; therefore, interested parties are encouraged to register early.

If you need special accommodations due to a disability, please contact the American Association of Pharmaceutical Scientists at least 3 weeks in advance.

Agenda: The program will encompass bioengineered products, novel therapeutic and preventive approaches, diagnostics and detection methodologies, and safety and efficacy

assessment. Regulatory issues related to standards and product quality and the impact of the Food and Drug Administration Modernization Act (FDAMA) will also be addressed. The Forum will feature plenary lectures and focused discussion groups that include FDA, industry, and university leaders in the field, on the following topics: (1) ''Biofarming and biopharming'' (bioengineered plants and animals as sources of foods and drugs); (2) diagnostics and detection methods; (3) microbial pathogens, antibiotics, and resistance; (4) therapeutic and preventive agents: Novel therapies, gene therapy, cell and tissue engineering, and vaccines; (5) new models/methods for safety and efficacy assessment; and (6) regulatory challenges: Standards, product quality, FDAMA and impact on biotechnology regulation, and public acceptance of novel products.

The meeting is co-sponsored by FDA, the American Association of Pharmaceutical Scientists, and the FDA Chapter of Sigma Xi, the Scientific Research Society.

Dated: June 30, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–18399 Filed 7–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0495]

Prescription Drug User Fee Act, ''PDUFA II Five-Year Plan;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of an internal planning document entitled ''PDUFA II Five-Year Plan.'' This plan is intended to show FDA's anticipated prescription drug user fee revenues and planned expenditures of the fee revenues over the 5-year period from 1998 through 2002. The plan is designed to assist in achieving the new goals for the drug review process under the Prescription Drug User Fee Act of 1992 (PDUFA), which was amended and extended through the year 2002 by the Food and Drug Administration Modernization Act of 1997 (FDAMA). The amended and extended PDUFA is referred to as PDUFA II.

DATES: Written comments my be provided at any time and will be considered as the agency makes annual adjustments to the plan in the second quarter of each fiscal year.

ADDRESSES: Copies of this document are available on the Internet at ''www.fda.gov/oc/pdufa2/5yrplan.html''. For those without Internet access, single copies of this plan may be obtained from the Division of Management Systems and Policy (HFA–300), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Please send a self-addressed adhesive label to assist that office in processing your request. Submit written comments on the plan to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Frank P. Claunts, Division of Management Systems and Policy (HFA–300), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5501.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of an internal planning document entitled ''PDUFA II Five-Year Plan.'' PDUFA was amended and extended through the year 2002 by FDAMA. The amended and extended PDUFA is referred to as PDUFA II. PDUFA II authorizes appropriations and fees that will provide FDA with resources to sustain the drug review staff developed in the last 5 years and to achieve the even more stringent new goals.

The plan begins with a statement of purpose, provides background information on PDUFA and a summary of the new goals, and discusses the 10 major assumptions on which the plan is based. Included is the assumption that this plan is dynamic and will be reassessed each fiscal year through 2002. The individual plans of agency components with major PDUFA responsibilities are summarized, followed by a summary of associated expenditures and an agency summary.

In our continuing efforts to maximize the availability and clarity of information about our review processes and plans, we are sharing this plan with all who have an interest and making it available on the Internet. We welcome comments and will consider them in the future as annual adjustments are made to the plan.

Interested persons, may at any time, submit written comments to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance document and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 3, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–18401 Filed 7–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0512]

Draft ''Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the FDA Form 356h, Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance document entitled ''Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the FDA Form 356h, Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use.'' The draft guidance document is intended to assist applicants in the preparation of the content and format of the chemistry, manufacturing, and controls (CMC) section and the establishment description section of a biologics license application (BLA), revised Form FDA 356h, for human blood and blood components intended for transfusion or for further manufacture. In addition, the draft guidance document provides assistance for the completion of the BLA. This action is part of FDA's continuing effort to achieve the objectives of the President's ''Reinventing Government'' initiatives and the Food and Drug Administration

Modernization Act of 1997 (Modernization Act), to reduce unnecessary burdens for industry without diminishing public health protection.

DATES: Written comments may be submitted at any time, however, comments should be submitted by September 8, 1998, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of ''Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the FDA Form 356h, Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use'' to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research, Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist that office in processing your requests. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the FDA Form 356h, Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use.'' The draft document, when finalized, is intended to provide instructions on the completion of the revised Form FDA 356h, including CMC and establishment description sections for human blood and blood components intended for transfusion or for further manufacture. In the **Federal Register** of July 8, 1997 (62 FR 36558), FDA announced the availability of a new harmonized Form FDA 356h entitled ''Application to Market a New Drug, Biologic, or an Antibiotic for Human Use.'' The new harmonized form is intended to be used by applicants for all drug and biological products, to include blood and blood components. The new harmonized form when fully implemented will allow biological product manufacturers to submit a single application, the BLA, instead of two separate license application submissions, a product license application (PLA) and an establishment license application (ELA).

The draft guidance document represents the agency's current thinking on content and format of the CMC and establishment description information sections of a license application for human blood and blood components intended for transfusion or for further manufacture. 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. As with other guidance documents, FDA does not intend this document to be all inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Requests for Comments

The draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the draft guidance document. Written comments may be submitted at any time, however, comments should be submitted by September 8, 1998, to ensure adequate consideration in preparation of the final document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments and requests should be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document using the World Wide Web (WWW). For WWW access, connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: June 30, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–18404 Filed 7–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0483]

Draft ''Guidance for Industry: In the Manufacture and Clinical Evaluation of In Vitro Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Virus Type 1;'' Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance document entitled ''Guidance for Industry: In the Manufacture and Clinical Evaluation of *In Vitro* Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Virus Type 1.'' The draft guidance document addresses general and specific concerns for gene based detection techniques, and it is intended to provide guidance on manufacturing and clinical trial design issues pertaining to the validation of tests based on nucleic acid detection either in the presence or absence of an amplification step.

DATES: Written comments may be submitted at any time, however, comments should be submitted by October 8, 1998, to ensure their adequate consideration in preparation of the final document.

ADDRESSES: Submit written requests for single copies of ''Guidance for Industry: In the Manufacture and Clinical Evaluation of *In Vitro* Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Virus Type 1'' to 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. Send one self-addressed adhesive label to assist

that office in processing your requests. The draft guidance document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Valerie A. Butler, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled ''Guidance for Industry: In the Manufacture and Clinical Evaluation of *In Vitro* Tests to Detect Nucleic Acid Sequences of Human Immunodeficiency Virus Type 1.'' The draft guidance document outlines some of the major regulatory and scientific issues concerning gene based tests for Human Immunodeficiency Virus (HIV), these criteria also apply to tests for other transfusion transmitted viruses including Human Immunodeficiency Virus Type 2, Hepatitis C Virus, Hepatitis B Virus, Human T–cell Lymphotropic Virus Types I and II.

This draft guidance document represents the agency's current thinking with regard to the manufacture and clinical evaluation of in vitro testing to detect specific nucleic acid sequences of HIV type 1. 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. As with other guidance documents, FDA does not intend this draft guidance document to be all-inclusive and cautions that not all information may be applicable to all situations. The draft guidance document is intended to provide information and does not set forth requirements.

II. Comments

This draft guidance document is being distributed for comment purposes only and is not intended for implementation at this time. Interested persons may submit to the Dockets Management Branch (address above) written comments regarding the draft guidance document. Written comments may be submitted at any time; however, comments should be submitted by October 8, 1998, to ensure adequate consideration in preparation of the final guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the draft guidance document using the World Wide Web (WWW). For WWW access, connect to CBER at ''http://www.fda.gov/cber/guidelines.htm''.

Dated: June 30, 1998.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 98–18403 Filed 7–9–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review Collection; Comment Request; Individual National Research Service Award Application and Related Forms

Summary

Under the provisions of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of Extramural Research, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 2, 1998, pages 16268–16269 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Individual National Research Service Award Application and Related Forms. *Type of Information Collection Request:* Revision, OMB 0925–0002, Expiration Date 9/30/98. *Form Numbers: PHS 416–1, 416–9, 416–5, 416–7, 6031, 6031–1. Need and Use of Information Collection:* The PHS 416–1 and PHS 416–9 are used by individuals to apply for direct research training support. Awards are made to individual applicants for specified training proposals in biomedical and behavioral research, selected as a result of a national competition. The other related forms (PHS 416–5, 416–7, 6031 and 6031–1) are used by these individuals to activate, terminate, and provide for payback of a National Research Service Award. *Frequency of Response:* Applicants may submit applications for published receipt dates. If awarded, annual progress is reported. Related forms are used at activation, termination, and to provide for payback of a National Research Service Award. *Affected Public:* Individuals or Households: Business or other for-profit; Not-for-profit institutions; Federal Government; and State, Local or tribal Government. *Type of Respondents:* Adult scientific trainees and professionals. The annual reporting burden is as follows: *Estimated Number of Respondents:* 29, 748; *Estimated Number of Responses per Respondent:* 1.0834; *Average Burden Hours Per Responses:* 2.658 hours; and *Estimated Total Annual Burden Hours Requested:* 85,679. The estimated annualized cost to respondents is $1,985,472 (Using a $35 physician/professor average hourly wage rate, and a $12 trainee average hourly wage rate.) There are no Capital Costs to report. There are no Operating or Maintenance costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated,

electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, D.C. 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Charles MacKay, Ph.D., NIH Project Clearance Officer, Division of Grants Policy, Office of Policy for Extramural Research Administration, OER, NIH, Rockledge II, Rm. 2196, 6701 Rockledge Dr., Bethesda, MD 20892–7730, or call non-toll free at (301) 435–0978 or E-mail your request, including your address to: *mackayc@odrockm1.od.nih.gov*.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received on or before August 10, 1998.

Dated: June 30, 1998.

Diana Jaeger,

Director, Division of Grants Policy, Office of Policy for Extramural Research Administration, OER, NIH.

[FR Doc. 98–18321 Filed 7–9–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Clinical Trials Musculoskeletal.

Date: August 3, 1998.

Time: 10:00 a.m. to 1:00 p.m.

Place: To review and evaluate grant applications.

Place: Natcher Bldg., 45 Center Drive, Room 5AS25N, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John R. Lymangrover, Scientific Review Administrator, NIAMS, 45 Center Drive, Room 5AS 25, Bethesda, MD 20892–650, (301) 594–4952.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, Osteoporosis Center.

Date: August 10, 1998.

Time: 10 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: Natcher Bldg., 45 Center Drive, Room 5AS25N, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John R. Lymangrover, Scientific Review Administrator, NIAMS, 45 Center Drive, Room 5AS 25, Bethesda, MD 20892–650, (301) 594–4952.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: July 2, 1998.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 98–18317 Filed 7–9–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel National Research Service Award.

Date: July 17, 1998.

Time: 9:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Bruce K. Wetzel, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–3907.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Phamacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: July 2, 1998.

LaVeen Ponds,

Acting Committee Management Officer, NIH.

[FR Doc. 98–18318 Filed 7–9–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Notice of International Workshop to ''Evaluate Research Needs on the Use and Safety of Medicinal Herbs''

The Workshop will be held at the National Institute of Environmental Health Sciences, Conference Facility in Research Triangle Park, North Carolina September 23 and 24 1998 from 8:30 to 5:00 each day.

Background

Herbal medicines and dietary supplements account for one of the fastest growing markets in U.S. pharmacies and constitute a multi-billion dollar industry. It is estimated that as many as 1,500 botanicals are sold in the U.S. as dietary supplements or ethnic traditional medicines. It is further estimated that greater than 50% of the U.S. population uses one or more dietary supplements including medicinal herbs. Medicinal herbs are not, however, subject to the same testing for efficacy or safety mandated for prescription or over-the-counter drugs. Given the increasing use of some medicinal herbs and the paucity of toxicological data, this workshop will bring together a panel of national and international experts to discuss the use of the medicinal herbs and dietary supplements and to establish research needs that address public health

concerns. The tentative program follows:

Wednesday, September 23, 1998

Opening Comments

The NIEHS—Dr. Carl Barrett, National Institute of Environmental Health Sciences
The National Toxicology Program—Dr. George Lucier, National Institute of Environmental Health Sciences
Comments from NIH Office of Dietary Supplements—Dr. Bernadette Marriott, National Institutes of Health
DHHS Office of Disease Prevention and Health Promotion—Dr. Kenneth D. Fisher, Dept. of Health & Human Services
Society for the Advancement of Women's Health Research—Ms. Phyllis Greenberger, Society for the Advancement of Women's Health Research
Keynote Speaker: ''Science, Politics, Public Opinion and Herbal Dietary Supplements''—Dr. Norman B. Farnsworth, University of Illinois, Chicago
Session I: Benefits and Risks Associated with the Use of Medicinal Herbs—Dr. H.B. Matthews, (Session Moderator)
Commonly Used Medicinal Herbs in the United States—Mr. Mark Blumenthal, American Botanical Council
Ranking Possible Toxic and Carcinogenic Hazards of Natural and Synthetic Chemicals—Dr. Lois Gold, Lawrence Berkeley National Laboratory
USP Panel on the Identification and Standardization of Natural Products—Dr. V. Srini Srinivasan, U.S. Pharmacopoeia
Session II: International Research on the Efficacy and Safety of Dietary Supplements and Medicinal Herbs Worldwide—Dr. Bernadette Marriott (Session Moderator)
Research of Medicinal Herbs in Germany—Dr. Prof. Hildebert Wagner, Institute for Pharmaceutical Biologie
Ancient-Modern Concordance in Ayurvedic Medicinal Plants—Dr. Sukh Dev, New Friends Colony, India
Medicinal Herbs in Japan—Prof. Yutaka Sashida, Tokyo Pharmaceutical University
Open Discussion & Public Comment

Thursday, September 24, 1998

Session III: Research on Medicinal Herbs and Dietary Supplements in the U.S.—Dr. Norman Farnsworth (Session Moderator)
Methodology and Testing to Insure Product Content and Quality—Dr. Joe Betz & Dr. William Obermeyer, Food & Drug Administration
Research on Dietary Supplements: An Industry Perspective—Loren D. Israelsen, Utah Natural Products Alliance
Current Research Programs of the U.S. Dietary Supplement Industry—Dr. Jill Ellis, National Nutritional Foods Association
Session IV: Panel Discussion on Research Needs to Assure Safety of Medicinal Herbs and Dietary Supplements in the U.S.—Dr. Kenneth D. Fisher (Session Moderator)
Dr. Bernadette Marriott, Director, NIH Office of Dietary Supplements
Dr. Wayne B. Jonas, Director, NIH Office of Alternative Medicine
Dr. Linda D. Meyers, Deputy Director for Science and Nutrition DHHS, Office of Disease Prevention and Nutrition
Dr. Elizabeth A. Yetley, Director, Office of Special Nutrition, US FDA
Mr. Loren Israelsen, Executive Director, Utah Natural Products Alliance
Dr. Jill Ellis, Scientific Director, NNFA
Dr. Rossanne M. Philen, Chief Environmental Hazards Epidemiology Section, NCEH
Mr. David Schardt, Associate Nutritionist, Center for Science in the Public Interest
Session V: Open Discussion on Research Needs to Assure Safety of Medicinal Herbs and Dietary Supplements in the U.S.—Dr. H.B. Matthews (Session Moderator)
Workshop Adjourns

Co-sponsors for the workshop include National Institutes of Health's Office of Dietary Supplements and National Institute of Environmental Health Sciences; the Department of Health and Human Services National Toxicology Program and Office of Disease Prevention and Health Promotion; the Food and Drug Administration's Office of Special Nutrition and the Society for the Advancement of Women's Health Research.

The meeting is open to the public, limited only by space available. The program includes time for open discussion. In addition time will be allotted to persons wishing to make oral comments. Those wishing to speak are encouraged to pre-register. The time allotted for each presenter will be dependent on the number of speakers.

To register, please submit the following: name, address, institutional affiliation, department, address, city, state, phone, fax and email address to Jaime Edge, NIEHS, P.O. Box 12233, Research Triangle Park, NC 27709 (fax: 919–541–0295 or email to edge@niehs.nih.gov.

For further information on the meeting plans contact Dr. Matthews at (919) 541–3252; for any other information on the workshop contact Alma Britton (919) 541–0530; Fax (919)–541–0295 or email: britton@niehs.nih.gov.

Dated: June 30, 1998.

Kenneth Olden,

Director, National Institute of Environmental Health Sciences.

[FR Doc. 98–18319 Filed 7–9–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Institute of Environmental Health Sciences (NIEHS); Notice of Meeting to Review the Murine Local Lymph Node Assay (LLNA) as an Alternative Test Method for Contact Hypersensitivity; Request for Comments

SUMMARY: Pursuant to Public Law 103–43, notice is hereby given of a public meeting sponsored by the NIEHS and the National Toxicology Program (NTP), and coordinated by the Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) and the NTP Interagency Center for the Evaluation of Alternative Toxicological Methods (NTP Center). The agenda topic is the scientific peer review of the murine local lymph node assay (LLNA), which is proposed as an alternative toxicological test method for assessing contact hypersensitivity (allergic contact dermatitis) potential of chemicals and products. The meeting will be held on September 17, 1998, at the Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, Maryland. The meeting will take place from 8:30 a.m. to 4:30 p.m. and is open to the public.

Background

Public Law 103–43 directed the NIEHS to develop and validate alternative methods that can reduce or eliminate the use of animals in acute or chronic toxicity testing, establish criteria for the validation and regulatory acceptance of alternative testing methods, and recommend a process through which scientifically validated alternative methods can be accepted for regulatory use. Criteria and processes for validation and regulatory acceptance were developed in conjunction with 13 other Federal agencies and programs

with broad input from the public. These are described in the document ''Validation and Regulatory Acceptance of Toxicological Test Methods: A Report of the Ad Hoc Interagency Coordinating Committee on the Validation of Alternative Methods'' NIH publication 97–3981, March 1997, which is available on the internet at http://ntp-server.niehs.nih.gov/htdocs/ICCVAM/ICCVAM htm. An Interagency Coordinating Committee on the Validation of Alternative Methods (ICCVAM) was subsequently established in a collaborative effort by NIEHS and 13 other Federal regulatory and research agencies and programs. The Committee's functions include the coordination of interagency reviews of toxicological test methods and communication with stakeholders throughout the process of test method development and validation. The following Federal regulatory and research agencies and organizations are participating in this effort:

Consumer Product Safety Commission
Department of Defense
Department of Energy
Department of Health and Human Services
  Agency for Toxic Substances and Disease Registry
  Food and Drug Administration
  National Institute for Occupational Safety and Health/CDC
  National Institutes of Health
  National Cancer Institute
  National Institute of Environmental Health Sciences
  National Library of Medicine
Department of the Interior
Department of Labor
  Occupational Safety and Health Administration
Department of Transportation
  Research and Special Programs Administration
Environmental Protection Agency

The LLNA was proposed to the ICCVAM for consideration as a stand-alone test to identify chemicals that have a potential to cause contact hypersensitivity (allergic contact dermatitis). An ICCVAM Immunotoxicity Working Group composed of Federal employees determined that there was sufficient information available to merit an independent scientific peer review of the LLNA test method. Peer review has been determined to be an essential prerequisite for consideration of a method for regulatory acceptance. The peer review panel will be charged with developing a scientific consensus on the usefulness of the test method to generate information for various human health risk assessment purposes. Following evaluation at this peer review meeting, the proposed test method and results of the peer review will be forwarded by ICCVAM to Federal agencies for consideration. Federal agencies will determine the regulatory acceptability of a method according to their mandates.

Agenda

There will be a brief orientation on the ICCVAM and the ICCVAM review process, followed by peer review of the proposed LLNA test method and supporting information. The peer review panel will discuss the usefulness of the LLNA as an alternative to test methods currently accepted by government regulatory authorities for the assessment of the contact hypersensitivity potential of chemicals and products. Copies of the proposed LLNA Test Method Protocol and supporting documentation may be obtained from the NTP Center for the Evaluation of Alternative Toxicological Methods, MD EC–17, P.O. Box 12233, Research Triangle Park, NC, 27709 (919–541–3398), FAX (919–541–0947), e-mail: *ICCVAM@niehs.nih.gov*. The LLNA test method documents and copies of written public comments can also be viewed at the Documents Management Branch, Food and Drug Administration, 5630 Fishers Lane, Room 1061, Rockville, MD, 20852 on Monday through Friday from 9:00 a.m. to 4:00 p.m.

Public Comment

The NTP Center invites the submission of written comments on the proposed LLNA test method, and other available information regarding the usefulness of the LLNA, including information about completed, ongoing, or planned studies. Written comments and additional information should be sent by mail, fax, or e-mail to the NTP Center at the address listed above by August 14th. Written comments will be made available to the peer review panel members, ICCVAM agency representatives and experts, and will be made available for attendees at the meeting. Members of the public who wish to present oral statements at the meeting should also contact the NTP Center as soon as possible, but not later than September 11, 1998. Speakers will be assigned on a first-come, first-serve basis and will be limited to a maximum of five minutes in presentation length. Written comments accompanying the oral statement should be submitted in advance so that copies can be made and distributed to the peer panel members.

The NTP Center will furnish an agenda and a roster of peer review panel members just prior to the meeting. Summary minutes and a final report of the LLNA peer review meeting will be available subsequent to the meeting upon request to the Center. Persons needing special assistance, such as sign language interpretation or other special accommodations should contact the NTP Center as described above.

Dated: June 30, 1998.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 98–18320 Filed 7–9–98; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4341–N–18]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: July 10, 1998.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7256, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1998 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: July 2, 1998.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 98–18049 Filed 7–9–98; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–1020–01; UTU–76188]

Proposed Classification Decision, State Indemnity Selection

The Utah State School and Institutional Trust Lands Administration has filed a petition for classification and application to acquire the public lands, including the mineral estate, described below, under the provisions of Act of Congress of August 17, 1958 (72 Stat. 928) as amended, and the acts supplementary and amendatory thereto. This application has been assigned Serial Number UTU–76188.

The Bureau of Land Management will examine these lands for evidence of prior valid existing rights or other statutory constraints that would bar transfer. This proposed classification is pursuant to Title 43, CFR 2400; and Section 7 of the Act of June 28, 1934.

Information concerning these lands and the proposed transfer to the State of Utah may be obtained from the Bureau of Land Management, Richfield District Office, 150 East 900 North, Richfield, Utah 84701.

For a period of 60 days from the date of publication of this notice in the **Federal Register**, all persons who wish to submit comments, suggestions, or objections in connection with the proposed classification may present their views in writing to the State Director, Bureau of Land Management, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145–0155.

Any adverse comments will be evaluated by the State Director who will issue a notice of determination to proceed with, modify, or cancel the action. In the absence of any action by the State Director, this classification action will become the final determination of the Department of the Interior.

As provided by Title 43 CFR 2450.4(c), public hearing may be scheduled by the State Director if he determines that sufficient public interest exists to warrant the time and expense of a hearing.

The lands included in the proposed classification are located within Garfield County, Utah, and are described as follows:

Salt Lake Meridian, Utah

T. 36 S., R. 11 E.,
Section 15: All
Section 29: W½SW¼, SE¼SW¼, W½SE¼
T. 37 S., R. 11 E.,
Section 5: All.

Containing 1480 acres.

Individuals and corporations holding valid leases, permits, and/or rights-of-way on the public lands described above have been or will be notified of the proposed classification. Rights-of-way granted by the Bureau of Land Management on the above lands will transfer with the land, the transfer document will be subject to the rights-of-way, or the rights-of-way may be reserved to the United States (see Section 508 of FLPMA). Oil and gas leases (geothermal, other leasing act minerals) will remain in effect under the terms and conditions of the lease. (Upon expiration or termination of the leases, or any authorized extensions thereof, such rights shall automatically vest in the State.)

State law and School and Institutional Trust Lands Administration procedures provide for the offering to holders of Bureau of Land Management grazing permits, licenses, or leases the first right to lease lands that are transferred to the State. This Classification notice constitutes official notice to holders of grazing use authorizations from the Bureau of Land Management that such authorizations will be terminated in part upon transfer of the land described above to the State of Utah.

For a period of 45 days from the date of first publication indicated below, persons asserting a claim to or interest in the described lands, other than holders of leases, permits, or rights-of-way may file such claim with the State Director, Bureau of Land Management, 324 South State Street, P.O. Box 45155, Salt Lake City, Utah 84145–0155, with evidence that a copy thereof has been served on the State of Utah, School and Institutional Trust Lands Administration.

Dated: July 2, 1998.

G. William Lamb,

State Director.

[FR Doc. 98–18388 Filed 7–9–98 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–040–06–1610–00]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management (BLM), Green River Resource Area, Rock Springs District, Wyoming, announces: (1) the availability of the Record of Decision (ROD) for the Environmental Impact Statement (EIS) for the Green River Resource Management Plan (RMP), (2) the approved Green River RMP, and (3) notice of off-road vehicle designations for the Green River Resource Area.

SUMMARY: The ROD identifies the selection and approval of the Green River RMP. The Green River RMP presents multiple use management prescriptions for about 3.6 million acres of public land surface and 3.7 million acres of Federal mineral estate, administered by the BLM, in portions of Sweetwater, Fremont, Lincoln, Uinta, and Sublette counties in southwest Wyoming.

The draft EIS for the Green River RMP was made available for public review and comment in November of 1992. Comments received on the draft EIS were considered in preparing the proposed Green River RMP and final EIS which was made available for public review and protest in May of 1996.

Management prescriptions are presented in the Green River RMP for all BLM-administered public land and resource uses and values found within the planning area, including the following: air quality, cultural resources, fire management, forests and woodlands, hazardous materials, lands and realty management, livestock grazing, minerals, off-road vehicles, outdoor recreation, special status species, vegetation, visual resources, watershed, wild horses, wildlife, and special management areas. Since wilderness values are addressed in other documents, the Green River RMP does not address them.

The Green River RMP is a comprehensive multiple-use land use plan. It is a refinement of the preferred alternative presented in the draft EIS and the proposed RMP presented in the final EIS. While the intent and content of the Green River RMP are not different from the proposed RMP, comments from the public, review by BLM staff, and new information obtained since the distribution of the final EIS have prompted some wording clarifications in the RMP.

This **Federal Register** Notice serves as the notice for the off-road vehicle (ORV) designations for the Green River Resource Area as identified in the Green River RMP. The ORV designations are described under **SUPPLEMENTARY INFORMATION** in this notice.

This notice also serves to meet the criteria for public notification of linear or site rights-of-way within floodplains as required by BLM Manual 7221 except for those associated with perennial streams. The BLM will solicit public comment on site facilities or major

linear rights-of-way along perennial streams unless another agency (Federal, State, or local) already has solicited such comments.

ADDRESSES: Information on the Green River RMP may be obtained from the Green River Resource Area Office, 280 Highway 191 North, Rock Springs, Wyoming 82901, (307) 352–0256.

FOR FURTHER INFORMATION CONTACT: Stan McKee, Green River Resource Area Manager, or Renée Dana, Green River RMP Team Leader, at the Rock Springs BLM District Office, 280 Highway 191 North, Rock Springs, Wyoming 82901, (307) 352–0256. Copies of the ROD and Green River RMP are available from the Green River Resource Area Office.

SUPPLEMENTARY INFORMATION: Eight protests were submitted during the 30-day protest period for the proposed Green River RMP. All of the protests were responded to and resolved by the Director of the Bureau of Land Management (BLM). Resolution of the protests required some minor corrections and wording clarification but did not result in changing any of the proposed Green River RMP decisions.

The Green River RMP provides the interim management direction for those BLM-administered public lands along waterways that were determined to meet the suitability factors for further consideration for inclusion in the Wild and Scenic Rivers System (WSRS). Seven parcels of BLM-administered lands, along a total of about 9.7 miles of the Sweetwater River, have been found to meet the suitability factors to be given further consideration for inclusion in the WSRS. Tentative classifications of the various parcels include wild (about 5.8 miles), scenic (about 0.5 miles), and recreational (about 3.4 miles). The interim management of these parcels will continue until Congress decides to consider them further for possible inclusion in the WSRS.

The Green River RMP includes identification of the Federal coal lands in the Green River Resource Area that are acceptable for further leasing consideration.

The Green River RMP includes designations of Areas of Critical Environmental Concern (ACEC). Seven prior ACEC designations are retained (or modified):

—Cedar Canyon ACEC (approximately 2,550 acres) with management priority and emphasis given to maintaining or enhancing important cultural, scenic, and wildlife habitat values.

—Greater Red Creek ACEC (approximately 131,890 acres—the original Red Creek ACEC of 55,880 acres was expanded to include the Currant Creek and Sage Creek drainages) with management priority and emphasis given to maintaining or enhancing fragile soils, Colorado River cutthroat trout, and water quality values.

—Greater Sand Dunes ACEC (approximately 38,650 acres) with management priority and emphasis given to maintaining or enhancing unique and unusual geological features associated with the sand dunes and Boars Tusk, and the diverse biological interrelationships supported by the sand dunes, especially the dependent plants and animals.

—Natural Corrals ACEC (approximately 1,276 acres) with management priority and emphasis given to maintaining or enhancing the unique and important cultural, historical, recreational, and geological values.

—Oregon Buttes ACEC (approximately 3,450 acres) with management priority and emphasis given to maintaining or enhancing the historic landmark, significant wildlife values, and the scenic integrity.

—Pine Springs ACEC (expanded from 90 acres to approximately 6,030 acres to include adjacent relevant and important values) with management priority and emphasis given to maintaining or enhancing the important cultural, historic, and prehistoric resource values.

—White Mountain Petroglyphs ACEC (approximately 20 acres) with management priority and emphasis given to maintaining or enhancing the educational opportunities and important cultural, wildlife, scenic, and Native American values.

Three new areas are designated ACECs:

—South Pass Historic Landscape ACEC (approximately 53,780 acres) with management priority and emphasis given to maintaining or enhancing the visual and historical integrity of historic trails and their surrounding viewscape.

—Special Status (Candidate) Plants ACEC (four separate locations totalling approximately 900 acres) with management priority and emphasis given to maintaining or enhancing these species and their habitats.

—Steamboat Mountain ACEC (approximately 43,270 acres) with management priority and emphasis given to maintaining or enhancing the wildlife habitats and vegetation communities.

The management actions for each ACEC include conditional requirements for surface disturbing activities and other land uses such as limitations on oil and gas and coal exploration and development activities, geophysical exploration, right-of-way construction, and vehicular travel. Portions of the ACECs may be closed to future locatable mineral exploration and development subject to valid existing rights. The level of these vary in each ACEC.

Six areas are designated Special Recreation Management Areas (SRMAs):

—The Greater Sand Dunes (about 38,650 acres).

—The Oregon, Mormon Pioneer, California, and Pony Express National Historic Trails (about 125 miles).

—The Continental Divide National Scenic Trail and the Continental Divide Snowmobile Trail (about 24 miles).

—The Green River (about 4,048 acres).

—The Wind River Front (about 261,080 acres).

The remainder of the BLM-administered public lands in the Green River Resource Area are designated an Extensive Recreation Management Area (ERMA).

Five backcountry byways are also designated: the Tri-Territory Loop, the Lander Road, Red Desert, Fort LaClede Loop, and the Firehole-Little Mountain Loop.

Management of wilderness values is not addressed in the Green River RMP. The twelve wilderness study areas (WSAs) within the Green River Resource Area are addressed in the ''Rock Springs District Wilderness Final EIS,'' September 1990, and the ''Adobe Town-Ferris Mountains Wilderness Final EIS,'' December 1987.

The Green River RMP includes the following Off-Road Vehicle (ORV) designations: areas open to off-road vehicular use, areas with use limitations (i.e., limited to seasonal use, limited to existing roads and trails, and limited to designated roads and trails), and areas closed to vehicular use. (Note: The areas designated as limited seasonally and limited to designated roads and trails, overlap one another as do the areas designated as limited seasonally and limited to existing roads and trails.) Maps of the ORV designations are on file in the Green River Resource Area Office.

Specific designations are as follows:

A. Open Designation (approximately 10,500 acres). Vehicle travel is permitted both on and off roads in the eastern portion of the Greater Sand Dunes Area of Critical Environmental Concern (ACEC) (about 10,500 acres).

Vehicle use is confined to the active sand dunes within the 10,500 acres.

B. Limited Designations:

1. Motorized vehicle travel is limited to existing roads and trails except during certain periods of the year when areas may be closed to all vehicles (approximately 1,627,955 acres). Acres may not total because of overlap.

a. Big game crucial winter ranges (about 1,500,000 acres) are limited through seasonal closures (November 15–April 30 as needed) to reduce stress on wintering animals. Closure to over-the-snow vehicles will be evaluated on a case-by-case basis in conjunction with the Wyoming Game and Fish Department.

b. Deer parturition areas (about 40,880 acres) are limited through seasonal closures (May 1 to June 30 as needed) to reduce stress on deer.

c. Elk calving areas (about 85,830 acres) are limited through seasonal closures (to be decided by biologist—May 1 to June 30 as needed) to reduce stress on elk.

d. Moose calving areas (about 410 acres) are limited through seasonal closures (to be decided by biologist—May 1 to June 30 as needed) to reduce stress on moose.

e. Raptor nesting areas (about 835 acres) are limited through seasonal closures (February 1 through July 31 as needed) to protect nesting raptors.

f. Steamboat Mountain (about 15,981 acres) is limited through seasonal closures (to be determined, but usually between May 1 and June 30) to protect wildlife values (big game birthing areas are of particular concern).

2. Motorized vehicle travel is limited to designated roads and trails only on approximately 1,006,336 acres. Vehicle use in these areas will be managed the same as under the existing roads and trails designation until the designation is implemented on the ground (i.e., until the designated roads are identified and signs or notices are put in place). Acres may not total because of overlap.

a. Adobe Town-Haystacks (about 54,000 acres) to protect fragile and highly erodible soils.

b. Cedar Canyon ACEC (about 2,550 acres) to protect wildlife and cultural values (includes over-the-snow vehicles).

c. Dug Springs Stage Station (about 10 acres) to protect historic values.

d. Greater Red Creek ACEC (about 123,870 acres) (includes the Currant Creek and Sage Creek watersheds, and remainder of Red Creek watershed) to protect watershed values.

e. An area adjacent to the Green River city limits (about 4,500 acres within a 2-mile radius around the city limits) to reduce impacts from ORV freeplay.

f. LaBarge Bluff Petroglyphs (about 100 acres within ½ mile surrounding the petroglyphs) to protect cultural values.

g. LaClede Stage Station (about 10 acres) to protect historic values.

h. Monument Valley (about 69,940 acres) to protect paleontological resource values and watershed values.

i. Natural Corrals ACEC (about 1,300 acres) to protect cultural, historic, and geologic resource values.

j. North and South Table Mountains (about 1,280 acres) to protect cultural and wildlife values.

k. Parting of the Ways (about 40 acres) to protect historical values.

l. Pine Mountain (about 64,200 acres) to protect watershed values.

m. Red Desert (about 245,480 acres) to protect scenic resource values.

n. South Pass (about 33,700 acres) to protect cultural values.

o. Steamboat Mountain ACEC (about 43,270 acres) to protect wildlife values.

p. Steep slopes of White Mountain (about 68,640 acres) to protect watershed and visual values.

q. Sugarloaf Basin (about 85,880 acres) to protect watershed values.

r. Sugarloaf Petroglyphs (about 350 acres within ½ mile radius) to protect cultural values.

s. Tolar Petroglyphs (about 310 acres within ½ mile radius) to protect cultural values.

t. White Mountain Petroglyphs ACEC (about 480 acres within ½ mile surrounding the petroglyphs) to protect cultural values.

u. Wind River Front Special Recreation Management area (about 260,580 acres) to protect the nearby Class I airshed, scenic, watershed, and wildlife values; recreation use; and riparian and vegetation resources.

3. Motorized vehicle travel is limited to existing roads and trails on approximately 2,436,595 acres. Acres may not total because of overlap.

a. General Green River Resource Area (about 2,436,595 acres) to reduce resource damage.

b. Greater Sand Dunes ACEC (Eastern Portion) (about 5,810 acres of stabilized dunes) to protect resource values.

c. Pine Springs ACEC (about 730 acres outside the WSA and original 90-acre site) to protect resource values.

d. Riparian areas (about 8,730 acres) to protect riparian and watershed values. During muddy conditions, vehicle travel may be limited to protect soil and watershed values.

C. Closed Designations (approximately 181,570 acres). Acres may not total because of overlap.

1. The following areas are closed to vehicle use.

a. Crookston Ranch (about 40 acres) in the Greater Sand Dunes ACEC to protect cultural and historic site.

b. Dry Sandy Swales (about 20 acres) to protect integrity of setting and soils.

c. Road around Boars Tusk and the Boars Tusk (about 90 acres) to preserve its value as a geologic feature.

d. LaBarge Bluffs Petroglyphs (about 20 acres) to protect cultural values.

e. Natural Corrals National Register of Historic Places site (about 20 acres and the trail [about ½ mile] to the spring) to protect wildlife and cultural values.

f. Oregon Buttes (about 3,450 acres) to protect historic, wildlife, and scenic resource values, and adjacent WSA values.

g. Pine Springs (about 5,390 acres within the Pine Springs ACEC) to protect cultural, historic, and prehistoric resource values.

h. Prehistoric Quarry site (about 160 acres) to protect cultural values.

i. Special Status Plant Species (about 3,610 acres) to protect plant populations.

j. Sugarloaf Petroglyph site (about 20 acres) to protect cultural values.

k. Tolar Petroglyph site (about 20 acres) to protect cultural values.

l. Wilderness Study Areas (to protect naturalness, solitude, and opportunities for unconfined recreation):

Buffalo Hump: 10,300 acres
South Pinnacles: 10,800 acres
Sand Dunes: 27,109 acres
Alkali Basin-East Sand Dunes: 12,800 acres
Alkali Draw: 16,990 acres
Red Lake: 9,515 acres
Honeycomb Buttes: 41,188 acres
Oregon Buttes: 5,700 acres
Whitehorse Creek: 4,002 acres
Devils Playground-Twin Buttes: 23,841 acres
Red Creek Badlands: 8,020 acres

Parties who are interested in and who wish to be involved in future activity planning and implementation of management actions that may involve or affect the resource values addressed in the Green River RMP are requested to identify themselves. Please contact the Green River Resource Area Office at the above address and request to be placed on a future contact list for activity planning and implementation activities concerning the Green River RMP.

Dated: July 2, 1998.

Alan R. Pierson,

State Director.

[FR Doc. 98–18336 Filed 7–9–98; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–912–08–0777–52]

Notice of Utah Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Utah Resource Advisory Council Meeting.

Utah's Resource Advisory Council (RAC) will meet August 17–18, 1998. The RAC will be touring the Fivemile Pass Area looking at the various recreation impacts and opportunities (i.e. housing development, rifle range proposal, tailings, active mining, OHV play areas, private land, grazing, and standards and guides for rangeland health).

A public comment period has been scheduled from 4:30–5:00 p.m. in the conference room of the Comfort Inn, 491 South Main Street, Tooele, Utah. Anyone interested in addressing the Council and/or attending the meeting should contact Sherry Foot, Special Programs Coordinator, Bureau of Land Management, 324 South State Street, Salt Lake City, Utah, 84111; telephone (801) 539–4195.

On August 18, the Council will travel to the Knolls Recreation Area where they will be looking at a different type of site in terms of vegetation and soils. The RAC will then tour the Salt Flats looking at the first year of the salt lay-down project and discussing filming use in the area.

Resource Advisory Council meetings are open to the public; however, transportation, meals, and overnight accommodations are the responsibility of the participating public.

Dated: July 1, 1998.

Linda S. Colville,

Associate State Director.

[FR Doc. 98–18312 Filed 7–9–98; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–01; N–61416]

Notice of Realty Action: Modified-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Modified-Competitive Sale of Public Lands in Lincoln County, Nevada.

SUMMARY: The below listed public land in Patterson Wash, Lincoln County, Nevada has been examined and found suitable for sale utilizing modified-competitive procedures, at not less than the fair market value. In accordance with Section 7 of the Act of June 28, 1934, as amended, 43 U.S.C. 315f and EO 6910, the described lands are hereby classified as suitable for disposal under the authority of Section 203 of the Act of October 21, 1976; 43 U.S.C. 1761.

DATES: On or before August 24, 1998, interested parties may submit comments to the Assistant District Manager, Nonrenewable Resources.

ADDRESSES: Written comments should be addressed to: Bureau of Land Management, Gene L. Drais, Assistant District Manager, Nonrenewable Resources, HC 33, Box 33500, Ely, NV 89301–9408.

FOR FURTHER INFORMATION CONTACT: Michael McGinty, Realty Specialist, at the above address or telephone (702) 289–1882.

SUPPLEMENTARY INFORMATION: The following described parcel of land, situated in Lincoln County is being offered as a modified-competitive sale of public lands located;

Mount Diablo Meridian, Nevada

T. 2 N., R. 67 E.,
Section 22, NW¼NW¼.
Containing 40.00 acres more or less.

This land is not required for any federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

The mineral estate of the above described lands are currently in non-federal ownership and will remain so.

The land will be offered for sale by sealed bid to be submitted at the BLM Ely Field Office at 702 North Industrial Way, Ely Nevada, 89301, during standard working hours starting at 7:30 am PDST on September 15, 1998 and ending 4:00 pm PDST on September 18, 1998. The sealed bids will be opened at 8:00 am PDST on September 21, 1998. This sale will be by modified-competitive procedures. Mr. Bevan Lister (designated bidder) will be given the opportunity meet the highest bid received by sealed bid. Bid envelopes must be marked on the left front corner with serial number N–61416 and sale date. Bid must not be less than the appraised fair market value as specified in this notice. The Fair Market Value as determined by appraisal is $6,000.00. Each sealed bid shall be accompanied by a certified check, postal money order, or cashier's check made payable to the *Department of Interior : BLM,* for not less than 10 percent of the amount bid.

The terms and conditions applicable to this sale are:

The patent, when issued, will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

The patent will be subject to the following:

1. Those rights for an existing Lincoln County road right-of-way for a gravel road, constructed under the provisions of R.S. 2477. The right-of-way width is 60 feet. The right-of-way is in effect in perpetuity.

Federal law requires all bidders must be U.S. citizens 18 years old or older, or in the case of corporations, be subject to the laws of any State of the United States.

Under modified-competitive sale procedures, an apparent high bidder will be declared after the sealed bids are open. The apparent high bidder and the designated bidder (Mr. Bevan Lister) will be notified. The designated bidder will have 30 days from the date of the sale to exercise the preference consideration given to meet the high bid.

Should the designated bidder fail to submit a bid that matches the apparent high bid within specified time period, the apparent high bidder shall be declared high bidder.

The total purchase price of the the land shall be paid within 180 days of the date of the sale. The purchase price does not include the costs for publishing in the **Federal Register**. The purchaser will be required to reimburse the BLM for publishing cost, when remitting final payment for parcel.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, and leasing under the mineral leasing laws.

This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding this action to the Assistant District Manager, Nonrenewable Resources at the address listed above. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau

of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with FLPMA, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: June 25, 1998.

Gene A. Kolkman,

District Manager.

[FR Doc. 98–18337 Filed 7–9–98; 8:45 am]

BILLING CODE 4310–HC–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Overseas Private Investment Corporation

Privacy Act of 1974; System of Records Comment Request

AGENCY: Overseas Private Investment Corporation, IDCA.

ACTION: Establishment of a new system of records.

SUMMARY: The Overseas Private Investment Corporation is establishing a new system of records to include in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed actions will be effective without further notice on August 6, 1998 unless comments are received which result in a contrary determination.

FOR FURTHER INFORMATION CONTACT: Privacy Act Officer/HRM, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8531.

SUPPLEMENTARY INFORMATION: The Overseas Private Investment Corporation's 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.

System Name: Employee Biography, Skills and Interest Inventory (OPIC–24).

Security Classification: None.

System Location: Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527.

Categories of Individuals Covered by the System: Current OPIC employees.

Categories of Records in the System: These records may contain information about the individual's name, current position, primary duties, previous positions, post-secondary education, professional certification, specialized training, country and regional knowledge, industry knowledge, computer skills, special skills (e.g., CPR, financial modeling), interest in other departments, job functional interests, foreign language proficiency, and other similar information.

Authority for Maintenance of the System: 5 U.S.C. 301.

Routine Uses of Records Maintained in the System, including Categories of Users and Purposes of Such Uses: The information is used to provide background information about OPIC staff to other OPIC staff members. Records may also be used to identify staff members with desired skills or expertise (e.g., language proficiency). Records may also be used to determine individual staff member's interest in the programs and activities of other OPIC departments and to determine the feasibility of special temporary assignments.

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System: Information is input electronically by each OPIC staff member onto an electronic form. Information is stored in an electronic database and biographies and skill set information can be accessed by OPIC staff members by searching available form fields (e.g., name, industry knowledge, computer skills) through OPIC's Intranet. Staff interest information and individual profiles are accessed by Human Resources Management staff who may, in turn, share this information with OPIC managers for work-related needs. Information is retained on-line throughout a staff member's tenure at OPIC. Information will be deleted from the OPIC network when a staff member departs the Corporation.

Storage: Records are stored on OPIC's network in a database. Data forms from which the data is collected are maintained by OPIC's IRM department. No hard copies of completed forms will be maintained except by individual OPIC staff, at each staff member's discretion.

Retrievability: Access to records stored in the database is limited to current OPIC staff as described above.

Safeguards: Access to record files is limited as described above. Access is further limited by OPIC's network security precautions, e.g., log-on passwords. The information submitted is volunteered with the understanding that it will be potentially accessible by all OPIC staff.

Retention and Disposal: When an individual leaves OPIC employment, his or her record will be deleted from the OPIC network.

System Manager(s) and Address: Managing Director for Administration, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527.

Notification Procedure: Requests to be notified whether or not the system contains a record pertaining to an individual should be addressed to the system manager, as above.

Record Access Procedures: Same as above.

Contesting Record Procedures: Same as above.

Record Source Categories: Information is volunteered by staff on a form entitled, ''Employee Biography, Skills and Interest Profile.''

Systems Exempted From Certain Provisions of the Act: None

Dated: July 2, 1998.

James R. Offutt,

Assistant General Counsel,

Department of Legal Affairs.

[FR Doc. 98–18153 Filed 7–9–98; 8:45 am]

BILLING CODE 3210–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collections; Comment Request

ACTION: Notice of Information Collection Under Review; Request for Cancellation of Public Charge Bond.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until September 8, 1998.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection: Extension of a currently approved collection.*

(2) *Title of the Form/Collection:* Request for Cancellation of Public Charge Bond.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–356. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The form is used by the Immigration and Naturalization Service to determine if the bond posted on behalf of an alien in the United States should be cancelled.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 2,000 responses at 15 Minutes (.25) per response.

(6) *An estimate of the total public burden (in hours associated with the collection:* 500 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530

Dated: July 6, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–18384 Filed 7–9–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Bureau of Justice Statistics; Agency Information Collection Activities: Proposed Collection: Comment Request

ACTION: Notice of Information Collection Under Review; Reinstatement, with change, of a previously approved collection for which approval has expired: National Crime Victimization Survey, School Crime Supplement.

The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until September 8, 1998. Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the collection of information including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Michael Rand, 202–616–3494, Bureau of Justice Statistics, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW, Washington, D.C. 20531.

Overview of This Information

(1) Type of information collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

(2) The title of the form/collection: National Crime Victimization Survey, School Crime Supplement.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: SCS–1 Office of Justice Programs, U.S. Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Eligible respondents to the survey have to be between the ages of 12 and 19 and have to have attended school at some point during the six months preceding the interview. The School Crime Supplement collects information related to students' violent and property crime victimization at school, including their perceptions of the presence of guns, street gangs, and illegal drugs at their schools.

Other: None.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: 14,000 respondents at an average of .167 hours (10 minutes each).

(6) An estimate of the total public burden (in hours) associated with the collection: 2,338 total hours.

If additional information is required, contact: Mr. Robert B. Briggs, Clearance Officer, United States Bureau of Justice Statistics, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: July 6, 1998.

Robert B. Briggs,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 98–18383 Filed 7–9–98; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

July 7, 1998.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be

obtained by calling the Department of Labor, Departmental Clearance Officer, Todd R. Owen ((202) 219–5096 ext. 143) or by E-Mail to Owen-Todd@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: 29 CFR Part 575—Waiver of Child Labor Provisions for Agricultural Employment of 10 and 11 Year Old Minors in Hand Harvesting of Short Season Crops.

OMB Number: 1215–0120 (Extension).

Frequency: On occasion.

Affected Public: Farms; Individuals or households.

Number of Respondents: 1.

Total Responses: 1.

Estimated Time per Respondent: 4 hours.

Total Burden Hours: 4 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Agricultural employers must supply certain information to the Department of Labor when applying for a waiver of the child labor provisions to employ 10 and 11 year old minors in hand harvesting of short season crops. Employers granted waivers are required to maintain certain records.

Agency: Employment Standards Administration.

Title: Application for Federal Certification of Age.

OMB Number: 1215–0083 (Extension).

Agency Number: WH–14.

Frequency: On occasion.

Affected Public: Businesses or other for-profit; State, Local, or Tribal Government; individuals or households; not-for-profit institution; Farms.

Number of Respondents: 50.

Total Responses: 50.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 9 hours.

Total annualized capital/startup costs: 0.

Totla annual costs (operating/maintaining systems or purchasing services): $17.50.

Description: The Fair Labor Standards Act provides, in part, that an employer may protect against unwitting employment of ''oppressive child labor'' by having on file a certificate issued pursuant to Department of Labor regulations certifying that the named person meets the FLSA minimum age requirements for employment. The Application for Federal Certificate of Age (WH–14) is the form used by the employer to obtain the certificate.

Agency: Employment Standards Administration.

Title: Operator Controversion (CM–970), Operator Response (CM–970a).

OMB Number: 1215–0058 (Extension).

Frequency: On occasion.

Affected Public: Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 4,000.

Total Responses: 8,000.

Estimated Time per Respondent: 15 minutes.

Total Burden Hours: 2,000.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $2,800.

Description: The Office of Workers' Compensation Programs administers the Black Lung Benefits Act. Under 30 U.S.C. 901 et. seq., 20 CFR 725.412, and 20 CFR 725.413, a coal mine operator who has been identified as potentially liable for payment of black lung benefits must be notified of this initial finding. The CM–970, Operator Controversion, gives the operator the opportunity to controvert the liability, the applicant's eligibility, and other issues. The regulations require the coal mine operator to be identified and notified of potential liability as early in the adjudication process as possible. The CM–970a gives the coal mine operator the opportunity to agree or disagree with the identification.

Agency: Employment and Training Administration.

Title: Forms for Agricultural Recruitment System of Services to Migratory Workers and their Employers Application for Alien Employment Certification.

OMB Number: 1205–0134 (Extension).

Frequency: On occasion.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 52.

Total Responses: 11,000.

Estimated Time per Respondent: 1 hour for ETA Form 790; 30 minutes for ETA Forms 795, 785, and 785A.

Total Burden Hours: 6,500.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: State Employment Security Agencies use forms in servicing agricultural employers to insure their labor needs for domestic migratory agricultural workers are met; in servicing domestic agricultural workers to assist them in locating jobs expeditiously and orderly; and to insure exposure of employment opportunities to domestic agricultural workers before certification for employment of foreign workers.

Agency: Employment and Training Administration.

Title: Disaster Unemployment Assistance (DUA) Handbook Program Operating Forms.

OMB Number: 1205–0051 (Reinstatement with change)

Affected Public: Individuals or Households.

Form No.	Respondents	Frequency	Average time per response (minutes)
ETA 90–2	50	6 reports	15
Initial Application	11,000	Once	20

Form No.	Respondents	Frequency	Average time per response (minutes)
Supplemental Form	3,800	Once	15
Weekly Form	11,000	6 times	50
Notice of Overpayment	235	Once	30

Total Burden Hours: 10,308 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: Unemployment compensation claims, financial management and data on disaster unemployment assistance (DUA) activity are needed for timely program evaluation necessary for competent administration of Section 410 and 423 of the Act.

Workload items are also used with fiscal reports to estimate the cost of administering the Act.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–18429 Filed 7–9–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon And Related Acts,'' shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled ''General Wage Determinations Issued Under the Davis-Bacon and Related Acts'' being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New York
NY980013 (Feb. 13, 1998)

Volume II

Pennsylvania
PA980002 (Feb. 13, 1998)
PA980004 (Feb. 13, 1998)
PA980007 (Feb. 13, 1998)
PA980008 (Feb. 13, 1998)
PA980010 (Feb. 13, 1998)
PA980014 (Feb. 13, 1998)
PA980015 (Feb. 13, 1998)
PA980017 (Feb. 13, 1998)
PA980018 (Feb. 13, 1998)
PA980019 (Feb. 13, 1998)
PA980020 (Feb. 13, 1998)
PA980024 (Feb. 13, 1998)
PA980038 (Feb. 13, 1998)
PA980040 (Feb. 13, 1998)
PA980054 (Feb. 13, 1998)
PA980065 (Feb. 13, 1998)

Virginia
VA980015 (Feb. 13, 1998)
VA980018 (Feb. 13, 1998)
VA980080 (Feb. 13, 1998)

West Virginia
WV980002 (Feb. 13, 1998)
WV980003 (Feb. 13, 1998)
WV980006 (Feb. 13, 1998)

Volume III

None

Volume IV

Illinois
IL980007 (Feb. 13, 1998)
IL980008 (Feb. 13, 1998)
IL980009 (Feb. 13, 1998)
IL980017 (Feb. 13, 1998)

Indiana
IN980060 (Feb. 13, 1998)
IN980061 (Feb. 13, 1998)

Minnesota
MN980005 (Feb. 13, 1998)

MN980007 (Feb. 13, 1998)
MN980008 (Feb. 13, 1998)
MN980012 (Feb. 13, 1998)
MN980015 (Feb. 13, 1998)
MN980027 (Feb. 13, 1998)
MN980031 (Feb. 13, 1998)
MN980035 (Feb. 13, 1998)
MN980039 (Feb. 13, 1998)
MN980047 (Feb. 13, 1998)
MN980058 (Feb. 13, 1998)
MN980059 (Feb. 13, 1998)
MN980061 (Feb. 13, 1998)

Volume V

Iowa
IA980003 (Feb. 13, 1998)
IA980010 (Feb. 13, 1998)
IA980016 (Feb. 13, 1998)
IA980019 (Feb. 13, 1998)
IA980038 (Feb. 13, 1998)
Louisiana
LA980001 (Feb. 13, 1998)
LA980005 (Feb. 13, 1998)
LA980014 (Feb. 13, 1998)
Missouri
MO980001 (Feb. 13, 1998)
MO980002 (Feb. 13, 1998)
MO980003 (Feb. 13, 1998)
MO980004 (Feb. 13, 1998)
MO980006 (Feb. 13, 1998)
MO980008 (Feb. 13, 1998)
MO980009 (Feb. 13, 1998)
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MO980012 (Feb. 13, 1998)
MO980013 (Feb. 13, 1998)
MO980020 (Feb. 13, 1998)
MO980048 (Feb. 13, 1998)
MO980050 (Feb. 13, 1998)
MO980051 (Feb. 13, 1998)
MO980053 (Feb. 13, 1998)
MO980062 (Feb. 13, 1998)
MO980066 (Feb. 13, 1998)
MO980069 (Feb. 13, 1998)
New Mexico
NM980001 (Feb. 13, 1998)

Volume VI

Alaska
AK980001 (Feb. 13, 1998)
AK980002 (Feb. 13, 1998)
AK980005 (Feb. 13, 1998)
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WY980006 (Feb. 13, 1998)
WY980013 (Feb. 13, 1998)
WY980023 (Feb. 13, 1998)

Volume VII

California
CA980001 (Feb. 13, 1998)
CA980002 (Feb. 13, 1998)
CA980027 (Feb. 13, 1998)
CA980031 (Feb. 13, 1998)
CA980032 (Feb. 13, 1998)
CA980033 (Feb. 13, 1998)
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CA980035 (Feb. 13, 1998)
CA980036 (Feb. 13, 1998)
CA980037 (Feb. 13, 1998)
CA980038 (Feb. 13, 1998)
CA980039 (Feb. 13, 1998)
CA980040 (Feb. 13, 1998)
CA980041 (Feb. 13, 1998)

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled ''General Wage Determinations Issued Under The Davis-Bacon and Related Acts.'' This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at (703) 487–4630.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 2nd Day of July 1998.

Margaret J. Washington,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 98–18013 Filed 7–9–98; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–98–17]

Design of Cave-in Protection Systems; Information Collection Requirements

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice; opportunity for public comment.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and information collection burdens, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on both current and proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that reporting burden (time and financial resources) is minimized, collection materials are clearly understood, impact of collection requirements on respondents can be accurately assessed, and requested data can be provided in the desired format. Currently, the Occupational Safety and Health Administration is soliciting comments concerning the collection of information requirements contained in 29 CFR 1926.652 (b) and (c), Design of Cave-in Protective systems.

The Agency is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of OSHA's responsibilities, 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 the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (for example, permitting electronic submissions of responses).

DATES: Written comments must be submitted on or before September 8, 1998.

ADDRESSES: Comments are to be submitted to the Docket Office, Docket ICR–98–17, U.S. Department of Labor,

Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7894. Written comments limited to 10 pages or less may be transmitted by facsimile to (202) 219–5046.

FOR FURTHER INFORMATION CONTACT: Mr. Laurence Davey, Directorate of Construction, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3621, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 219–7207. Copies of the information collection requests are available for inspection and copying in the Docket Office and will be mailed to persons who request copies by telephoning Mr. Davey at (202) 219–7207 or Barbara Bielaski at (202) 219–8076. For electronic copies of the information collection request, contact OSHA's Web Page on the Internet at http://www.osha-slc.gov (click on *Information Collection Requests*).

SUPPLEMENTARY INFORMATION:

Background

In OSHA's construction standard for excavations, employers are required to protect employees from cave-in hazards by using one of several protective systems. The information required to be collected by this standard is used by employers or engineers to design proper cave-in systems that will support the walls of the excavation or trench.

The employer may choose to slope the sides of the trench or bench (step) the soil back. They could also choose to use a support system or shield, such as a trench box. The standard provides allowable configurations and slopes, and provides appendixes to assist the employer with designing either the sloping/benching systems or the support/shield systems. If an employer elects to use a protective system designed by a registered professional engineer, or bases his/her system on tabulated data provided by sources other than the appendix, the employer must obtain certain information and keep it at the job site for review at the time of an inspection. The information obtained by the employer will contain the identity of the registered professional engineer who approved the design, will normally specify why a particular system was chosen, list the limits of the system chosen, and any explanatory information to aid the user of the data in the appropriate selection. The documentation provides both the employer and the compliance officer with the information necessary to determine if the appropriate system has been selected and designed properly.

Without the information collection requirements which are contained in § 1926.652(b)—Design of Sloping and Benching Systems, and § 1926.652(c)—Design of Support Systems, Shield Systems, and other Protective Systems, employees would be at greater risk from cave-in hazards.

Current Action

This notice requests public comment on OSHA's burden hour estimates prior to OSHA seeking Office of Management and Budget (OMB) approval of the information collection requirements contained in 29 CFR 1926.652 (b) and (c), Design of Cave-in Protective Systems.

Type of Review: Extension of existing approval.

Agency: Occupational Safety and Health Administration, U.S. Department of Labor.

Title: Design of Cave-in Protective systems (29 CFR 1926.652 (b) and (c)).

OMB Number: 1218–0137.

Agency Number: Docket No. ICR–98–17.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 10,000.

Estimated time Per Respondent: Ranges from –0– to 2 hours.

Total Burden Hours: 20,080 hours.

Comments submitted in response to this notice will be summarized and 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.

Signed at Washington, DC, this 2nd day of July 1998.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 98–18428 Filed 7–9–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL–2–93]

Entela, Inc., Expansion of Recognition

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice of expansion of recognition as a Nationally Recognized Testing Laboratory (NRTL).

SUMMARY: This notice announces the Agency's final decision on the application of Entela, Inc., for expansion of its recognition as an NRTL under 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on July 10, 1998 and will be valid until July 10, 2003, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, NRTL Program, Office of Technical Programs and Coordination Activities, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N3653, Washington, D.C. 20210, or phone (202) 219–7056.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that the Occupational Safety and Health Administration (OSHA) has expanded the recognition of Entela, Inc. (ENT) as a Nationally Recognized Testing Laboratory (NRTL) to include the 11 test standards (equipment and materials) listed below, with the limitations noted. ENT applied for expansion of its current recognition as an NRTL, pursuant to 29 CFR 1910.7, for the additional test standards. A notice announcing the application was published in the **Federal Register** on April 17, 1998 (63 FR 19275). The notice included a preliminary finding that ENT could meet the requirements for expansion of its recognition detailed in 29 CFR 1910.7, and invited public comment on the application by June 16, 1998. No comments were received concerning the request for expansion. ENT's previous application pursuant to 29 CFR 1910.7 was for an expansion of its recognition (62 FR 8041, 2/21/97), which OSHA granted on May 22, 1997 (62 FR 28066).

Copies of all documents (Docket No. NRTL–2–93) are available for inspection and duplication at the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Room N2634, Washington, D.C. 20210.

The address of the ENT laboratories covered by this recognition are:

Entela, Inc., 3033 Madison, S.E., Grand Rapids, Michigan 49548

Entela Taiwan Laboratories, 3F No. 260 262 Wen, Lin North Road, Pei Tou, Taipei, Taiwan.

Background

ENT submitted a request, dated September 29, 1997 (see Exhibit 11), to expand its recognition as a Nationally Recognized Testing Laboratory for additional test standards. In a recommendation dated February 17, 1998 (see Exhibit 12), staff for the NRTL Program recommended that ENT's recognition be expanded to include the additional test standards. The recommendation also incorporated the limitations on the recognition of the

Taipei, Taiwan facilities and personnel, when applicable to the testing and evaluation of products under the test standards listed below. These limitations are repeated herein.

In its request for expansion, ENT included a specific reference to an International Electrotechnical Commission (IEC) standard for many of the test standards listed below. Each specific reference is apparently intended to show the IEC standard equivalent to the U.S. national test standard requested. While there may be some equivalence, this expansion of recognition does not apply to or cover any of the IEC standards referenced in ENT's current request for expansion. This clarification is provided since it may not be readily apparent to some reviewers of the public record concerning this notice.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the request for expansion, the supporting documentation, and the NRTL Program staff recommendation, dated February 17, 1998, OSHA finds that ENT has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify certain additional equipment or materials. Pursuant to the authority in 29 CFR 1910.7, ENT's recognition is hereby expanded to include the 11 test standards listed below, subject to the limitations and condition. This recognition is limited to equipment or materials that, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is further limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

ENT asserts by its application that the following standards pertain to equipment or materials that will be used in environments under OSHA's jurisdiction, and OSHA has determined the standards are appropriate within the meaning of 29 CFR 1910.7(c):

ANSI/UL 130 Electric Heating Pads
ANSI/UL 858 Household Electric Ranges
ANSI/UL 969 Marking and Labeling Systems
ANSI/UL 1431 Personal Hygiene and Health Care Appliances
ANSI/UL 2157 Electric Clothes Washing Machines and Extractors
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Limitations

Taiwan Facility

The following limitations apply to the recognition of the Taiwan facility:

a. The Taiwan facility shall be limited to carrying out minor mechanical and electrical testing of instruments and small appliances.

b. Performance of inspections shall be limited to Entela personnel.

Conditions

Entela, Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA shall be allowed access to ENT's facility and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If ENT has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

ENT shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, ENT agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

ENT shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

ENT will continue to meet the requirements for recognition in all areas where it has been recognized; and

ENT will always cooperate with OSHA to assure compliance with the spirit as well as the letter of its recognition and 29 CFR 1910.7.

Signed at Washington, D.C. this 1st day of July 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–18426 Filed 7–9–98; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Agency Information Collection Activities; Announcement of OMB Approval

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is announcing that a collection of information has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. This document announces the OMB approval number and expiration date.

FOR FURTHER INFORMATION CONTACT: Robert O'Brien, Division of Administration and Training Information, Office of Training and Education, Occupational Safety and Health Administration, U.S. Department of Labor, 1555 Times Drive, Des Plaines, IL 60018, telephone (847) 297–4810.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 21, 1998, (63 FR 3155–3156), the Agency announced its intent to request reinstatement of its OMB approval for the Student Data Form. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), OMB has reinstated its approval for this information collection and assigned OMB control number 1218–0172 to the Student Data Form. The approval expires 5/31/2001. Under 5 CFR 1320.5(b), an Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Dated: July 2, 1998.

Charles N. Jeffress,

Assistant Secretary.

[FR Doc. 98–18427 Filed 7–9–98; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection Request Submitted for Public Comment and Recommendations; Delinquent Filer Voluntary Compliance Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (Pub. L. 104–13, 44 U.S.C. Chapter 35). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of a currently approved collection of information, the Delinquent Filer Voluntary Compliance Program. A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed below in the addresses section of the notice.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before September 8, 1998. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, Room N–5647, Washington, DC 20210. Telephone: 202–219–4782 (this is not a toll-free number). Fax: 202–219–4745.

SUPPLEMENTARY INFORMATION:

I. Background

The Secretary of Labor has the authority, under section 502(c)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), to assess civil penalties of up to $1,000 a day against plan administrators who fail or refuse to file complete and timely annual reports (Form 5500 Series Annual Return/Reports) as required under section 101(b)(4) of ERISA and the Secretary's regulations codified in 29 CFR part 2520. Pursuant to 29 CFR 2560.502c–2 and 2570.60 *et seq.*, PWBA has maintained a program for the assessment of civil penalties for noncompliance with the annual reporting requirements. Under this program, plan administrators filing annual reports after the date on which the report was required to be filed may be assessed $50 per day for each day an annual report is filed after the date on which the report(s) was required to be filed, without regard to any extensions for filing. Plan administrators who fail to file an annual report may be assessed a penalty of $300 per day, up to $30,000 per year, until a complete annual report is filed. Penalties are applicable to each annual report required to be filed under Title I of ERISA. The Department may, in its discretion, waive all or part of a civil penalty assessed under section 502(c)(2) upon a showing by the administrator that there was reasonable cause for the failure to file a complete and timely annual report.

The Department has determined that the possible assessment of the above described civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under Title I of ERISA. In an effort to encourage annual reporting compliance, therefore, the Department implemented the Delinquent Filer Voluntary Compliance (DFVC) Program (the Program) on April 27, 1995 (60 FR 20873). Under the Program, administrators otherwise subject to the assessment of higher civil penalties are permitted to pay reduced civil penalties for voluntarily complying with the annual reporting requirements under Title I of ERISA.

This ICR covers the requirement of providing data necessary to identify the plan along with the penalty payment. This data is the only means by which each penalty payment is associated with the relevant plan. With respect to most pension plans and welfare plans, the requirement is satisfied by sending, along with the penalty payment, a copy of the first page of the delinquent annual report, which under current procedures is sent to the IRS.

Under current procedures, certain pension plans for highly compensated employees, commonly called ''top hat'' plans, and apprenticeship plans may file a one-time statement in lieu of annual reports. With respect to such plans for information collection requirements of the Program are satisfied by sending a completed first page of an annual report form along with the penalty payment. The one-time statements are required to be sent to a different address within the Department. The Program is designed to allow the processing of all penalty payments at a single location within the Department.

II. Current Actions

The Pension and Welfare Benefits Administration proposes to extend the currently approved ICR included in the Delinquent Filer Voluntary Compliance Program. This Program is intended to encourage, through the use of reduced civil penalties, delinquent plan administrators to comply with their annual reporting obligations under Title I of the ERISA. The only ICR included in the Program is the requirement of providing data necessary to identify the plan along with the penalty payment. The identifying data allows the penalty to be associated with the relevant plan. Participation of the Program has ranged from approximately 3,400 to 3,000 plans in each year since the Program was implemented.

Type of Review: Extension of a currently approved collection.

Agency: U.S. Department of labor, Pension and Welfare Benefits Administration.

Title: Delinquent Filer Voluntary Compliance Program.

OMB Number: 1210–0089.

Affected Public: Business or other for-profit; Not-for-profit institutions.

Frequency: On occasion.

Average Burden Hours/Minutes Per Response: 21 minutes.

Number of Respondents: 3,100.

Total Annual Responses: 3,100.

Total Annual Burden Hours: 1,085.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval of the information collection request; they will also become a matter of public record.

Dated: July 7, 1998.

Gerald B. Lindrew,

Deputy Director, Pension and Welfare Benefits Administration, Office of Policy and Research.

[FR Doc. 98–18430 Filed 7–9–98; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL FOUNDATION FOR THE ARTS AND HUMANITIES

Proposed Collection, Comment Request

AGENCY: Institute of Museum and Library Services.

ACTION: Notice.

SUMMARY: The Institute of Museum and Library Services as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1994 (PRA95) [44 U.S.C. 3508©(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently the Institute of Museum and Library Services is soliciting comments concerning the proposed annual report for Library Services and Technology Act Grants to States.

A copy of the proposed information collection request can be obtained by contacting the individual listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before September 8, 1998.

IMLS is particularly interested in comments which help the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submissions of responses.

ADDRESSES: Send comments to: Jane Heiser, Director of State Programs, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW, Room 802, Washington, D.C. 20506. Ms. Heiser can be reached on (202) 606–5395 or at jheiser@imls.fed.us

SUPPLEMENTARY INFORMATION:

I. Background

Public Law 104–208 enacted on September 30, 1996 contains the Library Services and Technology Act, a reauthorization and refocusing of federal library programs. This legislation retains the state-based approach to library programs and sharpens the focus to two key priorities: information access through technology and information empowerment through special services.

Public Law 104–208 authorizes the Director of the Institute of Museum and Library Services to make grants to States to assist them to—

(1) Consolidate Federal library service programs;

(2) Stimulate excellence and promote access to learning and information resources in all types of libraries for individuals of all ages;

(3) Promote library services that provide all users access to information through State, regional, national and international electronic networks;

(4) Provide linkages among and between libraries;

(5) Promote targeted library services to people of diverse geographic, cultural, and socioeconomic backgrounds, to individuals with disabilities, and to people with limited functional literary or information skills.

II. Current Actions

This is a new information collection. The annual report is needed to assess outcome of awards as needed for compliance with the Government Performance and Results Act. The report will also facilitate information sharing and identify promising practices among the states to help them implement their state plans.

Agency: Institute of Museum and Library Services.

Title: Library Services and Technology Act State Grants Annual Reports.

OMB Number:

Agency Number: 3137.

Frequency: Once/year.

Affected Public: State Library Administrative Agencies.

Number of Respondents: 56.

Estimated Time Per Respondent: 20 hours.

Total Burden Hours: 1,120.

Total Annualized capital/startup costs: 0.

Total Annual Costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, telephone (202) 606–4646.

Mamie Bittner,

Director, Public and Legislative Affairs.

[FR Doc. 98–18333 Filed 7–9–98; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Submission for OMB Review; Comment Request; Title of Collection: EHR Impact Database

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewal of this collection, OMB control number 3145–0136, the EHR (Directorate for Education and Human Resources) Database. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have provided an opportunity for public comment on this action. Such a notice was published **Federal Register** 23810, dated April 30, 1998. No comments were received.

The materials are now being sent to OMB for review. Send any written comments to Desk Officer, OMB, 3145–0136, OIRA, OMB, Washington, D.C. 20503. Comments should be received by July 31, 1998.

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 on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Renewal Project

The EHR Impact Database was established in 1995 to integrate all available information pertaining to the NSF's Education and Training portfolio. Under a generic survey clearance (OMB 3145–0136) data from the NSF administrative database are incorporated and additional information is obtained through initiative-, divisional-, and program-specific data collections.

Use of the Information

This information is required for effective adminsitrative, program monitoring and evaluation, and for measuring attainment of NSF's program goals, as required by the Government Performance and Results Act (GPRA).

Burden on the Public

The total estimate for this collection is 50,000 annual burden hours. This figure is based on the previous 3 years of collecting information under this clearance. The average annual reporting burden is between 2 and 50 hours per 'respondent' who may be an individual or a project site representing groups.

Dated: July 1, 1998.

Mary Lou Higgs,

Acting NSF Reports Clearance Officer.

[FR Doc. 98–18385 Filed 7–9–98; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development.

Date and Time: July 20–21, 1998, 8:00 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 880, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Jesse Lewis, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1633.

Purpose of Meeting: To provide advice and recommendations concerning requests submitted to NSF for financial support.

Agenda: Review of the Historically Black Colleges & Universities Supplemental Requests.

Reasonf or Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Reason for Late Notice: Need for the panel not determined until this week.

Dated: July 6, 1998.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 98–18438 Filed 7–9–98; 8:45]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 34—Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations.

3. *How often the collection is required:* Applications for new licenses and amendments may be submitted at any time. Applications for renewal are submitted every 10 years. Reports are submitted as events occur.

4. *Who will be required or asked to report:* Applicants for and holders of specific licenses authorizing the use of licensed radioactive material for radiography.

5. *The number of annual responses:* 73 from NRC licensees and 146 from Agreement State licensees.

6. *The number of annual respondents:* 158 from NRC licensees and 30 from Agreement States.

7. *The number of hours needed annually to complete the requirement or request:* 106.5 hours for reporting (approximately 1.5 hours per response), plus 60,178.8 hours for recordkeeping (approximately 380 hours per licensee). The industry total burden is 60,285.3 hours annually for NRC licensees and 120,570.6 hours annually for Agreement State licensees.

8. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

9. *Abstract:* NRC regulations in 10 CFR Part 34 establish radiation safety requirements for the use of radioactive material in industrial radiography. The information in the applications, reports and records is used by the NRC staff to ensure that the health and safety of the public is protected and that licensee possession and use of source and byproduct material is in compliance with license and regulatory requirements.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by August 10, 1998: Erik Godwin, Office of Information and Regulatory Affairs (3150– 0007), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 6th day of July 1998.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 98–18415 Filed 7–9–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Reliability and Probabilistic Risk Assessment; Postponed

A meeting of the ACRS Subcommittee on Reliability and Probabilistic Risk Assessment scheduled to be held on July 17, 1998, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland has been postponed due to the unavailability of key personnel. Notice of this meeting was published in the

Federal Register on Monday, June 29, 1998 (63 FR 35297). Rescheduling of this meeting will be announced in a future **Federal Register** Notice.

For further information contact: Mr. Michael T. Markley, cognizant ACRS staff engineer, (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EDT).

Date: July 6, 1998.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 98–18416 Filed 7–9–98; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

1998 List of Designated Federal Entities and Federal Entities

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: This notice provides a list of Designated Federal Entities and Federal Entities, as required by the Inspector General Act of 1978 (IG Act), as subsequently amended.

FOR FURTHER INFORMATION CONTACT: Suzanne Murrin at 202–395–1040 or Jennifer Kim at 202–395–5835, Office of Federal Financial Management, Office of Management and Budget.

SUPPLEMENTARY INFORMATION: This notice provides a copy of the 1998 List of Designated Federal Entities and Federal Entities, which the Office of Management and Budget (OMB) is required to publish annually under the IG Act.

The List is divided into two groups: Designated Federal Entities and Federal Entities. The Designated Federal Entities are required to establish and maintain Offices of Inspector General. The 29 Designated Federal Entities are as listed in the IG Act, except that those agencies which have ceased to exist have been deleted from the list.

Federal Entities are required to annually report to each House of the Congress and the OMB on audit and investigative activities in their organizations. Federal Entities are defined as ''any Government corporation (within the meaning of section 103(1) of title 5, United States Code), any Government controlled corporation (within the meaning of section 103(2) of such title), or any other entity in the Executive Branch of the government, or any independent regulatory agency'' other than the Executive Office of the President and agencies with statutory Inspectors General. There are 3 deletions and 1 addition in the 1998 Federal Entities list from the 1997 list published in the April 30, 1997, **Federal Register**.

The 1998 Designated Federal Entities and Federal Entities List was prepared in consultation with the U.S. General Accounting Office.

G. Edward DeSeve,

Acting Deputy Director for Management.

Herein follows the text of the 1998 List of Designated Federal Entities and Federal Entities:

1998 List of Designated Federal Entities and Federal Entities

The IG Act, as subsequently amended, requires OMB to publish a list of ''Designated Federal Entities'' and ''Federal Entities'' and the heads of such entities. Designated Federal Entities were required to establish Offices of Inspector General before April 17, 1989. Federal Entities are required to report annually to each House of the Congress and the Office of Management and Budget on audit and investigative activities in their organizations.

Designated Federal Entities and Entity Heads

1. Amtrak—Chairperson
2. Appalachian Regional Commission—Federal Co-Chairperson
3. The Board of Governors, Federal Reserve System—Chairperson
4. Commodity Futures Trading Commission—Chairperson
5. Consumer Product Safety Commission—Chairperson
6. Corporation for Public Broadcasting—Board of Directors
7. Equal Employment Opportunity Commission—Chairperson
8. Farm Credit Administration—Chairperson
9. Federal Communications Commission—Chairperson
10. Federal Election Commission—Chairperson
11. Federal Housing Finance Board—Chairperson
12. Federal Labor Relations Authority—Chairperson
13. Federal Maritime Commission—Chairperson
14. Federal Trade Commission—Chairperson
15. Legal Services Corporation—Board of Directors
16. National Archives and Records Administration—Archivist of the United States
17. National Credit Union Administration—Board of Directors
18. National Endowment for the Arts—Chairperson
19. National Endowment for the Humanities—Chairperson
20. National Labor Relations Board—Chairperson
21. National Science Foundation—National Science Board
22. Panama Canal Commission—Chairperson
23. Peace Corps—Director
24. Pension Benefit Guaranty Corporation—Chairperson
25. Securities and Exchange Commission—Chairperson
26. Smithsonian Institution—Secretary
27. Tennessee Valley Authority—Board of Directors
28. United States International Trade Commission—Chairperson
29. United States Postal Service—Board of Governors

Federal Entities and entity heads

1. Advisory Council on Historic Preservation—Chairperson
2. African Development Foundation—Chairperson
3. American Battle Monuments Commission—Chairperson
4. Architectural and Transportation Barriers Compliance Board—Chairperson
5. Armed Forces Retirement Home—Board of Directors
6. Barry Goldwater Scholarship and Excellence in Education Foundation—Chairperson
7. Chemical Safety and Hazard Investigation Board—Chairperson
8. Christopher Columbus Fellowship Foundation—Chairperson
9. Commission for the Preservation of America's Heritage Abroad—Chairperson
10. Commission of Fine Arts—Chairperson
11. Commission on Civil Rights—Chairperson
12. Committee for Purchase from People Who Are Blind or Severely Disabled—Chairperson
13. Court of Veterans Appeals—Chief Judge
14. Defense Nuclear Facilities Safety Board—Chairperson
15. Export-Import Bank—President and Chairperson
16. Farm Credit System Financial Assistance Corporation—Chairperson
17. Farm Credit System Insurance Corporation—Board of Directors
18. Federal Financial Institutions Examination Council Appraisal Subcommittee—Chairperson
19. Federal Mediation and Conciliation Service—Director
20. Federal Mine Safety and Health Review Commission—Chairperson
21. Federal Retirement Thrift Investment Board—Chairperson
22. Harry S. Truman Scholarship Foundation—Chairperson

23. Institute of American Indian and Alaska Native Culture and Arts Development—Chairperson
24. Institute for Museum and Library Services—Board of Directors
25. Inter-American Foundation—Chairperson
26. James Madison Memorial Fellowship Foundation—Chairperson
27. Japan-U.S. Friendship Commission—Chairperson
28. Marine Mammal Commission—Chairperson
29. Merit Systems Protection Board—Chairperson
30. Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation—Chairperson
31. National Capital Planning Commission—Chairperson
32. National Commission on Libraries and Information Science—Chairperson
33. National Council on Disability—Chairperson
34. National Education Goals Panel—Chairperson
35. National Endowment for Democracy—Chairperson
36. National Mediation Board—Chairperson
37. National Science Foundation/Arctic Research Commission—Chairperson
38. National Transportation Safety Board—Chairperson
39. Neighborhood Reinvestment Corporation—Chairperson
40. Nuclear Waste Technical Review Board—Chairperson
41. Occupational Safety and Health Review Commission—Chairperson
42. Office of Government Ethics—Director
43. Office of Navajo and Hopi Indian Relocation—Chairperson
44. Office of Special Counsel—Special Counsel
45. Office of the Nuclear Waste Negotiator—Negotiator
46. Offices of Independent Counsel—Independent Counsels
47. Overseas Private Investment Corporation—Board of Directors
48. Postal Rate Commission—Chairperson
49. Selective Service System—Director
50. Smithsonian Institution/John F. Kennedy Center for the Performing Arts—Chairperson
51. Smithsonian Institution/National Gallery of Art—Board of Trustees
52. Smithsonian Institution/Woodrow Wilson International Center for Scholars—Board of Trustees
53. State Justice Institute—Director
54. Trade and Development Agency—Director
55. U.S. Enrichment Corporation—Chairperson
56. U.S. Holocaust Memorial Council—Chairperson
57. U.S. Institute of Peace—Chairperson

[FR Doc. 98–18445 Filed 7–9–98; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–26892]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

July 2, 1998.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 28, 1998, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified on any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After July 28, 1998, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Appalachian Power Company (70–5503)

Appalachian Power Company (''Appalachian''), 40 Franklin Road, S.W., Roanoke, Virginia 24011, an electric utility subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a post-effective amendment to its application-declaration under sections 9(a), 10 and 12(d) of the Act and rules 44 and 54 under the Act.

By order dated December 10, 1974 (HCAR No. 18703), the Commission authorized Appalachian, among other things, to enter into an agreement of sale (''Agreement'') with the Industrial Development Authority of Russell County, Virginia (''Authority''), concerning the financing of pollution control facilities (''Facilities'') at Appalachian's Glen Lyn and Clinch River plants. Under the Agreement, the Authority may issue and sell its pollution control revenue bonds (''Revenue Bonds'') or pollution control refunding bonds (''Refunding Bonds'' and, together with Revenue Bonds, ''Bonds''), in one or more series, and deposit the proceeds with the trustee (''Trustee'') under an indenture (''Indenture'') entered into between the Authority and the Trustee. The Trustee applies the proceeds to the payment of the costs of construction of the Facilities or, in the case of proceeds from the sale of Refunding Bonds, to the payment of principal, premium (if any) and/or interest on Bonds to be refunded.

The same order also authorized Appalachian to convey an undivided interest in a portion of the Facilities to the Authority, and to reacquire that interest under an installment sales arrangement (''Sales Agreement'') requiring Appalachian to pay as the purchase price semi-annual installments in an amount that, together with other funds held by the Trustee under the Indenture for that purpose, will enable the Authority to pay, when due, the interest and principal on the Bonds. To date, the Authority has issued and sold seven series of Bonds in an aggregate principal amount of $101.74 million of which $37.0 million presently are outstanding.

The Authority now intends to issue and sell its Series H Refunding Bonds in the aggregate principal amount of $19.5 million, the proceeds of which will be used to provide for the principal and interest payments required for the refunding, at their stated maturity on November 1, 1998, of the Authority's 7¼% Series F Refunding Bonds. Appalachian expects that the Series H Refunding Bonds will be issued under and secured by the Indenture and a seventh supplemental indenture, will bear interest semi-annually at a rate of interest not exceeding 8% per year and will mature at a date not more than thirty years from the date of issuance. Appalachian proposes to enter into an amended Sales Agreement in connection with the Series H Refunding Bonds under essentially the same terms and conditions of the original Sales Agreement. Appalachian may provide some form of credit enhancement in connection with the issuance and sale of

the Series H Refunding Bonds and pay a related fee.

Eastern Enterprises (70–9195)

Eastern Enterprises (''Eastern''), 9 Riverside Road, Weston, Massachusetts 02139, a public utility holding company exempt by order under section 3(a)(1) of the Act has filed an application under sections 3(a)(1), 9(a)(2) and 10 of the Act.

Eastern proposes to acquire all of the issued and outstanding voting securities of Essex County Gas Company (''Essex''), a gas public utility company. To accomplish the acquisition, Eastern and Essex have entered into an Agreement and Plan of Merger, dated as of December 19, 1997 (''Agreement''). The Agreement provides, among other things, that a special purpose subsidiary of Eastern (''NEWCO'') will merge with and into Essex. Shares of NEWCO will be converted into shares of new common stock of Essex, which will become a wholly owned subsidiary of Eastern. Each outstanding share of Essex will be converted into 1.183985 shares of Eastern common stock, subject to adjustment under certain circumstances based on the average market price for a specified period prior to closing. The stockholders of Essex will become stockholders of Eastern. Outstanding debt securities of Essex will not be affected and will remain outstanding on the same terms and conditions.

The trustees of Eastern approved the merger at a meeting held on December 12, 1997. No approval of Eastern's shareholders is required. The board of directors of Essex approved the merger at a meeting held on December 19, 1997. The shareholders of Essex voted to approve the Merger at a meeting held on June 24, 1998.

Eastern's sole utility subsidiary, Boston Gas Company (''Boston Gas''), serves approximately 530,000 gas retail customers, all in Massachusetts.[1] Essex serves approximately 42,000 gas retail customers entirely in eastern Massachusetts. The service territories of Eastern and Essex are contiguous. Eastern's net earnings for the twelve months ended December 31, 1997 were $51,950,000 on revenues of $970,204,000. Eastern's nonutility subsidiaries contributed $269,259,000, approximately 27.8% of total revenues during this period. Essex's net earnings for the twelve months ended August 31, 1997, were $3,966,519 on revenues of $53,534,734, substantially all of which were provided by its utility operations. Both Eastern and Essex are subject to the retail ratemaking jurisdiction of the Massachusetts Department of Telecommunications and Energy.

Eastern has several direct nonutility subsidiaries. These include: Midland Enterprises Inc. (''Midland''), AllEnergy Marketing Company, Inc., AMR Data Corporation, Boston Gas Services, Inc., Eastern Associated Capital Corp., Eastern Associated Securities Corp., Eastern Energy Systems Corp., Eastern Enterprises Foundation, Eastern Rivermoor Company, Inc., Eastern Urban Services, Inc., Mystic Steamship Corporation, PCC Land Company, Inc., Philadelphia Coke Co., Inc., ServiceEdge Partners, Inc., Water Products Group Incorporated, and Western Associated Energy Corp.[2] Midland and its subsidiaries[3] are engaged in river barge transportation services and related support activities. The other nonutility subsidiaries are engaged in investment activities, real estate activities, installing and servicing HVAC equipment, automated meter reading services, and ownership of liquid natural gas storage facilities.

Essex has two nonutility subsidiaries, LNG Storage, Inc. (''LNG'') and Northern Energy Company, Inc. (''Northern''). LNG owns a liquid natural gas storage facility. Northern is inactive.

In addition, Eastern requests an order granting it an exemption under section 3(a)(1) of the Act following the Merger. Eastern asserts that upon consummation of Merger, Eastern will continue to satisfy the requirements for an exemption under section 3(a)(1). Eastern states that it and its public utility subsidiaries, currently are, and will continue to be, predominately intrastate in character and will continue to carry on their businesses substantially in Massachusetts.

[1] Boston Gas has an active wholly owned nonutility subsidiary, Massachusetts LNG Incorporated, which holds title to a liquid natural gas storage facility.

[2] AllEnergy Marketing Company, Inc., Boston Gas Services, Inc., Eastern Energy Systems Corp., Eastern Urban Services, Inc., Mystic Steamship Corporation, Philadelphia Coke Co., Inc., Water Products Group Incorporated, and Western Associated Energy Corp. are inactive.

[3] Midland's subsidiaries include: Capital Marine Supply, Inc., Chotin Transportation, Inc., Eastern Associated Terminals Company, Federal Barge Lines, Inc., Hartley Marine Corp., Minnesota Harbor Service, Inc., The Ohio River Company, The Ohio River Company Traffic Division, Inc., The Ohio River Terminals Company, Orgulf Transport Co., Orsouth Transport Co., Port Allen Marine Service, Inc., Red Circle Transport Co., River Fleets, Inc., and West Virginia Terminals, Inc. Federal Barge Lines, Inc. is inactive. Midland and its active subsidiaries are engaged in river barge transportation services and related support activities.

Midlands also has an inactive nonutility subsidiary, Federal Barge Lines, Inc.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18293 Filed 7–9–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. PA–25; File No. S7–21–98]

Privacy Act of 1974: Establishment of Three New Systems of Records: Ridesharing System (SEC–44); Public Transportation Subsidy Program (SEC–45); and Identification Cards, Press Passes, and Proximity Access Control Cards (SEC–46)

AGENCY: Securities and Exchange Commission.

ACTION: Notice of the establishment of three new systems of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the Securities and Exchange Commission (SEC) gives notice of the establishment of three new Privacy Act systems of records: Ridesharing System (SEC–44); Public Transportation Subsidy Program (SEC–45); and Identification Cards, Press Passes, and Proximity Access Control Cards (SEC–46).

DATES: The proposed change will become effective August 19, 1998, unless further notice is given. The Commission will publish a new notice if the effective date is delayed to review comments, or if changes are made based on comments received. To be assured of consideration, comments must be received by the contact person below on or before August 10, 1998.

ADDRESSES: Persons wishing to submit comments should file three (3) copies thereof with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. [S7–21–98]. Copies of the comments will be available for public inspection and copying at the SEC's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Hannah R. Hall, Privacy Act Officer (202) 942–4320, Office of Filings and Information Services, Freedom of Information Act and Privacy Act Operations, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O–5, Alexandria, VA 22312–2413.

SUPPLEMENTARY INFORMATION: The SEC gives notice of the establishment of three new systems of records entitled the Ridesharing System (SEC–44); Public Transportation Subsidy Program (SEC–45); and Identification Cards, Press Passes, and Proximity Access Control Cards (SEC–46).

The SEC is establishing SEC–44 to administer its ridesharing program for those SEC employees who participate in a vanpool or carpool. The ridesharing system allows SEC employees who participate in a vanpool or carpool for equitable parking based on established criteria.

The SEC is establishing SEC–45 to administer its subsidy program for those SEC employees who use public transportation. The SEC's public transportation subsidy program was designed to reduce transportation to work by private conveyance and to increase the use of public transportation—thus reducing traffic congestion, energy consumption, and vehicular pollution. Generally, the subsidy is issued in a manner that is not readily transferable into cash. At the SEC Headquarters, the subsidy is distributed on a bimonthly basis whereas in the field offices, the method or period for distributing the subsidy is left to the discretion of each Regional Director and District Administrator.

The SEC is establishing SEC–46 to administer its Identification Cards, Press Passes, and Proximity Access Control Cards program for those SEC employees, members of the press, contractors, and consultants, who require access to SEC facilities. The SEC's identification card program was designed to facilitate access to SEC facilities and to exit the same.

The new systems of records reports, as required by 5 U.S.C. 552a(r) of the Privacy Act, have been submitted to the Committee on Government Operations of the House of Representatives, the Committee on Government Affairs of the Senate, and the Office of Management and Budget, pursuant to Appendix I to OMB Circular A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' as amended on February 20, 1996 (61 FR 6428, 6435).

Accordingly, the SEC proposes to establish the following systems of records.

SEC–44

SYSTEM NAME:

Ridesharing System.

SYSTEM LOCATION:

Securities and Exchange Commission, Operations Center, Office of Administrative and Personnel Management, 6432 General Green Way, Mail Stop O–1, Alexandria, VA 22312–2413.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SEC employees who participate in a vanpool or carpool and apply for parking permits.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include SEC Form 2421 (Official Parking Application). Records contain the employee's name, home address, SEC telephone number, and vehicle make, model, year, tag number, and state.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Exec. Order 12191; 41 CFR 101–6.3; 41 CFR 101–20.104; and 41 CFR 101–20.104–1 through 4, and 42 U.S.C. 13201.

PURPOSE:

The system is primarily designed to encourage the formulation of carpools or vanpools, as a means to conserve petroleum, reduce congestion, and improve air quality; and to provide equitable parking based upon established criteria.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

No routine use disclosures have been established for these records. The records and information contained in these records will not be disclosed outside the SEC, unless mandated by law. *See* Conditions of Disclosure to Third Parties, 5 U.S.C. 552a(b).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

RETRIEVABILITY:

Electronic records may be searched and retrieved by the employee's name or parking permit number. Paper records are retrieved by the parking permit number only.

SAFEGUARDS:

Paper records are placed in a locked file cabinet, and the data which is extracted from these paper records is keyed into a computer database, safeguarded by restricted passwords.

RETENTION AND DISPOSAL:

Records are maintained on one form and in a computer database. Documentation (paper and electronic records) is kept for two years then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Administrative and Personnel Management, Operations Center, Securities and Exchange Commission, 6432 General Green Way, Mail Stop O–1, Alexandria, VA 22312–2413.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the Privacy Act Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O–5, Alexandria, VA 22312–2413.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of this record may contact the Privacy Act Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O–5, Alexandria, VA 22312–2413.

CONTESTING RECORDS PROCEDURES:

See record access procedures above.

RECORD SOURCE CATEGORIES:

Information is provided by SEC employees, who have applied for parking, and by the issuing official.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SEC–45

SYSTEM NAME:

Public Transportation Subsidy Program.

SYSTEM LOCATION:

Securities and Exchange Commission, Operations Center, Office of Administrative and Personnel Management, 6432 General Green Way, Mail Stop O–1, Alexandria, VA 22312–2413. SEC Regional and District Offices are as follows: Central Regional Office, 1801 California Street, Suite 4800, Denver, CO 80202–2648; Midwest Regional Office, 500 West Madison Street, Suite 1400, Chicago, IL 60661–2511; Northeast Regional Office, 7 World Trade Center, Suite 1300, New York, NY 10048; Southeast Regional Office, 1401 Brickell Avenue, Suite 200, Miami, FL 33131; Atlanta District Office, 3475 Lenox Road, N.E., Suite 1000, Atlanta, GA 30326–1232; Boston District Office, 73 Tremont Street, Suite 600, Boston, MA 02108–3812; Fort Worth District Office, 801 Cherry Street, 19th Floor, Fort Worth, TX 76102; Philadelphia District Office, The Curtis Center, Suite 1005 East, 601 Walnut Street, Philadelphia, PA 19106–3322; San Francisco District Office, 44 Montgomery Street, Suite 1100, San

Francisco, CA 94104; and Salt Lake District Office, 50 South Main Street, Suite 500, Salt Lake City, UT 84144–0402.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

SEC employees who use public transportation.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include the employee's name, date of hire, social security number, organization, grade, and date of annual certification.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Exec. Order 12191; Pub. L. 101–509, Section 629; Pub. L. 103–172; 26 CFR 1.132–6; and 42 U.S.C. 13201.

PURPOSE:

The system is primarily designed to encourage employees to use public transportation as a means to conserve petroleum, reduce congestion, and improve air quality.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES.

The information contained in these records are used as follows:

1. To the appropriate personnel for periodic review of revalidation for subsidy;
2. To the Office of Inspector General for investigating allegations of abuse, should they occur;
3. To the appropriate Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order where the SEC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation; and
4. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

RETRIEVABILITY:

Records are maintained alphabetically and retrieved by the employee's name.

SAFEGUARDS:

Computerized records are safeguarded by restricted passwords and the paper records are locked in file cabinets.

RETENTION AND DISPOSAL:

Records in either paper or electronic form may include applications, certification logs, vouchers, and spreadsheets, used to document the disbursement of transportation subsidies. These records are destroyed after three years under the National Archives and Records Administration's *General Records Schedule* No. 9, Item 7.

SYSTEM MANAGER(S) AND ADDRESS:

Office of Administrative and Personnel Management, Operations Center, Securities and Exchange Commission, 6432 General Green Way, Mail Stop O–1, Alexandria, VA 22312–2413. SEC Regional and District Offices are as follows: Central Regional Office, 1801 California Street, Suite 4800, Denver, CO 80202–2648; Midwest Regional Office, 500 West Madison Street, Suite 1400, Chicago, IL 60661–2511; Northeast Regional Office, 7 World Trade Center, Suite 1300, New York, NY 10048; Southeast Regional Office, 1401 Brickell Avenue, Suite 200, Miami, FL 33131; Atlanta District Office, 3475 Lenox Road, N.E., Suite 1000, Atlanta, GA 30326–1232; Boston District Office, 73 Tremont Street, Suite 600, Boston, MA 02108–3812; Fort Worth District Office, 801 Cherry Street, 19th Floor, Fort Worth, TX 76102; Philadelphia District Office, The Curtis Center, Suite 1005 East, 601 Walnut Street, Philadelphia, PA 19106–3322; San Francisco District Office, 44 Montgomery Street, Suite 1100, San Francisco, CA 94104; and Salt Lake District Office, 50 South Main Street, Suite 500, Salt Lake City, UT 84144–0402.

NOTIFICATION PROCEDURE:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the Privacy Act Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O–5, Alexandria, VA 22312–2413.

RECORD ACCESS PROCEDURES:

Persons wishing to obtain information on the procedures for gaining access to or contesting the contents of this record may contact the Privacy Act Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O–5, Alexandria, VA 22312–2413.

CONTESTING RECORDS PROCEDURES:

See record access procedures above.

RECORD SOURCE CATEGORIES:

Records include SEC Form 2344, Return/Termination of Public Transportation Subsidy; SEC Form 2316, Employee Certification for Public Transportation Subsidy; SEC Form 2317, Receipt for Public Transportation Subsidy; SEC Form 2318, Disbursing Agents, Voucher; and SEC Form 2407, Authorization for Third-Party Receipt of Public Transportation Subsidy.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

SEC–46

SYSTEM NAME:

Identification Cards, Press Passes, and Proximity Access Control Cards.

SYSTEM LOCATION:

Securities and Exchange Commission, Operations Center, Office of Administrative and Personnel Management, 6432 General Green Way, Mail Stop O–1, Alexandria, VA 22312–2413.

CATEGORIES AND INDIVIDUALS COVERED BY THE SYSTEM:

SEC employees, members of the press, contractors, and consultants who require access to SEC facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include SEC Form 980, Regular Identification Card (name, date of birth, weight, height, color of hair and eyes, employee identification number, and date of expiration); SEC Form 980A, Day Pass (date, name, organization, and authorized by); SEC Form 990, Special Credential (signature of employee and card number); SEC Form 2354, Temporary Pass (date of expiration and control number); SEC Form 2355, Contractor and Consultant Pass (name, issuing officer, control number, identification number, date of issue, expiration date, date of birth, color of hair and eyes, height, weight, and assignment); SEC Form 2264, Permanent (Resident) Press Pass (name, organization, control number, and date of expiration); SEC Form 2265 Temporary (Non-Resident) Press Pass (name, organization, control number, and date of expiration); SEC Form 725, Identification/Access Control Card Worksheet (various personal characteristics); and Proximity Access Control Card (name, clearance(s), company and division).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Federal Property and Administrative Services Act of 1949 (63 Stat. 377), as amended.

PURPOSE:

This system was primarily designed to permit access to SEC facilities by SEC employees, members of the press, contractors and consultants.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES.

These records and information contained in these records are used as follows:

1. To the appropriate Federal, State or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the SEC becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation;

2. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court;

3. To a Federal, State, or local agency, in response to its requests, in connection with the hiring or retention of an employee, the issuance of a security clearance, or the conducting of a security or background investigation of an individual, to the extent that the information is relevant and necessary to the requesting agency; and

4. To the Office of Inspector General for investigating allegations of abuse, should they occur.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Retrievability:

By use of a database, records may be retrieved by the employee's name and identification number.

Safeguards:

Records are safeguarded by restricted computer passwords, locked file cabinets, and safes.

Retention and disposal:

Records are maintained in a computerized database and paper. Electronic records, identification cards, and passes are destroyed three months after expiration, revocation, or return to issuing office, as provided in the National Archives and Records Administration's *General Records Schedule* No. 11, Item 4.

System manger(s) and address:

Office of Administrative and Personnel Management, Operations Center, Securities and Exchange Commission, 6432 General Green Way, Mail Stop O–1, Alexandria, VA 22312–2413.

Notification procedure:

All requests to determine whether this system of records contains a record pertaining to the requesting individual may be directed to the Privacy Act Officer, Securities and Exchange Commission, Operations Center, 6432 General Green Way, Mail Stop O–5, Alexandria, VA 22312–2413.

Records access procedures:

persons wishing to obtain information on the procedures for gaining access to or contesting the contents of this record may contact the Privacy Act Officer, Securities and Exchange Commission, Operations Center, 6412 General Green Way, Mail Stop O–5, Alexandria, VA 22312–2413.

Contesting records procedures:

See record access procedures above.

Record source categories:

Inforamtion is provided by the SEC employee, contractor, consultant, or press member being issued the identification card and by the issuing official.

Exemptions claimed for the system:

None.

Dated: July 2, 1998.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18298 Filed 7–9–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40157; File No. SR–Amex–96–44]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3, 4, 5 and 6 to the Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Listing and Trading of Options on Exchange-Traded Fund Shares

July 1, 1998.

I. Introduction

On November 21, 1996, the American Stock Exchange, Inc. (''Amex'' or ''Exchange''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change to list and trade options on securities representing interests in open-end, exchange-listed investment companies that hold securities constituting or based on an index or portfolio of securities (''Exchange-Traded Fund Shares'' or ''Fund Shares''). The Exchange filed Amendment Nos. 1 and 2 to the proposal on January 16, 1997, and February 19, 1997, respectively.[3] Notice of the proposal, and Amendment Nos. 1 and 2 appeared in the **Federal Register** on February 25, 1997.[4] No comment letters were received on the proposed rule change. On January 7, 1998, the Amex filed Amendment No. 3 to the proposed rule change.[5]

Among other things, Amendment No. 3 revises the proposal to permit the Amex to trade FLEX Equity options on Fund Shares. On March 12, 1998, the Amex filed Amendment No. 4 to the proposal [6] and on April 28, 1998, the Exchange filed Amendment No. 5.[7] Finally, on June 19, 1998, the Exchange filed Amendment No. 6 to the proposed rule change.[8] This order approves the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Amendment Nos. 1 and 2 have been replaced and superseded by Amendment No. 5.

[4] *See* Securities Exchange Act Release No. 38308 (February 19, 1997), 62 FR 8467.

[5] *See* Letter from Claire P. McGrath, Vice President & Senior Counsel, Amex, to Sharon Lawson, Senior Special Counsel, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), dated January 6, 1998 (''Amendment No. 3''). Amendment No. 3 makes a number of changes to the proposal which are discussed herein.

[6] *See* Letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Sharon Lawson, Senior Special Counsel, OMS, Division, Commission, dated March 11, 1998 (''Amendment No. 4''). Amendment No. 4 provides that options on Fund Shares can either meet the uniform options listing standards set forth in Rule 915 and commentary .01 thereunder or meet the criteria set forth in proposed commentary .06 to Rule 915. The portion of Amendment No. 4 that addresses comprehensive surveillance sharing agreements with regard to non-U.S. stocks in the index or portfolio on which the fund shares are based has been replaced and superseded by Amendment No. 5.

[7] *See* Letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Sharon Lawson, Senior Special Counsel, OMS, Division, Commission, dated April 27, 1998 (''Amendment No. 5''). In Amendment No. 5 the Amex proposes the following surveillance sharing standard: (1) that any Fund Share with non-U.S. stocks in the underlying index or portfolio that are not subject to comprehensive surveillance sharing agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio; (2) stocks for which the primary market is in anyone country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index; and (3) stocks for which the primary market is in any two countries that are not subject to comprehensive agreements do not represent 33% or more of the weight of the index. Amendment No. 5 supersedes and replaces Amendment Nos. 1 & 2, and the portion of Amendment No. 4 that addresses surveillance sharing.

[8] *See* Letter from Claire P. McGrath, Vice President and Special Counsel, Amex, to Sharon Lawson, Senior Special Counsel, OMS, Division, Commission, dated June 19, 1998 (''Amendment No. 6''). In Amendment No. 6 the Exchange clarifies that Fund Shares that hold securities based upon a narrow-based index or portfolio must have options margin that equals at least 100% of the current market value of the contracts plus 20% of the

Exchange's proposal, and Amendment Nos. 3, 4, 5, and 6 on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to provide for the trading of options and FLEX Equity options [9] on Fund Shares. As noted above, Fund Shares are exchange-listed securities representing interests in open-end unit investment trusts or open-end management investment companies (''Funds'') that hold securities based on an index or a portfolio of securities.[10] Fund Shares are issued in exchange for an ''in kind'' deposit of a specified portfolio of securities, together with a cash payment, in minimum size aggregations or multiples thereof (''Creation Units''). The size of the applicable Creation Unit size aggregation is set forth in the Fund's prospectus, and varies from one series of Fund Shares to another, but generally is of substantial size (*e.g.*, value in excess of $450,000 per creation unit). A Fund, generally, will issue and sell Fund Shares in Creation Unit size through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Fund Shares and the appropriate securities are received. Following issuance, Fund Shares are traded on an exchange like other equity securities, and equity trading rules apply. Likewise, redemption of Fund Shares is made in Creation Unit size and ''in kind,'' with a portfolio of securities and cash exchanged for the Fund Shares that have been tendered for redemption.

Generally, options on Exchange-Traded Fund Shares are proposed to be traded on the Exchange pursuant to the same rules and procedures that apply to trading in options on equity securities. However, the Exchange is also proposing to list FLEX Equity options on Fund Shares and some options will have a unit of trading of 1000 Exchange-Traded Fund Shares. The Exchange will list option contracts covering either 100 or 1000 Fund Shares, or both, depending on the price and volatility of the underlying Fund Shares and the popularity of the options.[11] Strike prices for both the 100 and 1000 share contracts will be set to bracket the Fund Shares at one point intervals up to a share price of $200.[12] The proposed position and exercise limits for options on Fund Shares would be the same as those established for stock options as set forth in Amex Rules 904 and 905. The Amex anticipates that most options on Fund Shares initially will qualify for only the lowest position limit. As with standardized equity options, the position limits will be increased for options if the volume of trading in the Fund Shares increases to meet the requirements of a higher limit.[13] As is currently the case for all FLEX Equity options, no position and exercise limits will be applicable to FLEX Equity options overlying Fund Shares until, at least, September 9, 1999.[14]

The listing and maintenance standards proposed for options on Exchange-Traded Fund Shares are set forth in proposed Commentary .06 under Exchange Rule 915 and in proposed Commentary .08 under Exchange Rule 916, respectively. Pursuant to the proposed initial listing standards, Amex only will list Fund Shares that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as national market securities. In addition, the initial listing standards require that either: (1) the Fund Shares meet the uniform options listing standards in Commentary .01 to Rule 915, which include minimum public float, trading volume, and share price of the underlying security in order to list the option; [15] or (2) the Exchange-Traded Fund Shares must be available for creation or redemption each business day in cash or in kind from the Fund at a price related to the net asset value, and the Exchange will require that the underlying Fund Shares may be created even though some or all of the securities needed to be deposited have not been received by the Fund.[16]

In addition, the initial listing standards require that: (1) any Fund Share with non-U.S. stocks in the underlying index or portfolio that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio; (2) stocks for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index or portfolio; and (3) stocks for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index or portfolio.[17]

The Exchange's proposed maintenance standards provide that if a particular series of Exchange-Traded Fund Shares should cease to trade on an exchange or as national market securities in the over-the-counter market, there will be no opening transactions in the options on the Fund Shares, and all such options will trade on a liquidation-only basis. In addition, the Amex will consider the suspension of opening transactions in any series of options of the class covering Fund Shares if: (1) the options fail to meet the uniform equity option maintenance standards Commentary .01 to Rule 916,[18] when the options were listed pursuant to the equity option listing

market value of equivalent units of the underlying security value.

[9] In general, FLEX Equity options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices.

[10] Currently, the Exchange trades unit investment trust securities known as Portfolio Depository ReceiptsSM (''PDRs'') based on the Standard & Poor's 500® Composite Stock Price Index, the Standard & Poor's MidCap 400 Index, and the Dow Jones Industrial Average. In addition, the Exchange trades Index Fund Shares which are issued by an open-end management investment company consisting of seventeen separate series known as World Equity Benchmark SharesSM (''WEBS'') based on seventeen foreign equity market indexes. PDRs and WEBS are listed on the Amex pursuant to Rule 1000, et seq. and Rule 1000A et seq., respectively, and trade like shares of common stock. The Commission notes that not all PDRs or WEBS currently trading on the Amex may meet the standards for options trading approved by this order.

[11] *See* Amendment No. 3, *supra* note 5. In the event the Exchange lists options covering both 100 and 1000 of the same underlying Fund Shares, the Exchange will assign separate trading symbols to the options and will issue an Information Circular to all its members advising of the trading symbols. Telephone conversation between Claire P. McGrath, Vice President & Senior Counsel, Amex, and James T. McHale, Special Counsel, OMS, Division, Commission, on June 17, 1998.

[12] *See* Amendment No. 3, *supra* note 5.

[13] *Id.*

[14] *See* Securities Exchange Act Release No. 39032 (September 9, 1997) (Order eliminating position and exercise limits for FLEX Equity options on a two year pilot basis) (''FLEX Equity Position Limit Pilot'').

[15] Specifically, Commentary .01 to Rule 915 requires the underlying security to have a public float of 7,000,000 shares, 2000 holders, trading volume of 2,400,000 shares in the preceding 12 months, a share price of $7.50 for the majority of the business days during the three calendar months preceding the date of the selection, and that the issuer of the underlying security is in compliance with the Act.

[16] Provided the authorized creation participant has undertaken to deliver the shares as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the Fund which underlies the option, as described in the Fund prospectus. *See* Amendment No. 3, *supra* note 5.

[17] *See* Amendment No. 5, *supra* note 7.

[18] Specifically, Commentary .01 to Rule 916 provides that an underlying security will not meet the Exchange's requirements for continued listing when, among other things; (1) there are fewer than 6 300,000 publicly-held shares; (2) there are fewer than 1600 holders; (3) trading volume was less than 1,800,000 shares in the preceding twelve months; and (4) the share price of the underlying security closed below $5 on a majority of the business days during the preceding 6 months.

standards of Commentary .01 to Rule 915;[19] (2) following the initial twelve-month period beginning upon the commencement of trading of the Fund Shares on a national securities exchange or as national market securities through the facilities of a national securities association there are fewer than 50 record and/or beneficial holders of Fund Shares for 30 or more consecutive trading days; (3) the value of the index or portfolio of securities on which the Fund Shares are based is no longer calculated or available; or (4) such other event shall occur or condition exist that in the opinion of the Exchange makes further dealing in such options on the Exchange inadvisable.

Options on Fund Shares will be physically-settled and will have the American-style exercise feature used on all standardized equity options, and not the European-style feature originally proposed.[20] The Exchange, however, also proposes to trade FLEX Equity options which will be available with both the American-style and European-style exercise feature, as well as other FLEX Equity features.[21]

The proposed margin requirements for options on Exchange-Traded Fund Shares are at the same levels that apply to options generally under Exchange Rule 462, except, with respect to Fund Shares based on a broad-based index or portfolio, and those Fund Shares approved by the Commission to date, minimum margin must be deposited and maintained equal to 100% of the current market value of the option plus 15% of the market value of equivalent units of the underlying security value. Fund Shares that hold securities based upon a narrow-based index or portfolio must have options margin that equals at least 100% of the current market value of the contract plus 20% of the market value of equivalent units of the underlying security value.[22] In this respect, the margin requirements proposed for options on Exchange-Traded Fund Shares are comparable to margin requirements that currently apply to broad-based and narrow-based index options.

The Exchange believes it has the necessary systems capacity to support the additional series of options that would result from the introduction of options on Fund Shares, and it has been advised that the Options Price Reporting Authority (''OPRA'') also will have the capacity to support these additional series now that it has implemented an additional outgoing high speed line from the OPRA processor.[23]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5).[24] Specifically, the Commission believes that providing for the listing and trading of options and FLEX Equity options[25] on Exchange-Traded Fund Shares should give investors a better means to hedge their positions in the underlying Fund Shares. Further, the Commission believes that pricing of the underlying Fund Shares may become more efficient and market makers in these shares, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum, the Commission believes that options on Fund Shares likely will engender the same benefits to investors and the market place that exist with respect to options on common stock,[26] thereby serving to promote the public interest, remove impediments to a free and open securities market, and promote efficiency, competition, and capital formation.[27]

As a general matter, the Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on Fund Shares, can commence trading on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. With regard to position and exercise limits, the Commission finds that it is appropriate to adopt the tiered approach used in setting position and exercise limits for standardized stock options. This approach should serve to minimize potential manipulation and market impact concerns. In addition, the Commission believes that the rationale for allowing FLEX Equity options generally to trade without position and exercise limits until September 9, 1999, is equally applicable in the context of FLEX Equity options on Fund Shares.[28] Accordingly, because options and FLEX Equity options on Fund Shares will be subject to the same regulatory regime as the other options and FLEX Equity options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options and FLEX Equity options on Fund Shares.

The Commission also believes that it is appropriate to permit the Amex to list and trade options, including FLEX Equity options, on Exchange-Traded Fund Shares given that these options must meet specific requirements related to the protection of investors.[29] First, the Exchange's listing and delisting criteria for options on Fund Shares are adequate. With regard to initial listing, the proposal requires that either: (1) the

[19] *See* Amendment No. 4, *supra* note 6. The Commission notes that even if options on Fund Shares were not listed under the uniform equity option listing standards, Amex Rules 1002 and 1002A require a minimum number of Fund Shares to be outstanding before trading in a series of Fund Shares may commence. In addition, the Amex has represented that although there is no comparable public float maintenance standard for the underlying Fund Shares, as a practical matter there can never be trading in a series of Fund Shares in which there is less than one Creation Unit outstanding, since Fund Shares only may be created and redeemed in Creation Unit size, and if the last outstanding Creation Unit should ever be redeemed, the series (and the options on that series) will cease to trade.

[20] *See* Amendment No. 3, *supra* note 5. An American-style option may be exercised at any time prior to its expiration. A European-style option, however, may be exercised only on its expiration date.

[21] *Id.*

[22] *See* Amendment No. 6, *supra* note 8.

[23] *See* letter from Joseph P. Corrigan, Executive Director, OPRA, to Ivette Lopez, Assistant Director, OMS, Division, Commission, dated November 8, 1996.

[24] 15 U.S.C. 78f(b)(5).

[25] The Commission hereby incorporates by reference its findings and conclusions with respect to the appropriateness of FLEX Equity options generally. *See* Securities Exchange Act Release No. 37336 (June 19, 1996), 61 FR 33558 (June 27, 1996).

[26] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new product is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[27] 15 U.S.C. 78c(f).

[28] *See* FLEX Equity Position Limit Order, *supra* note 14. Pursuant to the FLEX Equity Position Limit Pilot, the Commission expects the Amex to include its experience with FLEX Equity options on Fund Shares in its report to the Commission.

[29] The Commission notes, and Amex has verified, that holders of options on Fund Shares who exercise and receive the underlying Fund Shares must receive, like any purchaser of Fund Shares, a product description or prospectus, as appropriate. Telephone Conversation between Claire P. McGrath, Vice President and Senior Counsel, Amex, Sharon Lawson, Senior Special Counsel, OMS, Division, Commission, and James McHale, Special Counsel, OMS, Division, Commission, on June 25, 1998.

underlying Fund Shares meet the Amex's uniform options listing standards; or (2) the Exchange-Traded Fund Shares must be available for creation or redemption each business day in cash or in kind from the Fund at a price related to the net asset value, and the Exchange will require that the underlying Fund Shares may be created even though some or all of the securities needed to be deposited have not been received by the Fund.[30] This listing requirement should ensure that there exists sufficient supply of the underlying Fund Shares so that a short call writer, for example, will have the ability to secure delivery of the Fund Shares upon exercise of the option.

In reviewing the Amex's proposal, as originally submitted, the Commission had been concerned with the ability to produce Fund Shares upon exercise of the option. The Commission believes the Amex has adequately addressed these concerns through the adoption of the listing standards set forth above. In particular, options listed pursuant to the uniform options listing standards will have to meet the options maintenance listing standards which require, among other things, that a minimum number of Fund Shares be outstanding to continue trading the options.[31] The alternative listing criteria, noted above, should also help to ensure that the underlying Fund Shares will be available upon exercise by requiring the Fund to allow market participants to create Fund Shares even though some or all of the necessary securities needed to be deposited are not available.[32] Although there is no absolute assurance that market participants will go ahead and create Fund Shares in the event a short call writer needs to purchase Fund Shares to meet an exercise notice, it is likely that arbitrage opportunities will create an incentive to do so. Further, in the event there are not enough Fund Shares to meet exercise requirements, as with other physically-settled equity options, the Options Clearing Corporation (''OCC'') has rules that would apply to such situations.

Second, the Commission believes that the surveillance standard developed by the Amex for options on Fund Shares is adequate to address the concerns associated with the listing and trading of such securities. Specifically, the Amex has proposed that: (1) any Fund Share with non-US stocks in the underlying index or portfolio that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio; (2) stocks for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index or portfolio; and (3) stocks for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index or portfolio.[33]

As a general matter, the Commission believes that comprehensive surveillance agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the content of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions. In evaluating the current proposal, the Commission believes that requiring comprehensive surveillance agreements to be in place between the Amex and the primary markets for foreign securities that comprise 50% or more of the weight of the underlying index or portfolio upon which Fund Shares are based, as well as the other conditions discussed above, provides an adequate mechanism for the exchange of surveillance sharing information necessary to detect and deter possible market manipulations. Although the Commission recognizes that up to 50% of the Portfolio's value may not be covered by comprehensive surveillance agreements, the other requirements will ensure that a significant percentage of the portfolio is not made up of securities from uncovered countries. Further, as to the domestically-traded Fund Shares themselves and the domestic stocks in the underlying index or portfolio upon which Fund Shares are based, the Intermarket Surveillance Group (''ISG'')[34] Agreement will be applicable to the trading of options on Fund Shares.[35]

Finally, the Commission believes that it is appropriate to require minimum margin of 100% of the current market value of the option plus 15% of the market value of the underlying security value (''broad-based margin'') for options on Fund Shares based on a broad-based index or portfolio and for options on Fund Shares which have been approved to date.[36] Moreover, the Commission believes that requiring minimum margin of 100% of the current market value of the option plus 20% of the market value of the underlying security value (''narrow-based margin'') for options on Fund Shares based on a narrow-based index or portfolio is appropriate.[37] The Commission notes that these margin requirements for options on Exchange-Traded Fund Shares are comparable to margin requirements that currently apply to broad-based and narrow-based index options.

The Commission finds good cause for approving Amendment Nos. 3, 4, 5, and 6 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 3, strengthens the proposal by: (1) providing that the Exchange will not list options on Fund Shares unless the Fund has agreed to issue Fund Shares even though some or all of the securities needed to be deposited have not been received, thus ensuring a minimum level of liquidity; and (2) adopting standardized options position and exercise limits. Amendment No. 3 also: (1) provides the options on Fund Shares

[30] Provided the authorized creation participant has undertaken to deliver the shares as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the Fund which underlies the option, as described in the Fund prospectus.

[31] *See supra* note 18.

[32] *See supra* note 30.

[33] The Exchange uses the term ''comprehensive surveillance agreement'' to mean an agreement which requires that the parties provide each other, upon request, information about market trading, clearing activity under the identity of the ultimate purchasers and sellers of securities. Telephone conversation between Claire P. McGrath, Vice President and Senior Counsel, Amex, and James T. McHale, Special Counsel, OMS, Division, Commission, on June 17, 1998.

[34] ISG was formed on July 14, 1983, to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The members of ISG include all of the registered National Securities Exchanges and the National Association of Securities Dealers, Inc. (''NASD''). In addition, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) are affiliate members of ISG.

[35] For example, the ISG Agreement would allow for the exchange of surveillance and investigative information between the Amex, trading PDRs on the S&P 500 index, and the markets trading the 500 stocks represented in the S&P 500 index. In addition, should other markets begin trading Fund Shares in the future, trading information with regard to the Fund Shares themselves would be readily available to the Amex pursuant to the ISG and the Amex could list options on those Fund Shares, assuming the options met all of the listing standards and requirements discussed herein.

[36] The Commission notes that the portfolios or indexes comprising WEBS have not been designated as broad-based by the Commission. In this order, the Commission is only determining that broad-based margin treatment for the WEBS is appropriate, without addressing the issue of whether such WEBS are broad-based.

[37] *See* Amendment No. 6, *supra* note 8.

shall have the American-style exercise feature; (2) allows for the trading of FLEX Equity options on Fund Shares; (3) permits the Exchange to list options on Funds Shares covering 100 or 1000 Fund Shares or both; (4) sets strike prices for both 100 and 1000 share contracts to bracket the Fund Shares price at one point intervals up to a share price of $200; and (5) makes various non-substantive references to ''Exchange-Traded Fund Shares'' throughout Amex's Rules, where appropriate. The Commission finds that these changes are not controversial because they do not alter the fundamental nature of the proposal.

Amendment No. 4 provides the Exchange with the flexibility to list Fund Shares pursuant to the uniform option listing standards in Rule 915 and Commentary .01, in lieu of obtaining a commitment from the unit investment trust or management investment company to issue Fund Shares even though some or all of the securities needed to be deposited have not been received. The Commission believes that this strengthens the proposal because the uniform option listing standards help to ensure that the Fund Shares underlying the options are actively traded, with substantial public float and number of holders. That portion of Amendment No. 4 that addresses comprehensive surveillance sharing agreements has been replaced and superseded by Amendment No. 5.

The Commission also believes that Amendment No. 5, concerning surveillance requirements, strengthens the Amex's proposal. Amendment No. 5, provides a clear, objective standard for determining the comprehensive surveillance requirements for trading options on Fund Shares where the underlying index or portfolio contains non-U.S. stocks.

The Commission finds that Amendment No. 6 also strengthens the Amex's proposal. Amendment No. 6 provides that the Amex will apply narrow-based margin to options on Fund Shares which are based on a narrow-based index or portfolio of securities. This requirement should ensure that purchasers of options on Fund Shares based on a narrow-based index or portfolio post sufficient margin to address any concerns associated with the potentially increased volatility inherent in a narrow-based index.

Finally, the Commission notes that no comments were received on the original Amex proposal, which was subject to full 21-day comment period. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) of the Act, to approve Amendment Nos. 3, 4, 5, and 6 to the proposed rule change on an accelerated basis.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 3, 4, 5 and 6 to the proposed rule change, including whether the Amendments are consistent with the Act. 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 in 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 Amex. All submissions should refer to File No. SR-Amex–96–44 and should be submitted by July 31, 1998.

For the foregoing reasons, the Commission finds that the Amex's proposal to list and trade options and FLEX Equity Options on Fund Shares is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[38] that the proposed rule change (File No. SR-Amex–96–44), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[39]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18414 Filed 7–9–98; 8:45 am]

BILLING CODE 8010–01–M

[38] 15 U.S.C. 78s(b)(2).

[39] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40166; File No. SR–CBOE–97–03]

Self-Regulatory Organizations; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 2 and 3 to the Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Options on Interests in Listed, Open-End, Indexed Investment Companies

July 2, 1998.

I. Introduction

On January 22, 1997, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change to adopt rules to permit the trading of options on securities representing interest in open-end, exchange-listed investment companies that hold a portfolio of securities comprising or based on a broad-based stock index (''Exchange-Traded Fund Shares'' or ''Fund Shares''). Notice of the proposal appeared in the **Federal Register** on March 5, 1997.[3] No comment letters were received on the proposed rule change.[4] On January 12, 1998, the Exchange filed Amendment No. 2 to the proposal.[5] On May 18, 1998, the CBOE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 38342 (February 26, 1997), 62 FR 10098.

[4] On May 2, 1997, the CBOE filed an amendment to the proposed rule change. *See* Letter from Michael L. Meyer, Esq., Schiff Hardin & Waite, to Howard L. Kramer, Senior Associate Director, Office of Market Supervision (''OMS''), Division of Market Regulation (''Division''), Commission, dated May 2, 1997 (''Amendment No. 1''). Amendment No. 1 made no changes to the proposal, but merely clarified the Exchange's original filing. Amendment No. 1 is no longer relevant, and has been replaced and superseded by Amendment Nos. 2 and 3.

[5] *See* Letter from Michael L. Meyer, Esq., Schiff Hardin & Waite to Howard L. Kramer, Senior Associate Director, OMS, Division, Commission, dated January 9, 1998 (''Amendment No. 2''). In Amendment No. 2 the Exchange proposes to revise the listing standards for Fund Shares set forth in Interpretation and Policy .06 under Rule 5.3 to require, in addition to other criteria, either: (1) that the underlying Fund Shares or units must satisfy the same criteria and guidelines under CBOE rules that apply to determine the eligibility for listing options on underlying equity securities; or (2) that the issuer is obligated to issue Fund Shares in a specified aggregate number in return for a cash deposit in an amount equal to the value of the securities that comprise the index or portfolio represented by the Fund Shares. In addition, Amendment No. 2 provides that the same tiered

filed Amendment No. 3 to the proposed rule change.[6] Finally, on June 24, 1998, the Exchange filed a technical amendment to the filing.[7] This order approves the Exchange's proposal, and Amendment Nos. 2 and 3 on an accelerated basis.

II. Description of the Proposal

The purpose of the proposed rule change is to provide for the trading of options on Fund Shares. As noted above, Fund Shares are exchange-listed securities representing interests in open-end unit investment trusts or open-end management investment companies (''Funds'') that hold securities based on an index or a portfolio of securities. Fund Shares are issued in exchange for an ''in kind'' deposit of a specified portfolio of securities, together with a cash payment, in minimum size aggregations or multiples thereof (''Creation Units''). The size of the applicable Creation Unit size aggregation is set forth in the Fund's prospectus, and varies from one series of Fund Shares to another, but generally is of a substantial size (*e.g.*, value in excess of $450,000 per creation unit). A fund, generally, will issue and sell Fund Shares in Creation Unit size through a principal underwriter on a continuous basis at the net asset value per share next determined after an order to purchase Fund Shares and the appropriate securities are received. Following issuance, Fund Shares are traded on an exchange like other equity securities, and equity trading rules apply. Likewise, redemption of Fund Shares is made in Creation Unit size and ''in kind,'' with a portfolio of securities and cash exchanged for Fund Shares that have been tendered for redemption.

The CBOE proposes to trade options on Fund Shares pursuant to the same rules and procedures that apply generally to trading in options on equity securities, except that some special listing criteria are proposed to apply to this category of options. Options on Fund Shares will be physically-settled and will have either the European-style or American-style exercise feature, as specified.[8]

The listing and maintenance standards proposed for options on Fund Shares are set forth in proposed Interpretation and Policy .06 under CBOE Rule 5.3 and in Interpretation .10 under CBOE Rule 5.4, respectively. Pursuant to the proposed initial listing standards, CBOE only will list options on Fund Shares that are principally traded on a national securities exchange or through the facilities of a national securities association and reported as national market securities. In addition, the initial listing standards require that either: (1) the Fund Shares meet the uniform options listing standards in CBOE Rule 5.3 and Interpretation and Policy .01 thereunder, which include minimum public float, trading volume, and share price of the underlying security in order to list the option;[9] or (2) the Exchange-Traded Fund Shares must be available for creation or redemption each business day in cash or in kind from the Fund at a price related to the net asset value, and the Exchange will require that the Fund is obligated to issue Fund Shares in a specified aggregate number even though some or all of the securities needed to be deposited have not been received by the Fund.[10]

In addition, the initial listing standards require that: (1) any Fund Share with non-US stocks in the underlying index or portfolio that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio; (2) stocks for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% of more of the weight of the index; and (3) stocks for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% of more of the weight of the index.[11]

The Exchange's proposed maintenance standards provide that if a particular series of Exchange-Traded Fund Shares should cease to trade on an exchange or as national market securities in the over-the-counter market, there will be no opening transactions in the options on the Fund Shares, and all such options will trade on a liquidation-only basis. In addition, the CBOE will consider the suspension of opening transactions in any series of options of the class covering Fund Shares if: (1) the options fail to meet the uniform equity option maintenance standards in paragraphs (a), (b), (c), and (d) of Interpretation and Policy .01 to Rule 5.4,[12] when the options were listed pursuant to the equity option listing standards of Rule 5.3 and Interpretation and Policy .01 thereunder;[13] (2) following the initial twelve-month period beginning upon the commencement of trading of the Fund Shares on a national securities exchange or as national market securities through the facilities of a national securities association there are fewer than 50 record and/or beneficial holders of Fund Shares for 30 or more consecutive trading days, when options on Fund Shares were listed pursuant to clause (D)(y) under Interpretation and Policy .06 of Rule 5.3;[14] or (3) the value of the index or portfolio of securities on which the Fund Shares are based is no longer calculated or available.

Reflecting the indexed nature of the underlying portfolios of the Fund

position and exercise limits that apply to options on individual equity securities will apply to options on Fund Shares. Finally, Amendment No. 2 removed certain continued listing standards that were in the original filing.

[6] *See* Letter form Joseph Levin, Vice President, Research, CBOE, to Howard L. Kramer, Senior Associate Director, OMS, Division, Commission, dated May 14, 1998 (''Amendment No. 3''). In Amendment No. 3 the Exchange proposes a new surveillance sharing standard for options on Fund Shares that include non-U.S. stocks in the index or portfolio upon which Fund Shares are based. In addition, Amendment No. 3 includes continued listing standards for options on Fund Shares, which are discussed herein.

[7] *See* Letter from Michael L. Meyer, Esq., Schiff Hardin & Waite, to James T. McHale, Special Counsel, OMS, Division, Commission, dated June 23, 1998 (''Amendment No. 4''). Amendment No. 4 merely corrects an erroneous cross-reference in Interpretation and Policy .08 to Rule 5.4.

[8] Telephone conversation between Michael L. Meyer, Esq., Schiff Hardin & Waite, and James T. McHale, Special Counsel, OMS, Division, Commission, on June 30, 1998.

[9] Specifically, Interpretation and Policy .01 to Rule 5.3 requires the underlying security to have a public float of 7,000,000 shares, 2000 holders, trading volume of 2,400,000 shares in the preceding 12 months, a share price of $7.50 for the majority of the business days during the three calendar months preceding the date of the selection, and that the issuer of the underlying security is in compliance with the Act.

[10] Provided the person obligated to deposit the securities has undertaken to deliver the securities as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the Fund which underlies the option, as described in the Fund prospectus. *See* Amendment No. 3, *supra* note 6.

[11] *See* Amendment No. 3, *supra* note 6.

[12] Specifically, paragraphs (a), (b), (c) and (d) of Interpretation and Policy .01 to Rule 5.4 provide that an underlying security will not meet the Exchange's requirements for continued listing when, among other things: (1) there are fewer than 6,300,000 publicly-held shares; (2) there are fewer than 1600 holders; (3) trading volume was less than 1,800,000 shares in the preceding twelve months; and (4) the share price of the underlying security closed below $5 on a majority of the business days during the preceding 6 months.

[13] *See* Amendment No. 2, *supra* note 5. The Commission notes that even if options on Fund Shares were not listed under the uniform equity option listing standards, initial listing standards for the underlying Fund Shares typically require a minimum number of Fund Shares to be outstanding before trading in a series of Fund Shares may commence. In addition, the CBOE has represented that although there is no comparable public float maintenance standard for the underlying Fund Shares, as a practical matter there can never be trading in a series of Fund Shares in which there is less than one Creation Unit outstanding, since Fund Shares only may be created and redeemed in Creation Unit size, and if the last outstanding Creation Unit should ever be redeemed, the series (and the options on that series) will cease to trade.

[14] *See* Amendment No. 4, *supra* note 7.

Shares on which options are proposed to be traded, the Exchange proposes to amend Interpretation and Policy .01 under Exchange Rule 5.5 to provide that the minimum strike price intervals for these options will be $2.50 where the strike price is $200 or less, and $5.00 where the strike price is over $200. These are comparable to the strike price intervals provided in Interpretation and Policy .01 under Exchange Rule 24.9, as applicable to broad-based index options having strike prices at about the level expected for options on Fund Shares.

Margin requirements are proposed for options on Fund Shares at the same levels that apply to options generally under Exchange Rule 12.3, except that, reflecting the broad-based nature of the index or portfolio underlying Fund Shares, minimum margin must be deposited and maintained equal to 100% of the current market value of the option plus 15% (instead of 20%) of the market value of equivalent units of the underlying security value. In this respect, the margin requirements proposed for options on Fund Shares are comparable to margin requirements that currently apply to broad-based index options under Exchange Rule 24.11(b)(i).[15]

CBOE believes it has the necessary systems capacity to support the additional series of options that would result from the introduction of options on Fund Shares, and it has been advised that the Option Price Reporting Authority (''OPRA'') also has the capacity to support these additional series.[16]

III. Commission Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(15).[17] Specifically, the Commission believes that providing for the listing and trading of standardized options on Exchange-Traded Fund Shares should give investors a better means to hedge their positions in the underlying Fund Shares. Further, the Commission believes that pricing of the underlying Fund Shares may become more efficient and market makers in these shares, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets. In sum, the Commission believes that options on Fund Shares likely will engender the same benefits to investors and the market place that exist with respect to options on common stock,[18] thereby serving to promote the public interest, remove impediments to a free and open securities market, and promote efficiency, competition, and capital formation.[19]

As a general matter, the Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as options on Fund Shares, can commence trading on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) the special risks of options are disclosed to public costumers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. With regard to position and exercise limits, the Commission finds that it is appropriate to adopt the tiered approach used in setting position and exercise limits for standardized stock options. This approach should serve to minimize potential manipulation and market impact concerns. Accordingly, because options on Fund Shares will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in options on Fund Shares.

The Commission also believes that it is appropriate to permit the CBOE to list and trade options on Exchange-Traded Fund Shares given that these options must meet specific requirements related to the protection of investors.[20] First, the Exchange's listing and delisting criteria for options on Fund Shares are adequate. With regard to initial listing, the proposal requires that either: (1) The underlying Fund Shares meet the CBOE's uniform options listing standards; or (2) the Exchange-Traded Fund Shares must be available for creation or redemption each business day in cash or in kind from the Fund at a price related to the net asset value, and the Exchange will require that the Fund is obligated to issue Fund Shares in a specified aggregate number even though some or all of the securities needed to be deposited have not been received by the Fund.[21] This listing requirement should ensure that there exists sufficient supply of the underlying Fund Shares so that a short call writer, for example, will have the ability to secure delivery of the Fund Shares upon exercise of the option.

In reviewing the CBOE's proposal, as originally submitted, the Commission had been concerned with the ability to produce Fund Shares upon exercise of the option. The Commission believes the CBOE has adequately addressed these concerns through the adoption of the listing standards set forth above. In particular, options listed pursuant to the uniform options listing standards will have to meet the options maintenance listing standards which require, among other things, that a minimum number of Fund Shares be outstanding to continue trading the options.[22] The alternative listing criteria, noted above, should also help to ensure that the underlying Fund Shares will be available upon exercise by requiring the Fund to allow market participants to create Fund Shares even though some or all of the necessary securities needed to be deposited are not available.[23] Although there is no absolute assurance that market participants will go ahead and create Fund Shares in the event a short call writer needs to purchase Fund Shares to meet an exercise notice, it is likely that arbitrage opportunities will create an incentive to do so. Further, in the event there are not enough Fund Shares to meet exercise requirements, as with other physically-settled equity options, the Options Clearing Corporation

[15] The Commission notes that the CBOE's proposal is limited to trading options on Fund Shares comprising or based on a broad-based index or portfolio.

[16] *See* memorandum from Joseph Corrigan, Executive Director, OPRA, to Eileen Smith, CBOE, dated January 21, 1997.

[17] 15 U.S.C. 78f(b)(5).

[18] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new product is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[19] 15 U.S.C. 78c(f).

[20] The Commission notes, and CBOE has verified, that holders of options on Fund Shares who exercise and receive the underlying Fund Shares must receive, like any purchaser of Fund Shares, a product description or prospectus, as appropriate. Telephone Conservation between Michael L. Meyer, Esq., Schiff Hardin & Waite, and James T. McHale, Special Counsel, OMS, Division, Commission, on June 30, 1998.

[21] Provided the person obligated to deposit the securities has undertaken to deliver the securities as soon as possible and such undertaking has been secured by the delivery and maintenance of collateral consisting of cash or cash equivalents satisfactory to the Fund which underlies the option, as described in the Fund prospectus.

[22] *See supra* note 12.

[23] *See supra* note 21.

(''OCC'') has rules that would apply to such situations.

Second, the Commission believes that the surveillance standard developed by the CBOE for options on Fund Shares is adequate to address the concerns associated with the listing and trading of such securities. Specifically, the CBOE has proposed that: (1) Any Fund Share with non-US stocks in the underlying index or portfolio that are not subject to comprehensive surveillance agreements do not in the aggregate represent more than 50% of the weight of the index or portfolio; (2) stocks for which the primary market is in any one country that is not subject to a comprehensive surveillance agreement do not represent 20% or more of the weight of the index; and (3) stocks for which the primary market is in any two countries that are not subject to comprehensive surveillance agreements do not represent 33% or more of the weight of the index.[24]

As a general matter, the Commission believes that comprehensive surveillance agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions. In evaluating the current proposal, the Commission believes that requiring comprehensive surveillance agreements to be in place between the CBOE and the primary markets for foreign securities that represent 50% or more of the weight of the underlying index or portfolio upon which Fund Shares are based, as well as the other conditions discussed above, provides an adequate mechanism for the exchange of surveillance sharing information necessary to detect and deter possible market manipulations. Although the Commission recognizes that up to 50% of the portfolio's value may not be covered by comprehensive surveillance agreements, the other requirement will ensure that a significant percentage of the portfolio is not made up of securities from uncovered countries.

Further, as to the domestically-traded Fund Shares themselves and the domestic stocks in an underlying index or portfolio upon which Fund Shares are based, the Intermarket Surveillance Group (''ISG'')[25] Agreement will be applicable to the trading of options on Fund Shares.

Finally, the Commission believes that requiring minimum margin of 100% of the current market value of the option plus 15% of the market value of the underlying security value (''broad-based margin'') for options on Fund Shares is appropriate. The Commission notes that this margin requirement is comparable to margin requirements that currently apply to broad-based index options, and that the CBOE's proposal is limited to trading options on Fund Shares comprising or based on a broad-based index or portfolio. Accordingly, the Commission believes that broad-based margin is appropriate for options on Fund Shares.

The Commission finds good cause for approving Amendment Nos. 2, and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Amendment No. 2 strengthens the proposal by: (1) providing that either the Fund Shares underlying the options satisfy the listing standards for options on underlying equity securities or the Fund has agreed to issue Fund Shares even though some or all of the securities needed to be deposited have not been received, thus ensuring a minimum level of liquidity; and (2) adopting standardized equity option position and exercise limits. Amendment No. 2 also removed certain continued maintenance standards, but these requirements were added back to CBOE's rules with Amendment No. 3.

The Commission also believes that Amendment No. 3, concerning surveillance requirements, strengthens the CBOE's proposal. Amendment No. 3 provides a clear, objective standard for determining the comprehensive surveillance requirements for trading options on Fund Shares where the underlying index or portfolio contains non-U.S. stocks. In addition, Amendment No. 3 strengthens the Exchange's proposal by including contained listing standards for options on Fund Shares.

Finally, the Commission notes that no comments were received on the original CBOE proposal, which was subject to the full 21-day comment period. Accordingly, the Commission believes that there is good cause, consistent with Section 6(b)(5) of the Act, to approve Amendment Nos. 2 and 3 to the proposed rule change on an accelerated basis.

Amendment No. 4 merely corrects an erroneous cross-reference in Interpretation and Policy .08 to Rule 5.4.[26]

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 2 and 3 to the proposed rule change, including whether such Amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NE., 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 Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–97–03 and should be submitted by July 31, 1998.

For the foregoing reasons, the Commission finds that the CBOE's proposal to list and trade options on Fund Shares is consistent with the requirements of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[27] that the proposed rule change (File No. SR–CBOE–97–03), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18413 Filed 7–9–98; 8:45 am]

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[24] The Exchange uses the term ''comprehensive surveillance agreement'' to mean an agreement which requires that the parties provide each other, upon request, information about market trading, clearing activity and the identity of the ultimate purchasers and sellers of securities. Telephone conversation between Michael L. Meyer, Esq., Schiff Hardin & Waite, and James T. McHale, Special Counsel, OMS, Division, Commission, on June 30, 1998.

[25] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The members of ISG include all of the registered National Securities Exchanges and the National Association of Securities Dealers, Inc. (''NASD''). In addition, the major stock index futures exchanges (*e.g.*, the Chicago Mercantile Exchange and the Chicago Board of Trade) are affiliate members of ISG.

[26] Because Amendment No. 4 is technical in nature, it is not subject to a notice and comment requirement.

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40167; File No. SR–MSRB–98–10]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

July 2, 1998.

On June 30, 1998, the Municipal Securities Rulemaking Board (''Board'' or ''MSRB'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change (File No. SR–MSRB–98–10) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A)[3] of the Act, which renders the proposed rule change effective upon receipt of this filing by the Commission. 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 Board is filing herewith a proposed rule change consisting of a notice of interpretation, in question-and-answer format, concerning Rule G–37, on political contributions and prohibitions on municipal securities business. The proposed rule change is as follows:

Rule G–37, on Political Contributions and Prohibitions on Municipal Securities Business

Since May 1994, the Board has provided interpretive guidance on Rule G–37 through the publication of eight Question & Answer (''Q&A'') notices.[4] The Board recently has received a number of questions concerning mergers in the municipal securities industry and the operation of the exemptive provision set forth in section (i) of the rule from market participants and the agencies charged with enforcing the rule. As a result, the Board has determined that it is necessary to provide further guidance to the industry and the applicable enforcement agencies by confirming and elaborating upon guidance provided in prior Q&A notices and in prior communications with the applicable enforcement agencies. Accordingly, the Board is publishing this ninth set of questions and answers.

Questions and Answers Regarding Rule G–37(i)

1. Q: A person is associated with a dealer in a non-municipal finance professional capacity and makes a political contribution to an official of an issuer for whom such person is not entitled to vote. Less than two years after such person made the contribution, the dealer merges with another dealer and, solely as a result of the merger, that person becomes a municipal finance professional of the surviving dealer. Would the surviving dealer be prohibited from engaging in municipal securities business with that issuer?

A: Yes. Rule G–37 would prohibit the surviving dealer from engaging in municipal securities business with the issuer for two years from the date the contribution was made. Of course, the surviving dealer's prohibition on business would only begin when the person who made the contribution becomes a municipal finance professional of the surviving dealer.

The Board notes, however, that Rule G–37 was not intended to prevent mergers in the municipal securities industry or, once a merger is consummated, to seriously hinder the surviving dealer's municipal securities business if the merger was not an attempt to circumvent the letter or spirit of Rule G–37. Thus, the Board believes that it would be appropriate for the NASD or the appropriate regulatory agency (*i.e.*, federal bank regulatory authorities) to grant conditional or unconditional exemptions from bans on municipal securities business arising from such mergers if the NASD or the appropriate regulatory agency determines that, pursuant to Rule G–37(i), the exemption is consistent with the public interest, the protection of investors and the purposes of the rule, as well as any other factors set forth in the rule or any other factors deemed relevant by the NASD or the appropriate regulatory agency.

2. Q: The Board has previously provided two examples in which exemptions from a ban on municipal securities business may be appropriate under Rule G–37(i). Are these the only situations in which the NASD or the appropriate regulatory agency may provide an exemption under Rule G–37(i)?

A: No. The two examples noted in Q&A number 4 (June 15, 1995), MSRB Reports, Vol. 15, No. 2 (July 1995) at 3–4, MSRB Manual (CCH) ¶ 3681, were not meant to be the only instances in which exemptions might appropriately be given. Because of the varying factual situations that arise with each exemptive request, the Board believes that the NASD and the appropriate regulatory agencies should review such other factual situations presented by dealers in exemptive requests pursuant to the requirements in Rule G–37(i) and, based on the facts, either approve or reject the request. Rule G–37(i) allows the NASD and the appropriate regulatory agencies to grant exemptions from the ban on business ''conditionally or unconditionally'' and, if the NASD or the appropriate regulatory agency believes it would be appropriate to shorten the ban on business or limit its scope, it is authorized to do so as long as the requirements of Rule G–37(i) are met.

3. Q: The Board has previously described three situations which it believes are not sufficient to justify the granting of an exemption from a ban on municipal securities business under Rule G–37(i). Does this mean that the NASD or the appropriate regulatory agency may never provide an exemption under Rule G–37(i) if any of these situations exist?

A: No. The Board's intent in describing these three scenarios in Q&A number 4 (June 15, 1995), MSRB Reports, Vol. 15, No. 2 (July 1995) at 3–4, MSRB Manual (CCH) ¶ 3681, was to note that none of these situations was sufficient, in and of itself, to justify the granting of an exemption from a ban on municipal securities business. However, any such scenario in combination with other facts and circumstances deemed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] *See* Securities Exchange Act Rel. No. 34161 (June 6, 1994), 59 FR 30379 (June 14, 1994); Securities Exchange Act Rel. No. 34603 (Aug. 25, 1994), 59 FR 45049 (Aug. 31, 1994); Securities Exchange Act Rel. No. 35128 (Dec. 20, 1994), 59 FR 66989 (Dec. 28, 1994); Securities Exchange Act Rel. No. 35544 (March 28, 1995), 60 FR 16896 (April 3, 1995); Securities Exchange Act Rel. No. 35879 (June 21, 1995), 60 FR 33447 (June 28, 1995); Securities Exchange Act Rel. No. 36857 (Feb. 16, 1996), 61 FR 7034 (Feb. 23, 1996); Securities Exchange Act Rel. No. 37675 (Sept. 12, 1996), 61 FR 49368 (Sept. 19, 1996); Securities Exchange Act Rel. No. 39084 (Sept. 16, 1997), 62 FR 49717 (Sept. 23, 1997).

See MSRB Reports, Vol. 14, No. 3 (June 1994) at 11–16; Vol. 14, No. 4 (Aug. 1994) at 27–31; Vol. 14, No. 5 (Dec. 1994) at 8; Vol. 15, No. 1 (April 1995) at 21; Vol. 15, No. 2 (July 1995) at 3–4; Vol. 16, No. 1 (Jan. 1996) at 31; Vol. 16, No. 3 (Sept. 1996) at 35–36; and Vol. 17, No. 3 (Oct. 1997) at 11–12. *See also* CCH Manual ¶ 3681.

relevant by the NASD or the appropriate regulatory agency (including, but not limited to, the factors set forth in Rule G–37(i)) could, in the judgment of the NASD or the appropriate regulatory agency, be sufficient to justify a conditional or unconditional exemption from the ban.

The Board also notes that none of the three situations previously cited as insufficient to justify an exemption involved a contribution made prior to an individual becoming a municipal finance professional. Thus, for example, where a non-*de minimis* contribution was made by a person who later becomes a municipal finance professional (whether by reason of a merger, as a newly hired associated person, as an existing associated person becoming involved in municipal securities activities, or otherwise), neither the NASD nor any appropriate regulatory agency is constrained from granting a conditional or unconditional exemption if, in its judgment, such exemption is consistent with Rule G–37(i).

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 Board 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 texts of these statements may be examined at the places specified in Item IV below. The Board 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

On April 7, 1994, the Commission approved Board Rule G–37, on political contributions and prohibitions on municipal securities business.[5] Since that time, the Board has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board published eight prior notices of interpretation which set forth, in Q&A format, general guidance on Rule G–37.[6] In prior filings with the Commission, the Board stated that it will continue to monitor the application of Rule G–37 and, from to time, will publish additional notices of interpretations, as necessary.[7] The Board recently has received a number of questions concerning mergers in the municipal securities industry and the operation of the exemption provision set forth in section (i) of the rule from market participants and the agencies charged with enforcing the rule. As a result, the Board has determined that it is necessary to provide further guidance to the industry and the applicable enforcement agencies by confirming and elaborating upon guidance provided in prior Q&A notices and in prior communications with the applicable enforcement agencies. Accordingly, the Board is publishing this ninth set of Q&As.

The Board believes the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act.[8]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, because it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Board rule under Section 19(b)(3)(A) of the Act and Rule 19b–4(1) thereunder,[9] which renders the proposed rule change effective upon receipt of this filing by the Commission

At any time within sixty days of the filing of this proposed 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, 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, including whether the proposed rule change is consistent with the Act. 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 in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–98–10 and should be submitted by July 31, 1998.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–18297 Filed 7–9–98; 8:45 am]

BILLING CODE 8010–01–M

[5] Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621 (April 13, 1994). The rule applies to contributions made on and after April 25, 1994.

[6] *See supra* note 3.

[7] *See* Securities and Exchange Act Release No. 34161 (June 6, 1994), 59 FR 30379 (June 13, 1994) (SR–MSRB–94–06) and Securities and Exchange Act Release No. 34603 (August 25, 1994), 59 FR 45049 (August 31, 1994) (SR–MSRB–94–15).

[8] Section 15(b)(2)(C) states in pertinent part that the rules of the Board ''shall 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, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.''

[9] 17 CFR 240.19b–4(e)(1).

[10] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3094]

State of Massachusetts

As a result of the President's major disaster declaration on June 23, 1998, I find that Bristol, Essex, Middlesex, Norfolk, and Suffolk Counties in the State of Massachusetts constitute a disaster area due to damages caused by

heavy rains and flooding beginning on June 13, 1998, and continuing. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on August 22, 1998, and for loans for economic injury until the close of business on March 23, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Floor, Niagara Falls, NY 14303.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Plymouth and Worcester Counties in Massachusetts; Bristol, Newport, and Providence Counties in Rhode Island; and Hillsborough and Rockingham Counties in New Hampshire.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	7.000
Homeowners without credit available elsewhere	3.500
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere.	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 309406. For economic injury the numbers are 990300 for Massachusetts, 990400 for Rhode Island, and 990500 for New Hampshire.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 30, 1998.

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 98–18410 Filed 7–9–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3099]

State of Michigan

Ottawa and Montcalm Counties and the contiguous counties of Allegan, Clinton, Gratiot, Ionia, Isabella, Kent, Mecosta, Muskegon, and Newaygo in the State of Michigan constitute a disaster area as a result of damages caused by severe storms and high winds that occurred on May 31, 1998. Applications for loans for physical damage from this disaster may be filed until the close of business on August 27, 1998 and for economic injury until the close of business on March 26, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	7.000
Homeowners without credit available elsewhere	3.500
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For Economic Injury	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 309911 for physical damage and 991400 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 6, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–18412 Filed 7–9–98; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3097]

State of Minnesota; and a Contiguous County in Wisconsin

Dakota and Ramsey Counties and the contiguous counties of Anoka, Goodhue, Hennepin, Rice, Scott, and Washington in Minnesota, and Pierce County, Wisconsin constitute a disaster area as a result of damages caused by severe storms, high winds, and tornadoes that occurred May 15 through May 30, 1998. Applications for loans for physical damage as a direct result of this disaster may be filed until the close of business on August 24, 1998 and for economic injury until the close of business on March 25, 1999 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.000
Homeowners without credit available elsewhere	3.500
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster for physical damages are 309712 for Minnesota and 309812 for Wisconsin. For economic injury the numbers are 991200 for Minnesota and 991300 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: June 25, 1998.

Aida Alvarez,

Administrator.

[FR Doc. 98–18411 Filed 7–9–98; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 2859]

The Bureau of Political-Military Affairs, Office of Defense Trade Controls; 30-Day Notice of Information Collection; DSP–61, Application/License for Temporary Import of Unclassified Defense Articles

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application/License for Temporary Import of Unclassified Defense Articles.

Frequency: Triennially.

Form Number: DSP–61.

Respondents: Applicants for Import Licenses of Defense Articles.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 4,500 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed survey by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: April 30, 1998.

Andrew J. Winton,

Deputy Chief Information Officer.

[FR Doc. 98–18323 Filed 7–9–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2858]

The Bureau of Political-Military Affairs, Office of Defense Trade Controls; Notice of Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; DSP–5, Application/ Licenses for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarized the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Origniating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application/Licenses for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data.

Frequency: Annually.

Form Number: DSP–5.

Respondents: Applicants for Export Licenses of Defense Articles and Related Technical Data.

Estimaed Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 10,000 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained for Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comment s regarding this proposal. Comments should refer to the proposed survey by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–18324 Filed 7–9–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice No. 2857]

The Bureau of Political-Military Affairs, Office of Defense Trade Controls; Notice of Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; DSP–94, Authority to Export Defense Articles and Defense Services sold under the Foreign Military Sales Program.

SUMMARY: The Department of State has sesubmitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Authority to Export Defense Articles and Defense Services sold under the Foreign Military Sales Program.

Frequency: Annually.

Form Number: DSP–94.

Respondents: Exporters of U.S. Munitions List items covered under the Foreign Military Sales Program.

Estimated Number of Respondents: 250.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,500 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S.

Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed survey by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–18325 Filed 7–9–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2856]

The Bureau of Political-Military Affairs, Office of Defense Trade Controls; Notice of Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; OMB #1405–0093, Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements and other Agreements.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements and other Agreements.

Frequency: Annually.

Form Number: OMB #1405–0093.

Respondents: Exporters of U.S. Technology.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 6 hours.

Total Estimated Burden: 6,000 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed survey by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–18326 Filed 7–9–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2855]

The Bureau of Political-Military Affairs, Office of Defense Trade Controls; Notice of Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; DSP–9, Statement of Registration.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Statement of Registration.

Frequency: One, two, or five years.

Form Number: DSP–9.

Respondents: Exporters of U.S. Military List items covered under the Foreign Military Sales Program.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,250 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed survey by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–18327 Filed 7–9–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2854]

The Bureau of Political-Military Affairs, Office of Defense

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; DSP–83, Non-transfer and Use Certificate.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Non-Transfer and Use Certificate.

Frequency: Annually.

Form Number: DSP–83.

Respondents: Exporters of significant military equipment and foreign end-users.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,250 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed survey by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–18328 Filed 7–9–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2850]

The Bureau of Political-Military Affairs, Office of Defense Trade Controls; Notice of Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; DSP–73, Application/License for Temporary Export of Unclassified Defense Articles.

SUMMARY: the Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application/License for Temporary Export of Unclassified Defense Articles.

Frequency: Annual.

Form Number: DSP–73.

Respondents: Applicants for Export Licenses of Defense Articles.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,250 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed survey by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–18329 Filed 7–9–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2851]

The Bureau of Political-Military Affairs, Office of Defense Trade Controls; Notice of Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; OMB #1405–0025, Statement of Political Contributions, Fees, or Commissions in Connection with the sale of Defense Articles or Services.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls Title of Information Collection: Statement of Political Contributions, Fees, or Commissions in Connection with the sale of Defense Articles or Services.

Frequency: Annually.

Form Number: OMB #1405–0025.

Respondents: Exporters of Defense Articles or Services.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 8 hours.

Total Estimated Burden: 96,000 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State,

Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed survey by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–18330 Filed 7–9–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2852]

The Bureau of Political-Military Affairs, Office of Defense Trade Controls; Notice of Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; DSP–85, Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application/License for Permanent/Temporary Export or Temporary Import of Classified Defense Articles and Classified Technical Data.

Frequency: Annually.

Form Number: DSP–85.

Respondents: Application for Export/Import Licenses of Classified Defense Articles.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 30 minutes.

Total Estimated Burden: 2,250 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed survey by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–18331 Filed 7–9–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF STATE

[Public Notice 2853]

The Bureau of Political-Military Affairs, Office of Defense Trade Controls; Notice of Information Collection

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; DSP–119, Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Reinstatement, without change, of a previously approved collection for which approval has expired.

Originating Office: The Bureau of Political-Military Affairs, Office of Defense Trade Controls.

Title of Information Collection: Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data.

Frequency: Annually.

Form Number: DSP–119.

Respondents: Applicants for Export/Import Licenses for Classified and Unclassified Defense Articles.

Estimated Number of Respondents: 4,500.

Average Hours Per Response: 15 minutes.

Total Estimated Burden: 1,125 hours.

Public comments are being solicited to permit the agency to—

- Evaluate whether the proposed information collection is necessary for the proper performance of the agency functions.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Charles S. Cunningham, Directives Management Branch, Department of State, Washington, DC 20520, (202) 647–0596. Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposed survey by name and/or OMB Control Number and should be sent to: OMB, Ms. Victoria Wassmer, (202) 395–5871.

Dated: April 30, 1998.

Andrew J. Winter,

Deputy Chief Information Officer.

[FR Doc. 98–18332 Filed 7–9–98; 8:45 am]

BILLING CODE 4710–25–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172; Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz)

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 172 meeting to be held July 28–31, 1998, starting at 9:00 a.m. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda will be as follows: Tuesday, July 28: (1) Plenary Convenes at 9:00 a.m. for 30 minutes: (2) Introductory Remarks; (3) Review and

Approval of the Agenda; (4) Introduction of NEXCOM Requirements Document by the FAA; (5) Working Group (WG)–2, VHF Data Radio Signal-in-Space MASPS, Continue Work on VDL Mode 3. Wednesday, July 29: (a.m.) (6) WG–2 Continues; (p.m.) (7) WG–3, Review of Activities in VHF Digital Radio MOPS Document Progress and Furtherance of Work. Thursday, July 30: (a.m.) (8) Plenary Reconvenes at 9:00 a.m.; (9) Review Summary Minutes of Previous Plenary of SC–172; (10) Reports from WG's 2 & 3 Activities; (11) Report on AMCP 5 and VDL Activities; (12) EUROCAE WG–47 Report and Discussion of Schedule for Further Joint Meetings with WG–3; (13) Review Issues List and Address Future Work; (14) Other Business; (15) Dates and Places of Next Meetings; (16) WG's Continue as Necessary. Friday, July 31: (17) WG's Continue as Necessary.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on July 6, 1998.

Janice L. Peters,

Desiganted Official.

[FR Doc. 98–18391 Filed 7–10–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33620]

State of Oklahoma by and Through the Oklahoma Department of Transportation—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

The State of Oklahoma, a noncarrier, by and through the Oklahoma Department of Transportation (ODOT), has filed a verified notice of exemption under 49 CFR 1150.31 to acquire approximately 124.78 miles of rail line from The Burlington Northern and Santa Fe Railway Company. ODOT will acquire the lines between: (1) between Oklahoma City, OK (milepost 536.4) and Sapulpa, OK (milepost 438.9), (2) between Pawnee Junction, OK (milepost 8.46) and Stillwater, OK (milepost 30.74), and (3) between Midwest City, OK (milepost 2.9) (EPS 15944+14) and the end of track (milepost 7.9) (EPS 16204+29).

The transaction was scheduled to be consummated on or shortly after June 19, 1998.

Stillwater Central Railroad, Inc. (SCRR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 in STB Finance Docket No. 33621, *Stillwater Central Railroad, Inc.—Lease and Operation Exemption—Oklahoma Department of Transportation,* wherein SCRR seeks to lease and operate the lines being acquired by ODOT.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33620, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Eric M. Hocky, Esq., Gollatz, Griffin, & Ewing, P.C., 213 W. Miner Street, P.O. Box 796, West Chester, PA 19381–0796.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 1, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–18453 Filed 7–9–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33621]

Stillwater Central Railroad, Inc.—Lease and Operation Exemption—the State of Oklahoma by and Through the Oklahoma Department of Transportation

Stillwater Central Railroad, Inc. (SCRR), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to lease from the State of Oklahoma by and through the Oklahoma Department of Transportation (ODOT) and to operate approximately 124.78 miles of rail line. The rail line is located in Oklahoma (1) between Oklahoma City (milepost 536.4) and Sapulpa (milepost 438.9), (2) between Pawnee Junction (milepost 8.46) and Stillwater (milepost 30.74), and (3) between Midwest City (milepost 2.9) (EPS 15944+14) and the end of the track (milepost 7.9) (EPS 16204+29). The Burlington Northern and Santa Fe Railway Company (BNSF) currently operates the line under retained unconditional freight service easements.[1] Following the acquisition by ODOT and the lease and operation transaction by SCRR will become a Class III rail carrier and BNSF's easements and common carrier authority will terminate.[2]

The transaction was scheduled to be consummated on or shortly after June 19, 1998.

This transaction is related to two simultaneously filed notice of exemptions: (1) STB Finance Docket No. 33619, *Richard B. Webb and Susan K. Lundy—Continuance in Control Exemption—Stillwater Central Railroad, Inc.,* wherein Richard B. Webb and Susan K. Lundy will continue in control of SCRR, upon its becoming a Class III rail carrier, and (2) STB Finance Docket No. 33620, *State of Oklahoma by and through the Oklahoma Department of Transportation—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company,* wherein ODOT seeks to acquire the rail lines owned by BNSF and lease the rail lines to SCRR to operate.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33621, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., BALL JANIK, LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 1, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–18457 Filed 7–9–98; 8:45 am]

BILLING CODE 4915–00–P

[1] ODOT has acquired the assets subject to these easements.

[2] SCRR states its projected revenues as a result of this transaction will not result in its becoming a Class II or Class I rail carrier.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Finance Docket No. 30186 (Sub–No. 3)]

Tongue River Railroad Company, Construction and Operation of the Western Alignment in Rosebud and Big Horn Counties, Montana

AGENCY: Surface Transportation Board.

ACTION: Notice of Intent to Prepare a Supplement to the Final Environmental Impact Statement and Request for Comments.

SUMMARY: On April 27, 1998, the Tongue River Railroad Company (TRRC) filed an application with the Surface Transportation Board (Board) under 49 U.S.C. 10901 and 49 CFR 1150.1–10 seeking authority to construct and operate a 17.3-mile line of railroad in Rosebud and Big Horn Counties, Montana, known as the ''Western Alignment.'' The line that is the subject of this application is an alternative routing for the portion of the 41-mile Ashland to Decker, Montana rail line that was approved by the Board on November 8, 1996 in Finance Docket No. 30186 (Sub-No. 2), referred to as the ''Four Mile Creek Alternative.'' [1]

To evaluate and consider the potential environmental impacts that might result from the construction and operation of this new alignment, the Board's Section of Environmental Analysis (SEA) will prepare a Supplement to the Final Environmental Impact Statement in Finance Docket No. 30186 (Sub-No. 2) (Supplement). Comments are requested from interested parties regarding the scope of the environmental issues associated with the proposed construction and operation of the Western Alignment that should be addressed in the Supplement.

DATES: Written comments on the scope of potential environmental issues are due August 24, 1998 (45 days). TRRC may reply within 15 days thereafter.

ADDRESSES: Send an original and 10 copies of comments referring to STB Finance Docket No. 30186(Sub-No. 3) to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001, Attention: Dana G. White, Section of Environmental Analysis.

FOR FURTHER INFORMATION CONTACT: Dana White, (202) 565–1552 (TDD for the hearing impaired: (202) 565–1695).

[1] Petitions for review of the November 8, 1996 decision were filed in the Ninth Circuit in *Northern Plains Resource Council, Inc. Et. Al.* v. *STB,* No. 97–70037 (filed Jan. 7, 1997) (NPRC). The court proceedings are being held in abeyance pending the conclusion of this proceeding.

SUPPLEMENTARY INFORMATION:

Background

In its original application filed on June 2, 1983 in Finance Docket No. 30186 and Finance Docket No. 30186 (Sub-No. 1), TRRC sought approval from the Interstate Commerce Commission (ICC, now the Surface Transportation Board or Board) for the construction and operation of 89 miles of railroad between Miles City, MT and two termini located near Ashland, MT (*Tongue River I*). TRRC explained that the proposed rail line would serve future coal mines in the Ashland area, and connect with what is now the Burlington Northern and Santa Fe Railroad Company's main line at Miles City for shipment of the coal to eastern and western destinations. In a decision served May 9, 1986, the ICC approved the application subject to several conditions, including environmental mitigation conditions that were recommended in the environmental impact statement (EIS) prepared by the ICC's environmental staff, now the Section of Environmental Analysis (SEA).

On June 28, 1991, TRRC filed an application in Finance Docket No. 30186 (Sub-No. 2), seeking approval to construct and operate 41 miles of railroad running south from the approved Miles City to Ashland rail line to connect with existing rail lines serving the Decker, MT coal mines (*Tongue River II*). SEA also prepared an EIS for this proceeding and considered the potential environmental impacts associated with (1) TRRC's preferred route,[2] (2) the Four Mile Creek Alternative,[3] and (3) the no-build alternative. SEA's Draft EIS (DEIS) was served on July 17, 1992, and comments were requested. The DEIS preliminarily recommended the Four Mile Creek Alternative because it would avoid the environmentally sensitive Tongue River Canyon. Because of concerns raised during the commenting process, SEA issued a Supplement to the DEIS (SDEIS) on March 17, 1994. In the SDEIS, SEA preliminarily concluded that the Four Mile Creek Alternative would have more adverse environmental consequences than TRRC's preferred route, because it would involve more land disturbance from cut and fill, erosion, deforestation, loss of habitat, and require more fuel consumption and cause more air pollution during operations. After the commenting process for the SDEIS, and further analysis and evaluation, SEA issued a Final EIS (FEIS), on April 11, 1996. In it, SEA explained that it had concluded that the Four Mile Creek Alternative would be the environmentally preferable construction option. SEA developed appropriate mitigation conditions to address potential environmental impacts if either of the two construction alternatives were approved.

In its decision served November 8, 1996, the Board approved the construction and operation of the Four Mile Creek Alternative, and imposed the mitigation measures recommended in the FEIS for that route. Additionally, the Board reopened *Tongue River* I for the limited purpose of requiring TRRC to complete construction of the entire line between Miles City and Decker within 3 years.

By petition filed July 15, 1997, TRRC sought to reopen the Board's November 1996 decision approving the construction and operation of the Four Mile Creek Alternative and proposed that the Board consider a new route, the Western Alignment, for a 17-mile portion of the approved line instead of the Four Mile Creek Alternative. The Western Alignment would roughly parallel TRRC's preferred route, but would lie slightly to the west of that route and the Tongue River.[4] TRRC

[2] TRRC's preferred route would have extended south from Ashland generally paralleling the Tongue River and passed just to the west of the Tongue River Reservoir before connecting with a line owned by the Spring Creek Coal Company, which provides access to the Burlington Northern and Santa Fe Railway Company rail lines. TRRC's preferred route would have included 5 bridges and a tunnel in the approximately 6-mile section of the Tongue River Canyon located between the Tongue River Dam and the confluence of Four Mile Creek and the Tongue River.

[3] The Four Mile Creek Alternative departs from TRRC's preferred route at the confluence of the Four Mile Creek and the Tongue River and heads in a westerly direction, climbing at a 2.31 percent grade away from the Tongue River valley floor. The route winds south connecting with the Spring Creek spur at the same point as TRRC's preferred route. The Four Mile Creek Alternative thus avoids the Tongue River Canyon and Reservoir.

[4] The Western Alignment would generally follow a route between TRRC's preferred alignment and the Four Mile Creek Alternative and would be located on uplands out of the Tongue River Canyon. Moving south along the approved route from Ashland, the Western Alignment would begin at a point approximately 9 miles downstream from the confluence of the Four Mile Creek and the Tongue River. It would then cross the Tongue River approximately 3,000 feet downstream of the existing county road river crossing. After crossing the river, the Western Alignment would parallel the existing Tongue River Road for 4 miles, then separate from the county road and climb away from the valley floor. At Four Mile Creek, the Western Alignment would cross the county road with a fifty-foot long bridge, and run approximately 0.07 miles west of the Hosford residence and ranch headquarters. From Four Mile Creek, the Western Alignment would continue to climb away from the Tongue River Valley, then proceed to connect with the existing Spring Creek rail spur. The Western Alignment would avoid the environmentally sensitive Tongue River Canyon and would

asserted that the Western Alignment, while still avoiding the environmentally sensitive Tongue River Canyon, would also eliminate the potential economic and operational problems TRRC claimed would make the approved Four Mile Creek Alternative economically infeasible. Further, TRRC stated that, compared to the Four Mile Creek Alternative, the Western Alignment would involve less land acquisition, affect fewer land owners, and, because of the more even grade, require less fuel consumption. However, based on additional information later filed by TRRC (see the discussion of TRRC's Environmental Report below), it appears that the Western Alignment could involve more earth-moving because of the rugged terrain, could cross more streams, could need more water during construction, and could potentially adversely affect big game movement, particularly pronghorn movement, during operations. In a decision served December 1, 1997, the Board denied TRRC's petition to reopen *Tongue River II* but stated that TRRC could file a new application for the Western Alignment.

Current Application

TRRC has now filed an application in Finance Docket 30186 (Sub-No. 3) that requests authority under 49 U.S.C. 10901 to construct and operate the Western Alignment as the final 17 miles of the Ashland to Decker line (in lieu of the Four Mile Creek Alternative), to connect with existing rail lines serving the Decker area coal mines (*Tongue River III*). The remainder of the approved line from Ashland to Decker would remain unchanged. In its Environmental Report that TRRC submitted with its new application, TRRC focused on the immediate vicinity of the Western Alignment and that alignment's two construction alternatives, the Four Mile Creek Alternative and TRRC's preferred route.[5] In the Environmental Report, TRRC compares what it believes to be the environmental impacts and costs of constructing and operating the Western Alignment with the impacts and costs associated with the relevant portions of the Four Mile Creek Alternative and TRRC's preferred route. TRRC did not readdress the entire corridor between Miles City and Decker because that corridor has already received extensive environmental review in the environmental impact statements prepared in *Tongue River I* and *Tongue River II*, both for the Miles City to Ashland portion and the Ashland to Decker portion of this corridor.

In preparing its Environmental Report, TRRC sought comments from a number of Federal and state agencies and included their responses in the report. Briefly, the U.S. Army Corps of Engineers (Corps) states that, since all Corps' permits have expired, it will be reviewing TRRC's proposal in its entirety. The Corps indicates that it believes that the project, though analyzed in segments over a number of years, is one continuous alignment. The Corps also suggests that environmental conditions along the 130-mile rail route may have changed since the earlier analyses were performed.

The Montana Department of Natural Resources and Conservation expresses concern about the direction and flow of possible flood waters and floodplain obstruction, water rights for dust control, blasting in the vicinity of the Tongue River Dam, encroachments on county roads, interference with dam rehabilitation, protection of historic resources, and disturbance of survey monuments. The Montana Department of Fish, Wildlife & Parks (MT FWP) acknowledges that the Western Alignment would avoid operating costs and operational concerns associated with the Four Mile Creek Alternative, but expresses concerns about the possible impacts from the cut and fill requirements associated with the construction of the Western Alignment and impacts to the nearby Tongue River Reservoir state park. MT FWP also describes two issues that it believes are unresolved from SEA's earlier environmental analysis: (1) the preservation of the integrity of the fish hatchery at Miles City; and (2) the status of the Multi-agency/Railroad Task Force set up in *Tongue River II*. The Montana Department of Transportation (MT DOT), in addition to expressing concerns about highway safety, requests re-negotiation of a Memorandum of Understanding designed to protect state highways. MT DOT also requests additional information about design plans for the I–94 grade crossing at Miles City. The Montana Natural Heritage Program has provided information about 5 species of concern that may be present in the Western Alignment area.

No responses were included in TRRC's Environmental Report from other agencies that TRRC contacted, including the U.S. Environmental Protection Agency, the U.S. Fish and Wildlife Service, the National Geodetic Survey, the National Park Service, the Montana Department of Environmental Quality, and the Montana Department of Commerce.

The Northern Plains Resource Council (NPRC), in a separate filing before the Board,[6] has suggested that the Board should now require another environmental analysis of the entire Miles City to Decker corridor. NPRC disagrees with TRRC's view that the Board should rely on its previous environmental analysis and focus its environmental review on only the Western Alignment. Instead, NPRC suggests that there are significant new changed environmental circumstances along the entire route. For example, it points to the invalidation of the Montco mine permit and the designation of the Tongue River as an impaired waterbody under the Clean Water Act. In addition, NPRC alleges that TRRC has significantly altered the alignments that were analyzed in *Tongue River I* and *Tongue River II* as it begins to exercise the authority previously granted in those proceedings.[7] If that were shown to be the case, it could be that the environmental analysis of some of the previously approved line would no longer be adequate.

Also, in separate filings,[8] Great Northern Properties Limited Partnership suggests that the increased coal traffic projected for the Western Alignment could affect the entire 130-mile route.

Environmental Review Process

The Council on Environmental Quality's (CEQ) rules implementing the National Environmental Policy Act (NEPA) advise Federal agencies to prepare supplements to an EIS where, as here, new information that is relevant to environmental concerns is presented after a Final EIS has been prepared.[9]

incorporate at its steepest a grade of 0.93 percent for a length of 2.4 miles.

[5] We note that TRRC's preferred route is not really a construction alternative at this point, since the Board approved the Four Mile Creek Alternative, and not TRRC's preferred route, in its November 1996 decision in *Tongue River II*.

[6] *See* Northern Plains Resource Council, Inc.'s Reply in Opposition to Petition to Establish Procedural Schedule, filed March 23, 1998.

[7] This point also has been brought to SEA's attention informally by various Montana state agencies.

[8] *See* Great Northern Properties Limited Partnership's Replies filed February 17, 1998, and May 20, 1998, and Motion to Compel filed April 6, 1998.

[9] The CEQ regulations at 40 CFR 1502.9(c) state that Agencies:

(1) Shall prepare supplements to either draft or final environmental impact statements if:

(i) The agency makes substantial changes in the proposed action that are relevant to environmental concerns; or

(ii) There are significant new circumstances or information relevant to environmental concerns and bearing on the proposed action or its impacts.

(2) May also prepare supplements when the agency determines that the purposes of the Act will be furthered by doing so.

Continued

See Marsh v. *Oregon Natural Resources Council,* 490 U.S. 360 (1989)(*Marsh*). Therefore, based on the CEQ rules, the Board's environmental regulations at 49 CFR 1105.10(a)(5), and SEA's analysis of all the information on the Western Alignment SEA has received to date, SEA has determined that a Supplement to the EIS in Finance Docket 30186 (Sub-No. 2) (Supplement) is the appropriate means of reviewing TRRC's application for the Western Alignment in *Tongue River III.* Specifically, SEA will prepare a draft Supplement including preliminary mitigation recommendations that will be available for a 45-day comment period. Based on comments to the draft Supplement, and any further analysis, SEA will prepare a final Supplement, which will include appropriate environmental mitigation recommendations. The Board will consider the draft and final Supplements, any comments, and other available environmental information in rendering its decision on whether to grant TRRC's new application. In its decision, the Board will consider both economic and competitive transportation issues and will impose any environmental conditions it deems appropriate.

Request for Comments About the Scope of the Supplement

Although CEQ's rules implementing NEPA do not require public scoping for the preparation of Supplements, SEA believes that it is appropriate in this case to request comments regarding the environmental scope of, and potential environmental concerns and issues to be addressed in, the Supplement.[10] Typically, SEA's environmental analysis includes potential impacts to safety, land use, water quality, endangered species, wildlife habitat, cultural resources, air, and noise that would result from the proposed transaction. *See* 49 CFR 1105(7)(e). At a minimum, SEA intends in its Supplement to analyze these potential environmental impacts associated with the construction and operation of the Western Alignment and to recommend appropriate mitigation to reduce or eliminate potentially adverse impacts in these areas. We invite interested parties to address any other potential impacts or areas of concern that are directly related to the proposed construction and operation in *Tongue River III,* and, therefore, should also be considered in the Supplement.

In addition, we invite comments about TRRC's suggestion that SEA's environmental analysis should be limited to the Western Alignment, TRRC's proposed construction alternatives for the Western Alignment, and the no-build alternative, and that there is no reason to revisit any of the earlier environmental analysis in *Tongue River I* and *Tongue River II.* As discussed earlier, some agencies and other interested parties have suggested that our approach should be broader. Moreover, the question of when circumstances have changed so much as to make some or all of a prior analysis stale is a difficult one. Therefore, we request comments on whether the Supplement should focus only on the environmental impacts associated with the Western Alignment and its alternatives, or whether the Supplement should encompass environmental concerns beyond the immediate geographic area of the Western Alignment (*i.e,* take at least a limited look at the rest of the line recently approved in *Tongue River II,* or perhaps even revise or update the environmental analysis in *Tongue River I* if we are shown that the environmental analysis has become outdated and is no longer adequate).[11]

The CEQ rules direct agencies to consider in any Supplement ''significant new circumstances or information relevant to environmental concerns and bearing on the action or its impacts.'' 40 CFR 1502.9(c). At the same time, it is well settled that an agency need not supplement an environmental impact statement every time new information comes to light after the environmental impact statement is finalized. *Marsh,* 490 U.S. at 373. Thus, the passage of time, in and of itself, is not necessarily a reason to repeat or redo environmental analysis. *Id.* Moreover, the environmental analysis in *Tongue River I* and *Tongue River II* was thorough and comprehensive. Therefore, we intend to use and rely on the data and analysis contained in our previous environmental documents for the Miles City to Ashland line and the Ashland to Decker line unless it is shown that, as a result of significant new circumstances, what was done before is no longer adequate. For example, it may be that certain portions, if not all, of the previous environmental documentation should be updated or revised to reflect significant new information (*i.e,* substantial alignment changes) that has made our former analysis incomplete, out-of-date or inapplicable.

Therefore, SEA has decided to seek comments on whether, to what extent, and in what environmental areas, our prior environmental documents may have become out-of-date. Specifically, we invite all interested parties to provide us with information, including specific examples, on whether any environmental conditions have changed substantially since we completed our environmental analysis in *Tongue River I* and *Tongue River II.* For example, have any substantial changes occurred in land use, topography, wetlands or water resources, endangered species, or cultural resources? If significant changes have occurred that could affect the adequacy of the conclusions in our previous environmental documents, such as NPRC's claim that TRRC may now have altered significantly the proposed alignment from what was analyzed in the prior environmental impact statements, we should be informed of these changes now so that we can consider such evidence in determining what the scope of the Supplement should be.

All comments should provide specific evidence to support the claims that are made. We want to know with specificity why commenters believe that environmental circumstances have changed significantly, possibly affecting our previous analysis and conclusions and, therefore, warranting further review in the Supplement.

SEA will also consult with affected Federal, state and local agencies regarding the appropriate scope of the Supplement. Based on its consideration of any comments to this Notice, and its evaluation and review of all available information, SEA will then announce what the scope of the Supplement will be.

As directed above, please submit comments by August 24, 1998 (45 days). TRRC may reply within 15 days thereafter.

(3) Shall adopt procedures for introducing a supplement into its formal administrative record, if such a record exists.

(4) Shall prepare, circulate, and file a supplement to a statement in the same fashion (exclusive of scoping) as a draft and final statement unless alternative procedures are approved by the Council.

[10] As noted, this Notice provides a 45-day comment period. TRRC may reply within 15 days thereafter.

[11] The Western Alignment plainly is directly related to *Tongue River II* because it is an alternative route for a part of that line. In addition, while no stay of *Tongue River II* was sought from the Board or in any court, petitions for judicial review are pending in the Ninth Circuit in *NPRC.* It is more difficult to justify revisiting *Tongue River I,* which has long been administratively final and is not pending judicial review in any court. On the other hand, as some agencies have contended, it can be argued that *Tongue River I, II* and *III* cannot be considered separately and are all part of the same line.

By the Board, Elaine K. Kaiser, Chief, Section of Environmental Analysis.

Vernon A. Williams,

Secretary.

[FR Doc. 98–18455 Filed 7–9–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33619]

Richard B. Webb and Susan K. Lundy—Continuance in Control Exemption—Stillwater Central Railroad, Inc.

Richard B. Webb and Susan K. Lundy (Applicants), have filed a verified notice of exemption to continue in control of Stillwater Central Railroad, Inc. (SCRR), upon SCRR becoming a Class III railroad.

The transaction was scheduled to be consummated on or shortly after June 19, 1998.

This transaction is related to two simultaneously filed verified notices of exemption: (1) STB Finance Docket No. 33620, *State of Oklahoma by and through the Oklahoma Department of Transportation—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company,* wherein the State of Oklahoma by and through the Oklahoma Department of Transportation (ODOT) seeks to acquire rail lines from The Burlington Northern and Santa Fe Railway Company (BNSF), and (2) STB Finance Docket No. 33621, *Stillwater Central Railroad, Inc.—Lease and Operation Exemption—Oklahoma Department of Transportation,* wherein SCRR seeks to lease and operate the lines being acquired by ODOT.

In addition to SCRR,[1] Applicants control two Class III rail carriers.: These carriers are South Kansas and Oklahoma Railroad Company, operating in the States of Kansas and Oklahoma, and the Palouse River & Coulee City Railroad, Inc., operating in the States of Washington and Idaho.[2]

Applicants state that: (i) the rail lines operated by SCRR do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect SCRR's lines with any railroad in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33619, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., BALL JANIK, LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 1, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–18454 Filed 7–9–98; 8:45 am]

BILLING CODE 4915–00–P

[1] SCRR is a noncarrier corporation formed for the purpose of leasing the rail lines acquired by ODOT from BNSF and operating the 124.78 miles of rail line.

[2] On May 15, 1998, Applicants filed a petition for exemption seeking Board approval to indirectly control the Blue Mountain Railroad, Inc., and the Southeast Kansas Railroad Company in STB Finance Docket No. 33603, *Richard B. Webb and Susan K. Lundy—Control Exemption—Blue Mountain Railroad, Inc. and Southeast Kansas Railroad Company.* This proceeding is currently pending.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–31 (Sub–No. 35X)]

Grand Trunk Western Railroad Incorporated—Abandonment Exemption—in Macomb County, MI

Grand Trunk Western Railroad Incorporated (GTW) has filed a notice of exemption under 49 CFR, Part 1152 Subpart F—*Exempt Abandonments* to abandon a 19.08-mile line of its railroad on the Romeo Subdivision between Richmond and Washington from milepost 0.42 to milepost 19.50 in Macomb County, MI. The line traverses United States Postal Service Zip Codes 48062, 48005, 48065, 48094 and 48095.

GTW has certified that: (1) no local traffic has moved over the line for at least 2 years; (2) any overhead traffic that previously moved over the line can be rerouted over other GTW lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment— Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on August 9, 1998, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by July 20, 1998. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by July 30, 1998, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Robert P. vom Eigen,

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

Esq., Hopkins & Sutter, 888 Sixteenth Street, N.W., Washington, DC 20006.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

GTW has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by July 15, 1998. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), GTW shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by GTW's filing of a notice of consummation by July 10, 1999, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: July 2, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–18456 Filed 7–9–98; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices, Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, N.W., Washington, D.C., on August 4, 1998, of the following debt management advisory committee: The Bond Market Association, Treasury Borrowing Advisory Committee.

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. Following the working session, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9:30 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of the Assistant Secretary for Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: July 6, 1998.

Gary Gensler,

Assistant Secretary (Financial Markets).

[FR Doc. 98–18390 Filed 7–9–98; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8862

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 8862, Information To Claim Earned Income Credit After Disallowance.

DATES: Written comments should be received on or before September 8, 1998 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Martha R. Brinson, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Information To Claim Earned Income Credit After Disallowance.

OMB Number: To be assigned later.

Form Number: 8862.

Abstract: Section 32 of the Internal Revenue Code allows taxpayers to claim an earned income credit (EIC) for each of their qualifying children. Code section 32(k), as enacted by section 1085(a)(1) of the Taxpayer Relief Act of 1997, disallows the EIC for a statutory period if the taxpayer improperly claimed it in a prior year. Form 8862 is used by taxpayers to reestablish their eligibility to claim the EIC.

Current Actions: This is a new collection of information.

Type of Review: New OMB approval.

Affected Public: Individuals or households.

Estimated Number of Respondents: 1,000,000

Estimated Time Per Respondent: 2 hr., 26 min.

Estimated Total Annual Burden Hours: 2,430,000

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be 3 retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: July 2, 1998.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 98–18441 Filed 7–9–98; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Advisory Group to the Commissioner of Internal Revenue

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Announce new official title for one of IRS, Federal advisory committees.

SUMMARY: The official title for the Advisory Group to the Commissioner of Internal Revenue has been changed to Internal Revenue Service Advisory Council.

FOR FURTHER INFORMATION CONTACT: Merci del Toro, Office of Public Liaison and Small Business Affairs, CL:PL Room 7559 IR,1111 Constitution Avenue, NW., Washington, DC 20224, Telephone: 202–622–5081 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The charter for the Advisory Group to the Commissioner of Internal Revenue was revised on May 13, 1998, in accordance with the provisions of the Federal Advisory Committee Act, Public Law 92–463, enacted October 6, 1972, to officially change the title of the Advisory Group to the Commissioner of Internal Revenue to Internal Revenue Service Advisory Council.

Dated: July 2, 1998.

Susanne M. Sottile,

Director, Office of Public Liaison and Small Business Affairs/Designated Federal Official for the IRS Advisory Council.

[FR Doc. 98–18442 Filed 7–9–98; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INSTITUTE OF PEACE

Announcement of Senior Fellowship Competition

AGENCY: United States institute of Peace.

ACTION: Notice.

SUMMARY: The agency is soliciting applications for Senior Fellowships from scholars or practitioners who conduct research related to the peaceful resolution of international conflict. Fellowship entails residence at agency in Washington, DC, for up to one year beginning September 1, 1999.

DATES: Application Material Available Upon Request Receipt Date for Return of Applications: October 1, 1998 Notification of Awards; April, 1999.

ADDRESSES: For application materials, visit the Institute's website at www.usip.org, or contact: United States institute of Peace, Jennings Randolph Program, 1550 M Street, NW, Suite 700, Washington, DC 20005–1708, (202) 429–6063 (fax), (202) 457–1719 (TTY), jrprogram@usip.org (email).

FOR FURTHER INFORMATION CONTACT: Jennings Randolph Program, Phone (202)–429–3886.

Dated: July 7, 1998.

Bernice J. Carney,

Director, Office of Administration.

[FR Doc. 98–18424 Filed 7–9–98; 8:45 am]

BILLING CODE 6820–AR–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on the Readjustment of Veterans, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 that a meeting of the Advisory Committee on the Readjustment of Veterans will be held July 23 through 25, 1998. This meeting will be a field meeting conducted primarily at VA facilities in Spokane, Washington, and Missoula and Fort Harrison, Montana. The Committee will also visit with Native American veterans on the Blackfeet and Flathead reservations in Montana to review the availability of services for rural and minority veterans. The purpose of the meeting is to provide the Committee a first-hand opportunity to review the provision and coordination of VA services for war related post-traumatic stress disorders (PTSD) and other readjustment difficulties specific to war veterans. For this purpose, the Committee will tour facilities, and engage in discussions with VA service providers and veteran consumers.

The meeting on July 23 will begin at 8 a.m. and conclude at 5 p.m. The day's agenda will be conducted concurrently at three different locations. Specifically, one Committee subgroup will visit the Fort Harrison VA Medical & Regional Office Center (VAM&ROC), Williams Street/Highway 19, Fort Harrison, Montana 59636, and one Committee subgroup will visit the VA Medical Center (VAMC), North 4815 Assembly, Spokane, Washington 99205. The day's agenda will consist of direct observations of VA mental health services with particular attention to PTSD programs, and a review of the PTSD claims process at the Fort Harrison VAM&ROC. An additional focus for the meeting is continuity of care and clinical follow-up between area VA medical facilities and Vet Centers. A third Committee subgroup will visit with Native American veterans on the Blackfeet reservation in Browning, Montana. The day's agenda will consist of assessing veterans needs and services provided by VA.

The meeting on July 24 will also begin at 8 a.m. and conclude at 5 p.m. The second day's agenda will also be conducted concurrently at three different locations. The day's agenda will consist of a continuation of direct observations of VA programs and facilities at the Vet Center, 500 N. Higgins Avenue, Missoula, Montana 59802, and Vet Center, West 1708 Mission Street, Spokane, Washington 99201. Concurrently, the third Committee subgroup will be visiting with Native American veterans on the Flathead reservation in Polson, Montana. The day's agenda will consist of assessing veterans needs and services provided by VA.

The meeting on July 25 will begin at 8:00 a.m. and conclude at 1:00 p.m. The third day's agenda will consist of a full Committee executive meeting to review findings and conclusions, and formulate recommendations. The meeting will be conducted at the Edgewater Double Tree Hotel, 100 Madison Street, Missoula, Montana. Their phone number is (406) 728–3100.

The meeting will be closed from 8 a.m. to 5 p.m. on Thursday, July 23, and from 8 a.m. to 5 p.m. on Friday, July 24, in accordance with the provisions cited in 5 U.S.C. 552b(c)(6) pursuant to subsection 10(d) of the Federal Advisory Committee Act. During this portion of the meeting, the Committee will be engaging in discussions with clinical service providers and veterans consumers. The discussions will disclose information of a personal nature for veteran patients, which would constitute a clearly unwarranted invasion of personal privacy. The meeting on Saturday, July 25, from 8 a.m. to 1 p.m., will be open to the public.

Anyone having questions concerning the meeting may contact Alfonso R. Batres, Ph.D., M.S.S.W., Chief, Readjustment Counseling Officer, Department of Veterans Affairs Headquarters Office at (202) 273–8967.

Dated: July 2, 1998.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 98–18322 Filed 7–9–98; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Amended Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

Notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a recurring computer matching program matching Office of Personnel Management (OPM) records with VA pension and parents' dependency and indemnity compensation (DIC) records.

The goal of this match is to compare income status as reported to VA with records maintained by OPM.

The Department of Veterans Affairs plans to match records of veterans and surviving spouses and children who receive pension, and parents who receive DIC from VA from Office of Personnel Management benefit records maintained by OPM. The match with OPM will provide VA with data from OPM civil service benefit records.

VA will use this information to update the master records of VA beneficiaries receiving income dependent benefits and to adjust VA benefit payments as prescribed by law. Otherwise, information about a VA beneficiary's receipt of OPM benefits is obtained from reporting by the beneficiary. The proposed matching program will enable VA to ensure accurate reporting of income.

Records to Be Matched

The VA records involved in the match are the VA system of records, Compensation, Pension, Education and Rehabilitation Records—VA (58 VA 21/22) first published at 41 FR 9294, March 3, 1976 and last amended at 63 FR 7196, February 12, 1998. The OPM records involved in the match are from the OPM Civil Service Retirement Pay File identified as OPM Central–1, Civil Service Retirement and Insurance records, published at 58 FR 19153 (April 12, 1993) and amended at 60 FR 63081–63083, (December 8, 1995). In accordance with Title 5 U.S.. subsection 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget.

This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

The match will start no sooner than 30 days after publication of this Notice in the **Federal Register,** or 40 days after copies of this Notice and the agreement of the parties are submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIBs) may extend this match for 12 months provided the agencies certify to the DIBs, within three months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Interested individuals may submit written comments to the Director, Office of Regulations Management (O2D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between 8:00 a.m. and 4:30 p.m., Mondays through Fridays, except holidays.

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge (213B), (202) 273–7218.

SUPPLEMENTARY INFORMATION: This information is required by Title 5 U.S.C. subsection 552a(e)(12), the Privacy Act of 1974. A copy of this notice has been provided to both Houses of Congress and the Office of Management and Budget.

Approved: June 30, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

[FR Doc. 98–18310 Filed 7–9–98; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 63, No. 132
Friday, July 10, 1998

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Forest Service

Moira Environmental Impact Statement

Correction

In notice document 98–16222 beginning on page 33317, in the issue of Thursday, June 18, 1998, in the second column, in the ninth line from the bottom, ''435'' should read ''45''.

BILLING CODE 1505-01-D

FEDERAL MARITIME COMMISSION

[Docket No. 98–08]

Kin Bridge Express Inc. and Kin Bridge Express (U.S.A) Inc.–Possible Violations of Sections 8, 10(a)(1), 10(b)(1) and 23 of the Shipping Act of 1984; Order of Investigation and Hearing

Correction

In notice document 98–17141, beginning on page 35228, in the issue of Monday, June 29, 1998, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133F, 84.133G, and 84.133P]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under Certain Programs for Fiscal Year 1999

Correction

In notice document 98–16180, beginning on page 33500, in the issue of Thursday, June 18, 1998, the instructions for SF 424 that appear on page 33507 are republished and the application form SF 424 should be added after page 33506 to read as follows:

BILLING CODE 1505-01-D

APPLICATION FOR FEDERAL ASSISTANCE

		2. DATE SUBMITTED	Application Identifier
1. TYPE OF SUBMISSION ☐ Construction ☐ Non-Construction	Preapplication: ☐ Construction ☐ Nonconstruction	3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (Give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. Employer Identification Number: ___ - _____

7. TYPE OF APPLICATION:
(enter appropriate letter here) ☐

A. State	F. Intermunicipal	K. Indian tribe
B. County	G. Special District	L. Individual
C. Municipal	H. Independent School Dist.	M. Profit Org.
D. Township	I. State Cont. I of HL	N. Other (Specify)
E. Interstate	J. Private University	_____

8. TYPE OF APPLICATION
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) here: ☐ ☐
A. Increase Award B. Decrease Award
C. Increase Duration D. Decrease Duration
Other (specify)

9. NAME OF FEDERAL AGENCY

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 84.
Title:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date:	Ending Date:	a. Applicant:	b. Project:

15. ESTIMATED FUNDING		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICANT SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES ☐ THIS PREAPPLICATION /APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes" attach an explanation
☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title:	c. Telephone Number:
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 REV 4-88)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicants control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matter related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project, if more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications use a separate sheet to provide a summary description of this project.
12.	List the State and area (county, city, etc.) the applicant is applying to serve with this application.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application).

BILLING CODE 1505-01-C

federal register

Friday
July 10, 1998

Part II

Department of Transportation

Research and Special Programs Administration

49 CFR Part 171, et al.

Transportation of Hazardous Materials; Miscellaneous Amendments; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 172, 173, 175, 177, 178 and 180

[Docket No. RSPA–97–2905 (HM–166Y)]

RIN 2137–AC41

Transportation of Hazardous Materials; Miscellaneous Amendments

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This final rule amends the Hazardous Materials Regulations (HMR) by incorporating miscellaneous changes based on petitions for rulemaking and RSPA initiative. This action is necessary to improve safety and to respond to petitions for rulemaking. The intended effect of these regulatory changes is to update, clarify or provide relief from certain regulatory requirements.

DATES: Effective: The effective date of these amendments is October 1, 1998.

Compliance: Compliance with the regulations, as amended herein, is authorized after August 24, 1998.

Incorporation by reference: The incorporation by reference of a publication listed in this final rule is approved by the Director of the Federal Register as of October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Joan McIntyre, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION:

I. Background

On March 4, 1995, the President directed Federal agencies to perform an extensive review of all agency regulations and eliminate or revise those requirements that are outdated or in need of reform. This final rule is consistent with the goals of the President's Regulatory Reinvention Initiative. In a continuing effort to review the HMR for necessary revisions, RSPA is eliminating, revising, clarifying and relaxing certain regulatory requirements in this final rule. On September 24, 1997, RSPA issued a notice of proposed rulemaking (NPRM) under Docket RSPA–97–2905 (HM–166Y) (62 FR 50222). The NPRM proposed a number of miscellaneous changes to the HMR, designed primarily to reduce regulatory burdens on industry by incorporating changes into the HMR based on RSPA's own initiative and petitions for rulemaking, submitted in accordance with 49 CFR 106.31. The NPRM contained information concerning each proposal and invited public comment. Readers should refer to the NPRM for additional background discussion.

RSPA received about 20 comments in response to the NPRM. These comments were submitted by representatives of trade associations, hazardous materials consulting firms, chemical manufacturers, a testing and manufacturing laboratory and an air carrier. The commenters expressed support for various proposals, but several raised concerns about certain provisions in the proposals that are discussed below. One commenter requested amendments to the HMR other than those proposed as part of this initiative; the commenter's letter was accepted as a petition for rulemaking under 49 CFR 106.31.

II. Summary of Regulatory Changes by Section

The following is a section-by-section summary of changes and, where applicable, a discussion of comments received.

Part 171

Section 171.7

Based on a petition for rulemaking from the Association of American Railroads (AAR) (P–1315), RSPA proposed to update the incorporation by reference of the AAR manual, ''AAR Manual of Standards and Recommended Practices, Section C-Part III, Specifications for Tank Cars, Specification M–1002,'' from the 1992 edition to the 1996 edition. RSPA and the Federal Railroad Administration (FRA) reviewed the referenced requirements in the 1996 manual and agree that the changes will enhance public safety. Therefore, RSPA is incorporating the 1996 edition by reference.

However, § 173.31(b)(5) provides for tank cars modified with bottom discontinuity protection before July 1, 1996, to conform to the requirements of Appendix Y of the 1992 edition of the AAR manual. Appendix Y of the 1996 edition of the AAR manual is under review by an industry task group, of which FRA is a member, and will be revised when the group's task is complete. Until completion of that review, RSPA also is retaining its incorporation by reference of the 1992 edition with a corresponding reference to § 173.31.

Section 171.8

In the NPRM, RSPA proposed to add a definition for ''self-defense spray'' to correspond with the proposed new entry, ''Self-defense sprays, non-pressurized, *containing not more than 2 percent tear gas substances*,'' Class 9, that would be added in the § 172.101 Hazardous Materials Table (HMT). Two commenters suggested that RSPA add descriptive information in the definition. The Air Line Pilots Association (ALPA) suggested adding, as an example, the commonly used term, ''pepper spray,'' as part of the definition. The other commenter, the Association of Defense Spray Manufacturers (ADSM) suggested that RSPA either add the words ''containing not more than two percent tear gas or ten percent oleoresin capsicum'' in the proposed definition or consider capsaicin (the primary capsaicinoid present in oleoresin capsicum) to be a tear gas substance and disregard the percentage of oleoresin capsicum. ADSM stated that not all pepper sprays list the capsicum content on the label and some sprays are labeled as a higher percentage active ingredient. Although oleoresin capsicum is the active ingredient in pepper sprays, RSPA is concerned that limiting the definition or shipping description to oleoresin capsicum would exclude other active ingredients that may be under development for use in self-defense sprays in the future. Therefore, RSPA is revising the definition to state that for self-defense sprays the two percent by mass limitation applies only to tear gas substances (such as chloroacetephenone), but not to other sprays such as (pepper sprays).

The definition of ''Marine pollutant'' is revised by adding a reference to § 171.4, which contains certain exceptions for marine pollutants. Adding the reference responds to a petitioner (P–1256) who stated that these exceptions are often overlooked.

Section 171.18

Section 171.18 is amended to remove an obsolete section concerning registrations filed with the Bureau of Explosives (BOE).

Section 171.19

RSPA is revising § 171.19 by terminating all remaining BOE approvals, other than those made under approval provisions in Part 179. The majority of BOE approvals have been converted to approvals issued by the Associate Administrator for Hazardous Materials Safety (AAHMS). RSPA believes that any remaining BOE

approvals, other than those applying to Part 179 requirements, are obsolete. Any person holding a BOE approval who is affected by this termination may apply for a new approval by the AAHMS.

Part 172

Section 172.101

RSPA is adding three new entries and revising eight existing entries to the HMT.

The three new entries are ''*Pepper spray, see* Aerosols, etc. or Self-defense spray, non-pressurized,'' ''*Self-defense spray, see* Aerosols,etc.'' and ''Self-defense spray, non-pressurized.'' Because ''not more than two percent by mass of a tear gas substance'' is specified in the definition of ''self-defense spray,'' the phrase is not needed as part of the proper shipping names and RSPA is removing it from the proper shipping names in this final rule. These entries clarify that both the aerosol and non-aerosol self-defense sprays are subject to the regulations. Related changes are made to § 171.8 by adding a definition of ''self-defense spray,'' to § 172.102 by adding a new special provision A37 for the entry, ''Self-defense spray, non-pressurized,'' and to § 175.10.

The entries, ''Corrosive solids, water-reactive, n.o.s.'' (UN3096) and ''Water-reactive solid, corrosive, n.o.s.'' (UN3131) are corrected by removing Special Provision 128 for Packing Groups II and III. For the entry, ''Aluminum smelting by-products or Aluminum remelting by-products'' (UN3170), Special Provision 128, containing a hazard communication requirement, is added for Packing Groups II and III.

The entry, ''Detonators, non-electric *for blasting,*'' UN0455 in Column (8A), is corrected by removing the erroneous reference ''none'' in the packaging exceptions column to read ''63(f), 63(g).''

RSPA proposed to amend the entry ''Trifluoroacetyl chloride'' by adding Special Provision ''B7'' to Column (7), in response to a petition for rulemaking (P–1254). Special Provision B7 states that safety relief devices are not authorized on multi-unit tank car tanks. The openings for the safety relief devices must be plugged or blank flanged. After publication of the NPRM, another petitioner (P–1329) requested that RSPA add Special Provision B7 for the entries, ''Dimethylhydrazine, unsymmetrical,'' ''Hydrazine, anhydrous or Hydrazine aqueous solutions *with more than 64 percent hydrazine, by mass*.'' and ''Methylhydrazine.'' The petitioner stated that it is the sole producer of these materials and pointed out that safe shipping experience has been established through DOT exemptions, DOT-E 11200 and DOT-E 11490, which authorize the shipment of hydrazine materials in multi-unit tank car tanks without relief devices. The petitioner also sponsored a risk analysis that focused on the transportation of propellants that are toxic and the risks associated with those materials when transported in multi-unit tank car tanks equipped with or without safety relief devices. The results of the analysis determined that there is an increased likelihood of the release of toxic materials when a relief device is present. The petitioner submitted similar comments in response to the NPRM. RSPA has studied the risk analysis prepared by the University of Central Florida and finds it to be credible. RSPA also has determined that the three additional materials described on the petition are similar in nature to ''Trifluoroacetyl chloride.'' Because of the safe shipping history of the hydrazine products in multi-unit tank car tanks without relief devices under the exemptions, their similarity to ''Trifluoroacetyl chloride,'' and the analysis's conclusions that these materials can be safely shipped in multi-unit tank car tanks without relief devices, RSPA agrees with the petitioner that these materials warrant the same provision as for ''Trifluoroacetyl chloride.'' Therefore, the four entries, ''Trifluoroacetyl chloride,'' ''Dimethylhydrazine, unsymmetrical,'' ''Hydrazine, anhydrous '' and ''Methylhydrazine'' are amended by adding Special Provision ''B7.''

Section 172.102

Special Provision 128 is corrected to provide that aluminum smelting by-products and aluminum remelting by-products meeting the definition of Class 8, Packing Groups II and III may also be classified in Division 4.3 and transported under ''Aluminum smelting by-products *or* Aluminum remelting by-products.'' An editorial revision is also made to the special provision to clarify that, when classified as Division 4.3, the Class 8 must be communicated as a subsidiary risk hazard.

Section 173.32c

RSPA is revising paragraph (j) to allow monolithic (non-flowable) solid materials to be loaded into IM portable tanks to a filling density of less than 80 percent by volume. Paragraph (j) currently specifies that an IM portable tank, or compartment thereof, having a volume greater than 7,500 liters may not be loaded to a filling density less than 80 percent by volume. The former requirement was intended to cover liquid and flowable solid hazardous materials in order to minimize the risk of accidents resulting from the sloshing and shifting of the center of gravity. A monolithic solid material which conforms to the tank geometry, such that the shifting of the center of gravity is not possible, can be safely transported in an IM portable tank at a filling density of less than 80 percent by volume.

In addition, a new sentence is added to paragraph (m) which contains the reference to § 177.834(h) for unloading of an IM portable tank.

Section 173.40

Paragraph (d)(1) is revised to clarify that a strong outside box, used to provide protection for a thin-walled cylinder or a cylinder equipped with a valve, does not need to be made to a specific UN standard. This change is consistent with similar provisions in § 173.301(g)(2) and (k) that permit a non-specification box to be used for protection of the cylinder or valve.

Section 173.56

In the NPRM, RSPA proposed to broaden the provisions in § 173.56(b)(1) for persons who receive approval to examine and assign recommended shipping names, divisions and compatibility groups for new explosives. The proposal stated that the person applying for the approval must meet the following criteria: (1) Is not be controlled by, or financially dependent upon, any entity that manufactures or markets explosives; (2) Does not perform any type of work in the explosives industry other than testing for determination of hazard class or performance; (3) Either has, or employs a person who has, at least ten years' experience in the examination, testing and evaluation of explosives; and (4) Is a resident of the United States.

One commenter contended that the proposed criterion to exclude explosives manufacturers was overly restrictive and stated that provisions should be similar to those in § 173.56(j), which allows manufacturers of Class 1.4 fireworks to classify their own items. However, another commenter stated that the proposed criterion should be more restrictive, stating that the criterion would permit the approval of too many persons and, thereby, render the activity economically infeasible.

RSPA disagrees with both commenters. First, under § 173.56(j), fireworks manufacturers are permitted to classify their own items provided the

items' chemical compositions conform to the parameters prescribed in the American Pyrotechnics Association's (APA) Standard for Construction of Fireworks. These chemical compositions identified in the APA standard have been used for over 50 years and their safety and stability are well known. They also have a proven transportation safety record. A similar situation does not apply to other types of explosives. Second, the proposed criterion provides for the approval of persons who have the prescribed experience in the examination, testing and evaluation of explosives. RSPA does not believe a limitation on the number of qualified persons who are approved to perform this function should be imposed by RSPA. Therefore, RSPA is adopting the provisions as proposed.

Also, as proposed in the NPRM, RSPA is revising paragraph (i) to provide for RSPA to classify a material or device without a prior examination when adequate data is available.

Section 173.156

RSPA is revising paragraph (b)(1) to clarify that the package markings specified in subpart D of part 172 do not apply to cages, carts, boxes or similar overpacks containing ORM–D materials that are offered for transportation or transported according to § 173.156(b)(1).

Section 173.308.

RSPA is revising paragraph (b) to clarify that when transporting up to 1,500 cigarette lighters on one motor vehicle by highway, the only part 172 provisions that do not apply are the hazard communication requirements in subparts C through G (i.e., shipping papers, marking, labeling, placarding, emergency response information) and the training requirements in subpart H. Special Provision N10 applies. RSPA also is revising paragraph (b) to require that the outer packaging be marked to identify the total number of devices contained in the package.

Section 173.469

In paragraph (a)(4)(i), the value of 1.3×10^{-24} is amended to read 1.3×10^{-4} in order to correct a printing error.

Part 175

Section 175.10

RSPA proposed to permit one self-defense device, not exceeding 118 ml (4 fluid ounces), per passenger, in checked baggage, provided the device incorporates a positive means to prevent accidental discharge. The Air Line Pilots Association (ALPA) supported the proposal to regulate self-defense spray devices but stated: ''We also re-affirm our opposition to hazardous material items that are considered weapons of self-defense to be carried by passengers on their person, placed in carry-on baggage, or placed in checked baggage. We maintain this position, in part, because these items could potentially be used in a threatening manner and subsequent release that would be debilitating to the passengers and crew. Additionally, our concern includes that there is no way to inspect or determine, prior to a release or incident, if the positive means (safety device) referenced in new [proposed] paragraph § 175.10(a)(4)(ii) is operable and in place to prevent accidental discharge and release of the contents, specifically with reference to the aerosols.''

In a few cases, self-defense sprays have been discovered in passengers' carry-on luggage after the devices were accidentally initiated. These situations were effectively mitigated by flight crews and investigated by Federal Aviation Administration (FAA) personnel. FAA is unaware of any reported cases of self-defense sprays, packed in checked baggage, initiating in flight and causing discomfort to passengers or crew. Therefore, RSPA is revising paragraph (a)(4) to clarify that all types of self-defense sprays are prohibited from being transported by air in a passenger compartment, either on one's person or in carry-on baggage. However, RSPA is permitting one self-defense device to be carried in checked baggage.

An air carrier expressed its support for the proposal but stated that it had a general concern that RSPA's statement in the preamble discussion to the § 172.101 HMT in the NPRM, characterizing mace and pepper sprays as a ''deadly or dangerous weapon,'' could be misconstrued. The air carrier requested that RSPA clarify that the responsibility of the air carrier is to post warning signs, such as required by proposed § 175.25, or otherwise notify the passenger of the regulations, and not to conduct questioning of passengers or searching of baggage for these items. RSPA did not intend in the preamble of the NPRM to imply that air carriers or airport personnel would be required to implement additional controls to screen each passenger or each passenger's baggage.

In addition, this section is revised to clarify that the quantity limits in paragraphs (a)(4)(i) and (a)(4)(ii) apply to both medicinal and toilet articles and to Division 2.2 aerosols for sporting or home use. This section also is editorially revised to make it easier to read and use.

Section 175.25

Paragraph (a) requires that aircraft operators display notices warning passengers against carrying undeclared hazardous materials aboard aircraft, in either their luggage or on their persons. As proposed in the NPRM, RSPA is revising the language used in the notice to reflect changes in the statutory citation and penalties. A new paragraph (a) is added to allow aircraft operators to display existing notices containing the obsolete language until January 1, 2002.

In addition, based on RSPA and FAA initiative, RSPA is making four other non-substantive changes that provide greater carrier flexibility. First, the introductory language to paragraph (a)(1) is revised to read: ''At a minimum, each notice must communicate the following information:''. Second, the wording in current paragraph (a)(3) is revised to permit additional information, examples, or illustration, if not inconsistent with the required wording. These changes are consistent with the introductory language in § 175.26(a) and permit the specified information to be conveyed to the public while leaving the format for presenting the information, such as the use of graphics, to air carriers' discretion. Third, paragraph (a)(2)(i) is revised to permit posters displayed by U.S. air carriers to have information printed in other languages, in addition to the required English. This wording facilitates communication of the required information to non-English speaking passengers and is consistent with § 175.26(b)(1). Fourth, paragraph (a)(2)(ii) is revised to require that the lettering for only the first paragraph of the notice be at least 0.4 inch in height and the lettering for all other paragraphs be at least 0.2 inch in height. The reduction of the lettering size will allow more space for other information, such as graphics.

Finally, as proposed, the quantity limit reference also is corrected for medicinal and toilet articles carried in a passenger's luggage to read 70 ounces for consistency with the exception provided in § 175.10(a)(4)(i).

Section 175.26

This section requires each person who engages in the acceptance or transport of cargo for transportation by aircraft to display a notice, to persons offering such cargo, of the applicable requirements for hazardous materials aboard aircraft. RSPA is amending the wording required in the notice to state that a violation can result in five years' imprisonment and penalties of $250,000

or more (49 U.S.C. 5124). In addition, a new paragraph (a)(4) is added to allow each person who accepts or transports cargo for transportation by aircraft to display existing notices containing the obsolete language until January 1, 2002.

Part 177

Section 177.834

RSPA proposed to relax a provision in paragraph (h) to permit an IM portable tank to be unloaded while remaining on a transport vehicle with the power unit attached, provided the tank meets the outlet requirements in § 178.345–11 and is attended during the unloading, as currently required for cargo tank motor vehicles under § 177.834(i). Section 178.345–11(b)(1)(iii) provides that the remote means of closure for the stop valve on a cargo tank must be capable of thermal activation when required by Part 173 for materials which are flammable, pyrophoric, oxidizing, or poisonous liquids. Three commenters stated that many IM portable tanks are not fitted with outlet valves meeting this requirement. They stated that RSPA should allow sufficient time for valve manufacturers to develop a valve system that works with a fusible link for installation on new IM portable tanks and that all existing IM portable tanks should be excepted from the valve requirement. One of the commenters, the Chemical Manufacturers Association, stated that the redesign of a proven cargo handling system and the retrofit of existing portable tanks to provide for thermal activation capability would be both expensive and disruptive of commerce because tanks would have to be removed from service.

RSPA disagrees with the commenters. The tank outlets are required to be equipped with this feature to ensure that the valve closes in a fire situation. Cargo tanks have been required to have this feature for many years. RSPA believes that when an IM portable tank is used in the same manner as a cargo tank it should have the same level of safety in the event the operator cannot manually operate the closure. RSPA received no comments on the proposal from valve manufacturers.

A fourth commenter, the National Tank Truck Carriers, Inc. (NTTC), stated that the proposed amendment will increase the use of IM portable tanks for transporting hazardous materials, nationwide. Therefore, IM portable tanks, when operating as cargo tanks, should be subject to all safety requirements paralleling those of traditional cargo tank motor vehicles, including emergency shut-down equipment, fusible and/or frangible device, etc., and, in addition, the requalification requirements contained in Part 180.

NTTC also stated that RSPA should specify the types of motor vehicle chassis, or securement devices, to use for IM portable tanks. NTTC stated that, with the types of trailers ranging from special ''container only'' chassis to equipment, such as, so-called ''goose-neck'' trailers, drop frame trailers and the conventional ''flat bed'' units, container securement is not adequately addressed in the Federal Motor Carrier Safety Regulations (49 CFR 393.100 *et. seq.*).

RSPA disagrees with NTTC that these IM portable tanks should meet the cargo tank requalification requirements in subpart E of Part 180 and that additional securements should apply to them. RSPA received no specific data indicating that the current requirements are inadequate. RSPA will continue to monitor the transportation experience of these tanks to determine if there may be a need to revise the securement requirements in a future rulemaking action.

Several commenters stated that the proposal to permit on-vehicle unloading of IM portable tanks should also apply to loading and pointed out RSPA's comment in the preamble that ''portable tanks are not intended to be filled or emptied while attached to a transport vehicle or a ship during transportation.'' The statement in the NPRM was in error. RSPA intended to say that portable tanks may not be emptied while remaining on a transport vehicle with the motive power attached during transportation. The restriction contained in the next-to-last sentence of current paragraph (h) does not apply to loading. Therefore, the comments are beyond the scope of this rulemaking.

Another commenter stated that the cargo tank attendance rule in paragraph (i)(3) is ''onerous and perhaps outmoded'' and should be revised to provide exceptions for cargo tanks loaded or unloaded inside plant facilities without public access. The need, if any, for changes to attendance requirements are beyond the scope of this rulemaking.

Finally, a commenter requested that the proposal be broadened to include all bulk packagings and that the definition of a cargo tank, in § 171.8, be amended to include an intermediate bulk container (IBC). RSPA may address other bulk packagings in a future rulemaking action. A proposal to amend the definition of a cargo tank is being considered under Docket HM–213.

In conclusion, as proposed in the NPRM, RSPA is permitting IM portable tanks to be unloaded without being removed from the motor vehicle if the outlet requirements in § 178.345–11 and the § 178.337–11 and attendance requirements are met.

Section 177.848

In paragraph (f), the Compatibility Table for Class 1 (Explosive) Materials is revised to clarify that Groups B and D are not compatible. However, a domestic exception (4) is allowed for Detonators when they are transported in accordance with the restrictions in § 177.835(g). To avoid the possibility of incompatible explosives being transported together, RSPA is clarifying the restriction by replacing the entry ''4'' with the entry ''$X_{(4)}$''.

Part 178

Section 178.65

Paragraph (i)(2)(viii)(A) is revised to update the citation ''49 U.S.C. 1809'' to read ''49 U.S.C. 5124.''

Sections 178.352 through 178.364

Several specification packaging requirements for radioactive materials contain obsolete section references. RSPA is updating these section references in this final rule.

Part 180

Section 180.405

RSPA is revising paragraph (c)(1) to recognize that the date marked on certain older cargo tanks was the date initial construction began rather than the date construction was completed. This action more precisely grandfathers cargo tanks in a manner consistent with former § 173.33(b)(1) (in effect prior to December 31, 1990), which read: ''A cargo tank of the specification listed in Column 1 may be used when authorized in this part, provided the tank construction began before the date in Column 2.'' This provision applied to MC 300, 301, 302, 303, 304, 305, 310, 311 and 330 cargo tank motor vehicles.

Finally, paragraph (f) is revised to allow the continued use of a cargo tank equipped with a self-closing system before September 1, 1993, but remarked and certified after that date.

Regulatory Analyses and Notices

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This proposed rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not significant under the Regulatory Policies and Procedures of

the Department of Transportation (44 FR 11034).

The costs and benefits asociated with this final rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation.

B. Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 (''Federalism''). Federal law expressly preempts State, local, and Indian tribe requirements applicable to the transportation of hazardous material that cover certain subjects and are not substantively the same as the Federal requirements. 49 U.S.C. 5125(b)(1). These subjects are:

(i) The designation, description, and classification of hazardous material;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous material;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous material and requirements respecting the number, content, and placement of those documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous material.

This final rule concerns the classification, packaging, marking, labeling, and handling of hazardous material, among other covered subjects.

This final rule would preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are ''substantively the same'' (see 49 CFR 107.202(d)) as the Federal requirements.

Federal law (49 U.S.C. 5125(b)(2)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance.

C. Regulatory Flexibility Act

This final rule would amend miscellaneous provisions in the HMR, generally to clarify those provisions and to relax requirements that are overly burdensome. The proposed changes in this rule are generally intended to provide relief to shippers, carriers, and packaging manufacturers, some of whom are small entities (for example, small businesses, governmental jurisdictions and not-for-profit organizations). The costs and benefits associated with this proposed rule are considered to be so minimal as to not warrant preparation of a regulatory impact analysis or regulatory evaluation. Small incremental cost increases are associated with updating the hazardous materials information shown on airport signs in §§ 175.25 and 175.26. A delayed compliance date of January 1, 2002, is provided for displaying the notices to allow for a sufficient transition period. Therefore, I certify that this proposal will not, if promulgated, have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, no person is required to respond to a collection of information unless it displays a valid OMB control number. This final rule does not propose any new information collection burdens. Information collection requirements addressing the approval of explosives in § 173.56 are currently approved under OMB approval number 2137–0557. This approval expires July 31, 1999.

E. Regulation Identifier Number (RIN)

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

F. Unfunded Mandates Reform Act

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects

49 CFR Part 171

Exports, Hazardous materials transportation, Hazardous waste, Imports, Incorporation by reference, Reporting and recordkeeping requirements.

49 CFR Part 172

Hazardous materials transportation, Hazardous waste, Labels, Markings, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 175

Air carriers, Hazardous materials transportation, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 177

Hazardous materials transportation, Motor carriers, Radioactive materials, Reporting and recordkeeping requirements.

49 CFR Part 178

Hazardous materials transportation, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR chapter I is amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS AND DEFINITIONS

1. The authority citation for part 171 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 49 CFR 1.53.

2. In the § 171.7(a)(3) Table, under the entry ''Association of American Railroads'', a new entry is added in appropriate alphabetical order to read as follows:

§ 171.7 Reference material.

(a) *Matter incorporated by reference.* * * *

(3) *Table of material incorporated by reference.* * * *

Source and name of material	49 CFR reference
* * * * * * *	
Association of American Railroads,	
* * * * * * *	
AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, September 1996.	174.63; 179.6; 179.7; 179.12; 179.15; 179.16; 179.20; 179.22; 179.100; 179.101; 179.102; 179.103; 179.200; 179.201; 179.220; 179.300; 179.400; 180.509; 180.513; 180.515; 180.517.
* * * * * * *	

* * * * *

§ 171.7 [Amended]

3. In addition, in the § 171.7(a)(3) Table, under the entry ''Association of American Railroads'', for the entry ''AAR Manual of Standards and Recommended Practices, Section C—Part III, Specifications for Tank Cars, Specification M–1002, September 1992'', in the second column, the existing section references are removed and a new reference ''173.31'' is added in their place.

4. In § 171.8, the following definition is added in the appropriate alphabetical order to read as follows:

§ 171.8 Definitions and abbreviations.

* * * * *

Self-defense spray means an aerosol or non-pressurized device that:

(1) Is intended to have an irritating or incapacitating effect on a person or animal; and

(2) Meets no hazard criteria other than for Class 9 (for example, a pepper spray; see § 173.140(a) of this subchapter) and, for an aerosol, Division 2.1 or 2.2 (see § 173.115 of this subchapter), except that it may contain not more than two percent by mass of a tear gas substance (e.g., chloroacetophenone (CN) or 0-chlorobenzylmalonitrile (CS); see § 173.132(a)(2) of this subchapter.)

* * * * *

§ 171.8 [Amended]

5. In addition, in § 171.8, for the definition ''Marine pollutant'', in the first sentence, the wording ''this subchapter and,'' is removed and ''this subchapter (also see § 171.4) and,'' is added in its place.

§ 171.18 [Removed and Reserved]

6. Section 171.18 is removed and reserved.

7. Section 171.19 is revised to read as follows:

§ 171.19 Approvals or authorizations issued by the Bureau of Explosives.

Effective December 31, 1998, approvals or authorizations issued by the Bureau of Explosives (BOE), other than those issued under part 179 of this subchapter, are no longer valid.

PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, AND TRAINING REQUIREMENTS

8. The authority citation for part 172 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

9. In § 172.101, the Hazardous Materials Table is amended by adding the following entries, in appropriate alphabetical order, to read as follows:

§ 172.101 Purpose and use of hazardous materials table.

* * * * *

§ 172.101 HAZARDOUS MATERIALS TABLE

Symbols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identification numbers	PG	Label codes	Special provisions	(8) Packaging (§ 173.* * *)			(9) Quantity limitations		(10) Vessel stowage	
							Exceptions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
	* *		*	*		*		*		*			
	[ADD:]												
	Pepper spray, see Aerosols, etc. *or* Self-defense spray, non-pressurized.												
	* *		*	*		*		*		*			
	Self-defense spray, aerosol, see Aerosols, etc												
+AD	Self-defense spray, non-pressurized	9	NA3334	III	9	A37	155	203	None	No limit	No limit	A	
	* *		*	*		*		*		*			

§ 172.101 [Amended]

10. In addition, in § 172.101, in the Hazardous Materials Table, the following changes are made:

a. For the entry, ''Aluminum smelting by-products *or* Aluminum remelting by-products'' (UN3170), for Packing Groups II and III, in Column (7), the special provision ''128,'' is added immediately before ''B106'', each place it appears.

b. For the entry, ''Corrosive solids, water-reactive, n.o.s.'' (UN3096), for Packing Group II, in Column (7), the special provision ''128,'' is removed.

c. For the entry, ''Detonators, non-electric *for blasting.*'', UN0455, in Column (8A), the reference ''None'' is revised to read ''63(f), 63(g)''.

d. For the entry, ''Dimethylhydrazine, unsymmetrical'', in Column (7), the special provision ''B7,'' is added immediately following ''2,''.

e. For the entry, ''Hydrazine, anhydrous *or* Hydrazine aqueous solutions *with more than 64 percent hydrazine, by mass.*'', in Column (7), the special provision ''B7,'' is added immediately following ''A10,''.

f. For the entry, ''Methylhydrazine'', in Column (7), the special provision ''B7,'' is added immediately following ''1,''.

g. For the entry, ''Trifluoroacetyl chloride'', in Column (7), the special provision ''B7,'' is added immediately following ''2,''.

h. For the entry, ''Water-reactive solid, corrosive, n.o.s.'' (UN3131), for Packing Groups II and III, in Column (7), the special provision ''128,'' is removed each place it appears.

10a. In § 172.102, paragraph (c)(1) is amended by revising Special Provision 128 and paragraph (c)(2) is amended by adding Special Provision A37 to read as follows:

§ 172.102 Special provisions.

* * * * *

(c) * * *

(1) * * *

Code/Special Provisions

* * * * *

128. Regardless of the provisions of § 172.101(c)(12), aluminum smelting by-products and aluminum remelting by-products described under this entry, meeting the definition of Class 8, Packing Group II and III may be classed as a Division 4.3 material and transported under this entry. The presence of a Class 8 hazard must be communicated as required by this Part for subsidiary hazards.

(2) * * *

Code/Special Provisions

* * * * *

A37. This entry applies only to a material meeting the definition in § 171.8 of this subchapter for self-defense spray.

* * * * *

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

11. The authority citation for part 173 continues to read as follows:

Authority: 49 U.S.C. 5101–5127, 44701; 49 CFR 1.45, 1.53.

12. § 173.32c, in paragraph (m), a second sentence is added to read as follows:

§ 173.32c Use of Specification IM portable tanks.

* * * * *

(m) * * * In addition, for unloading an IM portable tank, see § 177.834(h) of this subchapter.

* * * * *

§ 173.32c [Amended]

13. In addition, § 173.32c, in paragraph (j), the first word ''An'' is removed and ''Except for a non-flowable solid, an'' is added in its place.

§ 173.40 [Amended]

14. In § 173.40, in paragraph (d)(1), in the first sentence, the wording ''4C1, 4D, 4F, 4G, 4H1 or 4H2'' is removed.

15. In § 173.56, paragraph (b)(1) is revised to read as follows:

§ 173.56 New explosives—definition and procedures for classification and approval.

* * * * *

(b) * * *

(1) Except for an explosive made by or under the direction or supervision of the Department of Defense (DOD) or the Department of Energy (DOE), a new explosive must be examined and assigned a recommended shipping description, division and compatibility group, based on the tests and criteria prescribed in §§ 173.52, 173.57 and 173.58. The person requesting approval of the new explosive must submit to the Associate Administrator for Hazardous Materials Safety a report of the examination and assignment of a recommended shipping description, division, and compatibility group. If the Associate Administrator finds the approval request meets the regulatory criteria, the new explosive will be approved in writing and assigned an EX number. The examination must be performed by a person who is approved by the Associate Administrator under the provisions of subpart H of part 107 of this chapter and who—

(i) Has (directly, or through an employee involved in the examination) at least ten years of experience in the examination, testing and evaluation of explosives;

(ii) Does not manufacture or market explosives, and is not controlled by or financially dependent on any entity that manufactures or markets explosives, and whose work with respect to explosives is limited to examination, testing and evaluation; and

(iii) Is a resident of the United States.

* * * * *

§ 173.56 [Amended]

16. In addition, in § 173.56, in paragraph (i), the wording '', following examination in accordance with paragraph (b) of this section, revise its'' is removed and the wording ''specify a'' is added in its place.

17. In § 173.156, paragraph (b)(1) introductory text is revised to read as follows:

§ 173.156 Exceptions for ORM materials.

* * * * *

(b) * * *

(1) Strong outer packagings as specified in this part, marking requirements specified in subpart D of part 172 of this subchapter, and the 30 kg (66 pounds) gross weight limitation are not required for materials classed as ORM–D when—

* * * * *

18. In § 173.308, paragraph (b) is revised to read as follows:

§ 173.308 Cigarette lighter or other similar device charged with fuel.

* * * * *

(b) When no more than 1,500 devices covered by this section are transported in one motor vehicle by highway, the requirements of subparts C through H of part 172 of this subchapter, and part 177 of this subchapter do not apply. However, no person may offer for transportation or transport the devices or prepare the devices for shipment unless that person has been specifically informed of the requirements of this section. The outer packaging, as specified in Special Provision N10 of § 172.102(c)(5) of this subchapter, must be plainly and durably marked with the required proper shipping name specified in § 172.101 of this subchapter, or the words ''CIGARETTE LIGHTERS'' and the number of devices contained in the package.

* * * * *

§ 173.469 [Amended]

19. In § 173.469(a)(4)(i), in the second sentence, the mathematical expression ''$(1.3 \times 10^{-24}$'' is removed and ''$(1.3 \pm 10^{-4}$'' is added in its place.

PART 175—CARRIAGE BY AIRCRAFT

20. The authority citation for part 175 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

21. In § 175.10, paragraph (a)(4) is revised to read as follows:

§ 175.10 Exceptions.

(a) * * *

(4) The following hazardous materials when carried by a passenger or crew member for personal use in conformance with the following conditions:

(i) Non-radioactive medicinal and toilet articles (including aerosols) may be carried in checked or carry-on baggage;

(ii) One self-defense spray (see § 171.8 of this subchapter), not exceeding 118 ml (4 fluid ounces) by volume, that incorporates a positive means to prevent accidental discharge may be carried in checked baggage only;

(iii) Other aerosols in Division 2.2 with no subsidiary risk may be carried in checked baggage only; and

(iv) The aggregate quantity of hazardous materials carried by the person may not exceed 2 kg (70 ounces) by mass or 2 liters (68 fluid ounces) by volume and the capacity of each container may not exceed 0.5 kg (18 ounces) by mass or 470 ml (16 fluid ounces) by volume.

* * * * *

22. In § 175.25, the introductory text to paragraph (a)(1), the second and fifth full paragraphs of the notice in paragraph (a)(1), and paragraphs (a)(2)(i), (a)(2)(ii) and (a)(3) are revised; and a new paragraph (a)(4) is added, to read as follows:

§ 175.25 Notification at air passenger facilities of hazardous materials restrictions.

(a) * * *

(1) At a minimum, each notice must communicate the following information:

* * * * *

A violation can result in five years' imprisonment and penalties of $250,000 or more (49 U.S.C. 5124).

* * * * *

There are special exceptions for small quantities (up to 70 ounces total) of medicinal and toilet articles carried in your luggage and certain smoking materials carried on your person.

* * * * *

(2) * * *

(i) In legible English and may, in addition to English, be displayed in other languages; and

(ii) In lettering of at least 1 cm (0.4 inch) in height for the first paragraph and 6.0 mm (0.2 inch) in height for the other paragraphs; and

* * * * *

(3) Size and color of the notice are optional. Additional information, examples, or illustrations, if not inconsistent with the required information, may be included.

(4) Notwithstanding the requirements of paragraph (a)(1) of this section, a notice with the wording ''A violation can result in penalties of up to $25,000 and five years' imprisonment. (49 U.S.C. 1809)'' may be used through December 31, 2001.

* * * * *

23. In § 175.26, paragraph (a)(2) is revised and a new paragraph (a)(4) is added to read as follows:

§ 175.26 Notification at cargo facilities of hazardous materials requirements.

(a) * * *

(2) A violation can result in five years' imprisonment and penalties of $250,000 or more (49 U.S.C. 5124).

* * * * *

(4) Notwithstanding the requirements of paragraph (a)(2) of this section, a notice with the wording ''A violation can result in penalties of up to $25,000 and five years' imprisonment (49 U.S.C. 1809)'' may be used through December 31, 2001.

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

24. The authority citation for part 177 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 177.834 [Amended]

25. In § 177.834, in paragraph (h), in the next to the last sentence, the wording ''cargo tank'' is removed and the wording ''cargo tank or IM portable tank'' is added in its place, and a new paragraph (o) is added to read as follows:

§ 177.834 General requirements.

* * * * *

(o) *Unloading of IM portable tanks.* An IM portable tank may be unloaded while remaining on a transport vehicle with the power unit attached if the tank meets the outlet requirements in § 178.345–11 of this subchapter and the tank is attended by a qualified person during the unloading in accordance with the requirements in paragraph (i) of this section.

§ 177.848 [Amended]

26. In § 177.848, in (f), in the Compatibility Table for Class 1 (Explosive) Materials, for compatibility group B, under the column headed ''D'' and for compatibility group D, under the column headed ''B'', the entry ''4'' is removed and ''$X_{(4)}$'' is added in both places.

PART 178—SPECIFICATIONS FOR PACKAGINGS

27. The authority citation for part 178 continues to read as follows:

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

§ 178.352–4 [Amended]

28. In § 178.352–4, at the end of the section, the section reference ''§ 178.103(3)(c)(1)'' is revised to read ''§ 178.352–3(c)(1)''.

§ 178.354–2 [Amended]

29. In § 178.354–2, in the first sentence of paragraph (a), the section reference ''§ 178.104–5'' is revised to read ''§ 178.354–5''.

§ 178.354–3 [Amended]

30. In § 178.354–3, in paragraph (c) introductory text, the section reference ''§ 178.104–3(a)(1)'' is revised to read ''paragraph (a)(1) of this section''.

§ 178.354–5 [Amended]

31. In § 178.354–5, in paragraph (a), the wording ''§ 173.24 of this chapter'' is revised to read ''§ 178.3''.

§ 178.356–4 [Amended]

32. In § 178.356–4, in paragraph (a), the wording ''§ 173.24 of this subchapter'' is revised to read ''§ 178.3''.

§ 178.358–3 [Amended]

33. In § 178.358–3, the following changes are made:

a. In paragraph (b)(6), the section reference ''§ 178.121–5(c)'' is revised to read ''§ 178.358–5(c)''.

b. In paragraph (c), the section reference ''§ 178.121–5(b)'' is revised to read ''§ 178.358–5''.

§ 178.358–5 [Amended]

34. In § 178.358–5, in paragraph (a), the wording ''§ 173.24 of this subchapter'' is revised to read ''§ 178.3''.

§ 178.360–2 [Amended]

35. In § 178.360–2, the section reference ''§ 178.34–4'' is revised to read ''§ 178.360–4''.

§ 178.362–3 [Amended]

36. In § 178.362–3, in paragraph (b), the section reference ''§ 178.104–4'' is revised to read ''§ 178.354–4''.

§ 178.364–5 [Amended]

37. In § 178.364–5, in paragraph (a), the wording ''§ 173.24 of this subchapter'' is revised to read ''§ 178.3''.

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

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

Authority: 49 U.S.C. 5101–5127; 49 CFR 1.53.

39. In § 180.405, paragraph (c)(1) is revised, paragraph (f)(7) is redesignated as paragraph (f)(8) and new paragraph (f)(7) is added to read as follows:

§ 180.405 Qualification of cargo tanks.

* * * * *

(c) * * * (1) A cargo tank made to a specification listed in Column 1 of Table 1 or Table 2 of this paragraph (c)(1) may be used when authorized in this part, provided—

(i) The cargo tank initial construction began on or before the date listed in Table 1, Column 2, as follows:

TABLE 1

Column 1	Column 2
MC 300	Sept. 2, 1967.
MC 301	June 12, 1961.
MC 302, MC 303, MC 304, MC 305, MC 310, MC 311.	Sept. 2, 1967.
MC 330	May 15, 1967.

(ii) The cargo tank was marked or certified before the date listed in Table 2, Column 2, as follows:

TABLE 2

Column 1	Column 2
MC 306, MC 307, MC 312	Sept. 1, 1995.

* * * * *

(f) * * *

(7) A cargo tank remarked and certified in conformance with this paragraph (f) is excepted from the provisions of § 180.405(c).

* * * * *

Issued in Washington, DC, on July 2, 1998, under authority delegated in 49 CFR part 106.

Kelley S. Coyner,

Deputy Administrator, Research and Special Programs Administration.

[FR Doc. 98–18060 Filed 7–9–98; 8:45 am]

BILLING CODE 4910–60–P

federal register

Friday
July 10, 1998

Part III

Department of Education

34 CFR Part 304

Special Education; Personnel Preparation to Improve Services and Results for Children With Disabilities; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 304

RIN 1820–AB46

Special Education—Personnel Preparation To Improve Services and Results for Children with Disabilities

AGENCY: Office of Special Education and Rehabilitative Services of Special Education Services, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to establish regulations governing specific provisions of the Personnel Preparation Program to Improve Services and Results for Children with Disabilities. The regulations are needed to implement recently enacted changes to the Individuals with Disabilities Education Act (IDEA or the Act) that were adopted as part of the IDEA Amendments of 1997. Specifically, the regulations would establish procedures to implement section 673(h) of IDEA which requires that individuals who receive a scholarship through personnel preparation projects funded under the Act must subsequently provide special education and related services to children with disabilities (or, for leadership personnel, work in areas related to their preparation) for a period of two years for every year for which assistance was received. Scholarship recipients who do not satisfy their service obligation must repay all or part of the cost of their assistance in accordance with regulations issued by the Secretary. These proposed regulations would implement requirements governing, among other things, the service obligation for scholars, oversight by grantees, repayment (or ''payback'') of scholarship, and procedures for obtaining deferrals or exemptions from service or repayment obligations.

DATES: Comments must be received by the Department on or before September 8, 1998.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Sherron Dunmore, U.S. Department of Education, 600 Independence Avenue, SW., Room 4628, Switzer Building, Washington, DC 20202–2641. Comments may also be sent through the Internet: comments@ed.gov

You must include the term ''payback'' in the subject line of your electronic message.

Comments that concern information collection requirements must be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. A copy of those comments may also be sent to the Department representative named in this section.

FOR FURTHER INFORMATION CONTACT: Renee Bradley, U.S. Department of Education, 600 Independence Avenue, Washington, DC 20202–2641. Telephone: (202) 358–2849. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9374 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.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations. All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in Room 3070, Mary E. Switzer Building, 330 C Street SW, Washington DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

On request the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking docket for these proposed regulations. An individual with a disability who wants to schedule an appointment for this type of aid may call (202) 205–8113 or (202) 260–9895. An individual who uses a TDD may call the Federal Information Relay Service at 1–800–877–8339, between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

To assist the Department in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden, the Secretary invites comments on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

SUPPLEMENTARY INFORMATION: IDEA personnel training grants are intended to increase the number and quality of personnel available to provide special education and related services to children with disabilities, to provide early intervention services to infants and toddlers with disabilities, and their families, and to serve in leadership positions in special education, related, or early intervention services. Shortages in school districts across the country of qualified personnel who can address the educational needs of children with disabilities are well documented. In the past, however, some individuals who received financial support through IDEA in order to obtain degrees or other types of certification subsequently entered careers in which they did not focus on serving children with disabilities under IDEA.

Section 673(h) of the Act was adopted as part of the IDEA Amendments of 1997 as a means of ensuring that individuals who receive scholarships under IDEA-supported personnel training projects provide special education or related services to children with disabilities under Part B of the Act or early intervention services to infants and toddlers with disabilities, and their families, under Part C of the Act. Similarly, individuals who receive scholarships under IDEA training projects for leadership personnel must work in an area related to their preparation. Scholarship recipients who choose not to enter the special education, related service, or early intervention field are obligated to pay back their scholarship so that IDEA personnel training monies may be preserved for purposes of increasing the availability of individuals qualified to provide services under IDEA.

Subpart A—General

As stated in proposed § 304.1, individuals who receive scholarship assistance from projects funded under the Personnel Preparation to Improve Services and Results for Children with Disabilities Program (program) are required to complete a service obligation, or repay all or part of the costs of such assistance. The service requirement included in the proposed regulations would apply to individuals who receive scholarship assistance from a funded project. Under the proposed regulations, scholarships could be awarded only to individuals pursuing degrees, licenses, certifications, or endorsements related to special education, related services, or early intervention services. An individual who receives training under an IDEA-funded personnel preparation project, but does not receive a scholarship from that project, would not be subject to the service obligation or payback requirements in the proposed regulations.

Proposed § 304.2, which restates section 673(a) of the Act, identifies the

program and the purposes for which the program provides financial assistance.

Proposed § 304.3 would define key terms used in this part of the regulations.

The definitions of the terms ''related services'' and ''special education'' would be the same as those used in Part B of the Act, while the proposed definition of ''early intervention services'' would be the same as that used in Part C of the Act.

The proposed definition of ''academic year''—a full-time course of study taken for a period totaling at least nine months or for the equivalent of at least two semesters, two trimesters, or three quarters—is based on the standard term typically used in university settings.

The proposed regulations would require scholars to work full-time in a special education, related service, or early intervention position following their training in order to ensure that scholarship recipients focus on providing services to children with disabilities during the period in which they are fulfilling their service obligation. The term ''full-time'' would mean a full-time equivalent position as defined by the individual's employer or by the agencies served by the individual. The definition is intended to recognize the wide variety of special education, related service, or early intervention settings in which scholars might work subsequent to their training. In some instances, it should be straightforward to determine whether an individual works for one employer (e.g., a school or school district) in a full-time equivalent position or works part-time for multiple employers and the proportion to a full-time equivalent for each position add up to one full time-equivalent job. In other instances, particularly when a self-employed individual provides related services to children with disabilities under Part B, it may be more difficult to determine whether the individual works on a full-time basis. In that case, full-time equivalency would be determined by the school district or agency with which the individual is associated to provide Part B or Part C services. Questions as to whether an individual's job or jobs meets the full-time equivalent requirement shall be determined by the grantee institution from which the individual received his or her scholarship. Nonetheless, the Secretary is particularly interested in public comment on the requirement that IDEA scholars provide special education, related services, or early intervention services on a full-time basis and seeks suggestions as to how full-time equivalency should be measured.

The proposed definition of ''scholarship'' is based on the definition of that term used in other Department of Education programs, and would include all disbursements or credits for tuition, fees, student stipends, and books, and for travel in conjunction with training assignments.

It should be noted that the term ''scholarship'' does not include funding to support assistantships for graduate students at institutions of higher education (IHE). Because funding for graduate assistants is conditioned on the individual performing work for the IHE, the service obligation in the proposed regulations does not apply to that type of financial support. Otherwise, the graduate assistants would be required to perform dual service obligations: work for the IHE during training and work in the special education field after training. The Secretary believes that financial support to students enrolled in IDEA personnel training projects must be used primarily for scholarship recipients who will be subject to the service obligation under the Act. Thus, in order to maximize funds available for scholars who must work in the special education, related service, or early intervention field, funding for graduate assistants is not considered ''scholarship'' assistance. IHE grantees that choose to use IDEA funds to pay graduate assistants to assist in facilitating or administering projects must classify those funds as personnel costs in their grant applications rather than as ''scholarship'' or ''student support.''

Subpart B—What Conditions Must Be Met by the Grantee?

Section 304.20 reflects the Secretary's intention to announce for each personnel training grant competition a specific percentage, up to 75 percent, of a grantee's total award that must be used to support scholarships. In interpreting the IDEA Amendments of 1997, the Secretary believes that Congress intended that a large portion of IDEA personnel training funds be used to support scholarships in order to ensure that a greater number of qualified individuals will serve children with disabilities under Parts B and C of the Act. The Secretary shall determine the appropriate percentage of grant funds that must be set-aside for scholarships based on the type of projects that will be funded under a given grant competition and on the Secretary's interest in maximizing the number of scholars who will subsequently work in special education, related service, or early intervention jobs. The proposed provision would allow the Secretary to award grants that use less than the published percentage to pay for scholarships in light of the unique nature of a particular project. For example, a project in which IDEA funds support only university training expenses, while an additional funding source finances student stipends, may be exempted from the published percentage. The Secretary notes, however, that because financial support for graduate assistants is not considered scholarship assistance (see previous discussion), such costs may not be paid from the minimum percentage of grant funds that must be used to support scholarships.

Proposed § 304.21 stipulates the types of costs that would be allowable under program grants. In short, project funds may be used to support costs that are allowable under 34 CFR 75.530 through 75.562 of the Education Department General Administrative Regulations (EDGAR) and to support scholarships (i.e., tuition, fees, student stipends, and books, and travel in conjunction with training assignments).

Proposed § 304.22 identifies requirements that grantees must meet in disbursing scholarships. Proposed paragraph (a) would require grantees to ensure that scholarship recipients satisfy certain citizenship or residency requirements. Proposed paragraph (b) would require grantees to limit the individual's scholarship assistance to the amount by which the cost of attendance at the institution exceeds the amount of any grant assistance the individual receives under Title IV of the Higher Education Act. Proposed paragraph (c) would limit scholarship assistance to an individual's cost of attendance for no more than four academic years total, with exceptions for extensions that are consistent with accommodations provided by the grantee under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973.

Proposed § 304.23 lists the assurances that must be provided by a grantee intending to provide scholarships. Under proposed paragraph (a), grantees would be required to enter into a written agreement with each scholar who receives a scholarship through an IDEA-supported personnel training project. That agreement would specify the terms and conditions applicable to the scholarship, including the individual's service obligation and responsibility to pay back the scholarship if the individual fails to satisfy that obligation.

Proposed paragraph (b) would identify the service obligation requirements as they apply to

scholarship recipients under IDEA personnel training grants. Specifically, the proposed provision, which is based on the service obligation requirements stated in section 673(h) of the Act, would require that any individual who receives a scholarship from a training project that prepares personnel to serve children with low- or high-incidence disabilities (section 673(b) and (e) of the Act) or, in appropriate instances as determined by the Secretary, from a training project of national significance (section 673(d) of the Act) shall subsequently maintain employment: (1) By providing special education and related services to children with disabilities or early intervention services to infants and toddlers, and their families; (2) on a full-time basis; and (3) for a period of at least two years for every year for which assistance was received. The service obligation would apply beginning after the recipient completes his or her training and would need to be completed within the number of years of required service (2 years per year of assistance) plus an additional three years. For example, a scholar who received two academic years of scholarship support would have to perform four years of service within seven years from the time the scholar's training ended.

The Secretary has clarified in the proposed regulations that scholars may fulfill their service obligation by providing early intervention services under Part C of the Act. Although section 673(h) of the Act states that individuals must ''provide special education and related services to children with disabilities'', IDEA clearly authorizes personnel training projects to prepare personnel to provide early intervention services to infants and toddlers with disabilities, and their families. The Secretary believes Congress intended to apply the service obligation and payback requirements to those who receive scholarships from early intervention personnel training projects and that early intervention scholars must be permitted to fulfill their service obligation by working in the field in which they have been trained.

The requirements in proposed paragraph (b)(2) are particularly important to determining whether a former scholar's job would satisfy the service obligation requirements in the proposed regulations. That provision would require scholars to fulfill their service obligation by working in a position or positions ''in which a majority of the persons to whom the individual provides services are receiving from the individual special education and related services as defined in Part B of the Act or early intervention as defined in Part C of the Act.'' In other words, a majority of a teacher's students, or a majority of a service provider's caseload, must be children or infants and toddlers with disabilities. Moreover, the former scholar must actually be providing special education, related services, or early intervention services to those individuals. The Secretary considers this requirement essential in order to ensure that IDEA scholarship monies are used to alleviate shortages of qualified special education, related service, or early intervention personnel. The Secretary is concerned that without this requirement scholars could potentially meet the service obligation without addressing the needs of children with disabilities in any measurable way. For example, serving as a regular education teacher in a class with a sole disabled student, the Secretary believes, is not the type of placement envisioned under section 673(h) of the statute. An IDEA-supported scholar is free to choose such a profession, but would be required to pay back to the Department the amount of scholarship assistance received. On the other hand, an individual who teaches regular and special education classes, and a majority of the teacher's students are receiving special education services from the teacher, would satisfy the proposed service obligation requirement. Similarly, a speech-language pathologist who serves both children and adults with disabilities would satisfy the service obligation provided a majority of the provider's caseload are special education students under Part B or infants and toddlers with disabilities under Part C.

Because scholars who enter leadership positions in special education do not typically serve a classroom or caseload of students, proposed paragraph (b)(3) would apply a somewhat different standard to the service obligation for those who receive scholarships from leadership training projects (section 673(c) of the Act). Such scholars would be required to work full-time, for a period of at least two years for each year of assistance, in a position (or positions) in which a majority of the scholar's time is expended on work related to his or her training (i.e., special education, related service, or early intervention leadership). Determinations as to whether a former scholar in a leadership position meets this time requirement, or whether any scholar meets applicable service requirements, would be made by the grantee institution.

Proposed § 304.23(b)(4) would clarify that the service obligation requirements as applied to part-time scholars will be based on the accumulated academic years of training for which the scholarship is received. As an example, the service obligation for a scholarship recipient enrolled half-time in a training project over four years would be based on two full academic years of training, meaning that the individual must work four years (two years of service per year of assistance) in the special education, related service, or early intervention field, or pay back the scholarship.

Proposed section § 304.23(c) through (f) would respectively identify grantee assurances related to: scholarship repayment, the grantee's standards for measuring a scholar's academic progress, the grantee's system for tracking compliance with the service obligation requirements, and the grantee's procedures for notifying scholars in writing of their service obligation upon their exit from the training project. A grantee would provide assurances to the Secretary that it has established policies or procedures to address each of these requirements, and the remaining requirements in § 304.23, prior to receiving a training grant under IDEA.

Proposed § 304.23(g) and (h) would identify the requirements governing maintenance and submission of information related to each scholarship recipient. Examples include letter form, grantee-developed forms, electronic communications, and other appropriate forms that enable grantees to monitor compliance of scholars with the proposed regulations.

Proposed § 304.23(i) would require grantees to notify the Secretary at the time an individual has failed to fulfill or has chosen not to fulfill the applicable service obligation within the time period specified under paragraph (b)(1)(iii) or (b)(3)(iii) so that the Secretary may initiate repayment procedures.

The Secretary emphasizes that both the Act and the proposed regulations hold grantee institutions responsible for ensuring that scholarship recipients satisfy their service requirements. Accordingly, the requirements of § 304.23 are those that the Secretary considers necessary for grantees to monitor the compliance of individual scholars with their statutory and regulatory obligations.

Subpart C—What Conditions Must Be Met by the Scholar?

Proposed § 304.30 would specify the requirements that a scholar must meet in order to receive a scholarship under the program. Specifically, scholars must: be enrolled in a course of study leading to a degree, certificate, endorsement, or license related to special education, related services, or early intervention services (§ 304.30(a)); enter into with the grantee a written agreement setting forth the service obligation requirements (§ 304.30(b)); receive the applicable training at the educational institution or agency designated in the scholarship (§ 304.30(c)); not accept educational allowances from any other entity if that allowance conflicts with the individual's obligations under the program (§ 304.30(d)); maintain satisfactory progress toward the relevant degree, certificate, endorsement, or license (§ 304.30(e)); and provide any information that the grantee needs in order to track the scholar's progress in meeting the service obligation (§ 304.30(f)).

Proposed § 304.31 would identify the circumstances under which a scholar, who has yet to complete the service obligation, may receive a deferral or exemption to the repayment requirement.

If a former scholar fails to satisfy the applicable service obligation, or fails to obtain an authorized deferral or exception, the scholar must repay the scholarship to the Secretary in accordance with requirements in proposed § 304.32. Proposed paragraph (a) of this section would require that the repayment amount be proportional to the service obligation that the scholar has failed to complete. For example, if a scholar receives two academic years of scholarship assistance, teaches special education for two years (rather than the requisite four), then stops working or changes careers (in a field unrelated to special education, related service, or early intervention), the individual would be required to pay back one-half of the scholarship assistance received.

Proposed § 304.32(b) through (d) would specify the requirements governing the accrual of interest and assessment of costs that would be included as part of the individual's payback obligation. Proposed § 304.32(e) would list the various points at which a scholar enters repayment status.

Finally, proposed § 304.32(f) would authorize the Secretary to establish a repayment schedule that a scholar in repayment status must follow.

Executive Order 12866

1. Potential Costs and Benefits

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary as necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements are identified and explained elsewhere in this preamble under the heading Paperwork Reduction Act of 1995.

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Summary of Potential Costs and Benefits

The following is an analysis of the costs and benefits of the proposed regulations that are intended to implement the statutory changes made by the IDEA Amendments of 1997. Based on this analysis, the Secretary has concluded that the proposed regulations do not impose significant costs to grantees under this program. An analysis of the specific provisions follows:

Proposed § 304.1 describes the purposes of the regulations. The regulations reflect the essential purpose of the statute, which is to ensure that individuals who receive scholarship assistance from projects funded under the Personnel Preparation to Improve Services and Results for Children with Disabilities Program complete a service obligation, or repay all or part of the costs of such assistance. Any and all benefits and costs associated with this statutory requirement or the proposed regulations flow from this basic requirement. The primary beneficiaries of this requirement would be children with disabilities and their families. In order for the Federal government to justify the expenditure of public funds under this program, certain procedures and documentation are necessary to ensure that goals of the program are achieved. Since the primary goal of this program is to train personnel to provide special education, early intervention, and related services to children with disabilities, Congress has determined that individuals who benefit from financial assistance under this program should return the benefits of that assistance in their field of training. The primary benefit of these regulations is to establish a process to implement this requirement.

The cost of this requirement will be borne by the Federal government, by grantees who administer scholarship programs, and by individuals who receive scholarships from those grantees.

The costs to grantees will be in establishing written agreements with scholars before awarding scholarships, establishing and maintaining information systems for tracking the academic progress of scholars during training and tracking the progress of scholars in meeting their service obligations following training, and in reporting to the Secretary when a scholar fails to fulfill the service obligation.

The costs to individual scholarship recipients will be in satisfying the service obligation following training, providing information to the grantee until completion of the service obligation, and in repaying scholarship assistance if the scholar fails to fulfill the service obligation.

Specific estimates of the costs associated with the regulations affecting each of these parties is provided below. One person hour is assumed to cost $15.00 on average.

Proposed § 304.2 identifies the program and the purposes for which the program provides financial assistance and has no costs associated with it.

Proposed § 304.3 provides definitions of key terms and has no costs associated with it.

Proposed § 304.20 provides information about how the Secretary will set parameters on the proportion of grant funds that must be used for scholarship assistance. Proposed § 304.21 identifies allowable costs under grants. No particular benefits or costs are associated with these provisions.

Proposed § 304.22 includes requirements that grantees must meet in disbursing scholarships, including determining the status of citizenship and eligibility of a scholar for Federal assistance. The regulations would specify citizenship or resident criteria

for receiving scholarship assistance. An estimated 1,000 person-hours per year would be required, at an estimated cost of $15,000 per year for all grantees.

Proposed § 304.23 includes assurances that must be provided by a grantee that intends to provide scholarships. The scholar and the grantee benefit from this provision which ensures that each has a clear understanding of each party's responsibilities prior to the awarding of a scholarship. An estimated 7,500 person-hours per year would be required, at an estimated cost of $112,500 per year for all grantees.

Proposed § 304.23(b)(3) includes requirements for fulfilling the service obligation as it relates to individuals trained under section 673(c) of the Act, leadership training. No additional costs are associated with this provision.

Proposed § 304.23(b)(4) clarifies that the service obligation requirement as applied to a part-time scholar will be based on the accumulated academic years of training for which the scholarship is received. This provision does not impose costs on grantees or scholars.

Proposed § 304.23(c) through (f) include provisions relating to repayment of all or part of any scholarship received in the event that the service obligation is not fulfilled. The Federal agency must collect repayment of scholarship funds from a scholar who fails to meet the service obligation. Grantees must establish policies and procedures, including a tracking system, to determine the compliance of scholars with the terms of the agreement the scholars entered with the grantee. This one-time cost will vary considerably depending on existing data systems at grantee institutions. An estimated 12,500 person-hours per year would be required, at an estimated cost of $187,500 per year for all grantees. Grantees must establish policies and procedures for receiving written exit certification from scholars that identifies, among other things, the number of years the scholar needs to work to fulfill the service obligation. An estimated 10,000 person-hours per year would be required, at an estimated cost of $150,000 per year for all grantees.

Proposed § 304.23(g) and (h) require the grantee to provide necessary information on a scholar, upon request of the Secretary, and to maintain such information for a period of time equal to the time required to fulfill the service obligation. An estimated 100,000 person-hours per year would be required, at an estimated cost of $1,500,000 per year for all grantees.

Under § 304.23(i), the grantee must inform the Secretary if a scholar fails to fulfill the service obligation. Starting in the fourth or fifth year of the program, an estimated 1,500 person-hours per year would be required for an approximation of 75 cases per year, at an estimated cost of $22,500 in staff time and correspondence for all grantees.

Proposed § 304.30(a) through (f) require that a scholar: be enrolled in a course of study leading to a degree, certificate, endorsement, or license related to special education, related services, or early intervention services; enter into a written agreement with the grantee before starting training; and be trained at the educational institution or agency designated in the scholarship. These decisions are made by scholars in advance of accepting scholarship assistance and are conditions for receiving such assistance. Therefore no costs are associated with the requirements under this provision.

Proposed § 304.31 would provide procedures whereby a scholar could request a deferral or exception to performance of the service obligation or repayment. The costs associated with this requirement would be negligible.

Proposed § 304.32(a) through (d) delineate the monetary payback provisions that would apply if a scholar failed to meet the terms and conditions of a scholarship agreement or to obtain a deferral or an exception to performance or repayment. There are no additional costs associated with these provisions.

Proposed § 304.32(e) specifies when a scholar enters repayment status. Proposed § 304.32(f) requires the scholar to make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary. There are no additional costs associated with these provisions.

2. Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed regulations clearly stated? (2) Do the proposed regulations contain technical terms or other wording that interferes with their clarity? (3) Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity? Would the proposed regulations be easier to understand if they were divided into more (but shorter) sections? (A ''section'' is preceded by the symbol ''§'' and a numbered heading; for example, § 304.23 *What assurances must be provided by a grantee that intends to provide scholarships?* (4) Is the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble helpful in understanding the proposed regulations? How could this description be more helpful in making the proposed regulations easier to understand? (5) What else could the Department do to make the proposed regulations easier to understand?

A copy of any comments that concern how the Department could make these proposed regulations easier to understand should be sent to Stanley M. Cohen, Regulations Quality Officer, U.S. Department of Education, 600 Independence Avenue, SW. (room 5121, FB–10B), Washington, DC 20202–2241.

Regulatory Flexibility Act Certification

The Secretary certifies that these regulations would not have a significant economic impact on a substantial number of small entities. The entities that would be affected by these proposed regulations are institutions of higher education that participate in programs under Part D of IDEA. These institutions are defined as ''small entities,'' according to the U.S. Small Business Administration Size Standards, if they are for-profit or nonprofit institutions with total annual revenue below $5,000,000 or if they are institutions controlled by governmental entities with populations below 50,000. These proposed regulations impose minimal requirements to implement the statutory provisions and would not have a significant economic impact on the small entities affected.

Paperwork Reduction Act of 1995

Sections 304.22, 304.23, 304.30, 304.31, and 304.32 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review. The Secretary notes that each grantee has the discretion to determine the method(s) by which it will collect and maintain information.

Collection of Information: Special Education—Personnel Preparation To Improve Services and Results for Children With Disabilities

Annual reporting and record keeping burden for this collection of information is estimated to average 285 hours per

year per grantee, or 142,500 hours for 500 grantees. The burden for scholars is approximately 1.3 hours per year for each scholar, or a total of 10,000 hours for a projected 7,500 scholars per year. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the various collections of information. Thus, the total annual reporting and record keeping burden for this collection at the full operation of the program is estimated to be 157,500 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on this proposed collection of information in—

- Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical use;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing 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.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed regulations.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

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Note: The official version of this document is the document published in the **Federal Register**.

List of Subjects in 34 CFR Part 304

Grant programs—children with disabilities, special education, Personnel preparation, Reporting and record keeping requirements.

Dated: June 24, 1998.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

(Catalog of Federal Domestic Assistance Number 84.325, Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities)

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising Part 304 to read as follows:

PART 304—SPECIAL EDUCATION—PERSONNEL PREPARATION TO IMPROVE SERVICES AND RESULTS FOR CHILDREN WITH DISABILITIES

Subpart A—General

Sec.
304.1 Purpose.
304.2 What is the Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities Program?
304.3 What regulations apply to this part?
304.4 What definitions apply?

Subpart B—What Conditions Must Be Met by the Grantee?

304.20 What are the requirements for directing grant funds?
304.21 What are allowable costs?
304.22 What are the requirements for grantees in disbursing scholarships?
304.23 What assurances must be provided by a grantee that intends to provide scholarships?

Subpart C—What Conditions Must Be Met by the Scholar?

304.30 What are the requirements for scholars?
304.31 What are the requirements for obtaining a deferral or exception to performance or repayment under an agreement?
304.32 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

Authority: (20 U.S.C. 1473).

Subpart A—General

§ 304.1 Purpose.

Individuals who receive scholarship assistance from projects funded under the Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities Program are required to complete a service obligation, or repay all or part of the costs of such assistance, in accordance with section 673(h) of the Individuals with Disabilities Education Act and the regulations of this part.

(Authority: 20 U.S.C. 1473(h))

§ 304.2 What is the Special Education—Personnel Preparation to Improve Services and Results for Children With Disabilities Program?

The Special Education—Personnel Preparation to Improve Services and Results for Children with Disabilities Program (program) provides financial assistance under section 673 of the Act to—

(a) Help address State-identified needs for qualified personnel in special education, related services, early intervention, and regular education, to work with children with disabilities; and

(b) Ensure that those personnel have the skills and knowledge, derived from

practices that have been determined, through research and experience, to be successful, that are needed to serve those children.

(Authority: 20 U.S.C. 1473(a))

§ 304.3 What definitions apply to this program?

(a) *Definitions in EDGAR.* The following terms used in this part are defined in 34 CFR 77.1:

Applicant
Award
Department
EDGAR
Grantee
Project
Recipient
Secretary

(b) The following definitions apply to this program: *Academic year* means a full-time course of study—

(1) Taken for a period totaling at least nine months; or

(2) Taken for the equivalent of at least two semesters, two trimesters, or three quarters.

Act means the Individuals with Disabilities Education Act, 20 U.S.C. 1400 *et seq.*

Early intervention services means early intervention services as defined in section 632(4) of the Act.

Full-time, for purposes of determining whether an individual is employed full-time in accordance with § 304.23, means a full-time equivalent position as defined by the individual's employer or by the agencies served by the individual.

Payback means monetary repayment of scholarship assistance in lieu of completion of a service obligation.

Related services means related services as defined in section 602(22) of the Act.

Scholar means an individual who is pursuing a degree, license, endorsement, or certification related to special education, related services, or early intervention services and who receives scholarship assistance under this part.

Scholarship means financial assistance to a scholar for training under the program and includes all disbursements or credits for tuition, fees, student stipends, and books, and travel in conjunction with training assignments.

Service obligation means a scholar's employment obligation, as described in section 673(h) of the Act and § 304.23(b) of this part.

Special education means special education as defined in section 602(25) of the Act.

(Authority: 20 U.S.C. 1473(h))

§ 304.4 What regulations apply to this program?

The following regulations apply to this program:

(a) The Education Department General Administrative Regulations (EDGAR) in the following part of title 34 of the Code of Federal Regulations:

(1) Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations).

(2) Part 75 (Direct Grant Programs).

(3) Part 77 (Definitions That Apply to Department Regulations). ′

(4) Part 79 (Intergovernmental Review of Department of Education Programs and Activities).

(5) Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments).

(6) Part 81 (General Education Provisions Act—Enforcement).

(7) Part 82 (New Restrictions on Lobbying).

(8) Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

(9) Part 86 (Drug-Free Schools and Campuses).

(b) The regulations in this part 304.

(Authority: 20 U.S.C. 1473; 20 U.S.C. 3474(a)

Subpart B—What Conditions Must Be Met by the Grantee?

§ 304.20 What are the requirements for directing grant funds?

(a) The Secretary shall, as appropriate, identify in a notice published in the **Federal Register**, the percentage (up to 75 percent) of a total award under the program that must be used to support scholarships as defined in § 304.3.

(b) The Secretary may award grants that use less than the percentage published under paragraph (a) of this section for scholarships based upon the unique nature of a project.

(Authority: 20 U.S.C. 1473(h))

§ 304.21 What are allowable costs?

In addition to the allowable costs established in the Education Department General Administrative Regulations in 34 CFR 75.530 through 75.562, the following items are allowable expenditures by projects funded under the program:

(a) Tuition and fees.

(b) Student stipends and books.

(c) Travel in conjunction with training assignments.

(Authority: 20 U.S.C. 1473(h))

§ 304.22 What are the requirements for grantees in disbursing scholarships?

Before disbursement of scholarship assistance to an individual, a grantee shall—

(a) Ensure that the scholar—

(1) Is a citizen or national of the United States;

(2) Provides evidence from the U.S. Immigration and Naturalization Service that he or she—

(i) Is a permanent resident of the United States; or

(ii) Is in the United States for other than a temporary purpose with the intention of becoming a citizen or permanent resident; or

(3) Has a permanent or lasting—as distinguished from temporary—principal, actual dwelling place in fact, without regard to intent, in the Republic of the Marshall Islands, the Federated States of Micronesia, or Palau (during the period in which those entities are eligible to receive an award under the program) or the Commonwealth of the Northern Mariana Islands.

(b) Limit scholarship assistance to the amount by which the individual's cost of attendance at the institution exceeds the amount of grant assistance the scholar is to receive for the same academic year under Title IV of the Higher Education Act;

(c) Limit scholarship assistance to the individual's cost of attendance at the institution, consistent with paragraph (b), for no more than a total of four academic years, except that the grantee may provide an extension consistent with the institution's accommodations under the Americans with Disabilities Act or Section 504 of the Rehabilitation Act of 1973, if the grantee determines that an individual has a disability that seriously affects the completion of the course of study;

(d) Obtain a Certification of Eligibility for Federal Assistance from each scholar, as prescribed in 34 CFR 75.60, 75.61, and 75.62.

(Authority: 20 U.S.C. 1473)

§ 304.23 What assurances must be provided by a grantee that intends to provide scholarships?

A grantee that intends to grant scholarships under the program shall provide the following assurances before receiving an award:

(a) *Requirement for agreement.* Each scholar who will receive a scholarship will first enter into a written agreement with the grantee that contains the terms and conditions required by this section.

(b) *Terms of the agreement.* Each agreement under paragraph (a) of this section shall contain, at a minimum, the following provisions:

(1) Individuals who receive scholarship assistance from projects funded under section 673(b) and (e), and to the extent determined appropriate by the Secretary, section 673(d), of the Act will subsequently maintain employment—

(i) In which the individual provides special education and related services to children with disabilities or early intervention services to infants and toddlers, and their families;

(ii) On a full-time basis; and

(iii) For a period of at least two years for every year for which assistance was received, within a period, beginning after the recipient completes the training for which the scholarship assistance was provided, of not more than the sum of the number of years required in this paragraph and three additional years.

(2) In order to meet the requirements of paragraph (b)(1) of this section, an individual must be employed in a position in which a majority of the persons to whom the individual provides services are receiving from the individual special education and related services as defined in Part B of the Act or early intervention services as defined in Part C of the Act.

(3) Individuals who receive scholarship assistance from a leadership preparation project funded under section 673(c) of the Act will subsequently maintain employment—

(i) In which the individual expends a majority of his or her time performing work related to the individual's preparation;

(ii) On a full-time basis; and

(iii) For a period of at least two years for every year for which assistance was received, within a period, beginning after the recipient completes the training for which the scholarship assistance was awarded, of not more than the sum of the number of years required in this paragraph and three additional years.

(4) The service obligation in this subsection as applied to a part-time scholar will be based on the accumulated academic years of training for which the scholarship is received.

(c) *Repayment.* (1) Subject to the provisions in § 304.31 regarding a deferral or exception, a scholar who does not fulfill the requirements in paragraph (b)(1) or (b)(3) of this section, as appropriate, shall repay all or part of any scholarship received, plus interest.

(2) The amount of the scholarship that has not been retired through eligible service will constitute a debt owed to the United States that—

(i) Will be repaid by the scholar in accordance with § 304.32; and

(ii) May be collected by the Secretary in accordance with 34 CFR part 30, in the case of the scholar's failure to meet the obligation of § 304.32.

(d) *Standards for satisfactory progress.* The grantee shall establish, notify students of, and apply reasonable standards for measuring whether a scholar is maintaining satisfactory progress in the scholar's course of study;

(e) *Tracking system.* The grantee has established policies and procedures, including a tracking system, to determine compliance of scholars with the terms of the written agreement developed under this section;

(f) *Exit certification.* The grantee has established policies and procedures for receiving written certification from scholars at the time of exit from the program that identifies—

(1) The number of years the scholar needs to work to satisfy the work requirements in paragraph (b) of this section.

(2) The total amount of scholarship assistance received subject to the work-or-repay provision in paragraph (b) of this section.

(3) The time period, consistent with paragraphs (b)(1)(iii) or (b)(3)(iii) of this section, during which the scholar must satisfy the work requirements in paragraph (b) of this section.

(4) All other obligations of the scholar under this section.

(g) *Information.* The grantee shall provide, upon request of the Secretary, information, including records maintained under paragraphs (e) and (f) of this section, that is necessary to carry out the Secretary's functions under this part.

(h) *Records.* The grantee shall maintain the information under this section related to a scholar for a period of time equal to the time required to fulfill the obligation under paragraph (b) of this section.

(i) *Notification.* The grantee shall inform the Secretary if a scholar fails to fulfill or chooses not to fulfill the obligation under paragraph (b)(1) or (b)(3) of this section.

(Authority: 20 U.S.C. 1473(h))

Subpart C—What Conditions Must be met by the Scholar?

§ 304.30 What are the requirements for scholars?

A scholar shall—

(a) Be enrolled in a course of study leading to a degree, certificate, endorsement, or license related to special education, related services, or early intervention services in order to be eligible to receive a scholarship under the program;

(b) Enter into a written agreement with the grantee that meets the terms and conditions of § 304.23 of this part before starting training;

(c) Receive the training at the educational institution or agency designated in the scholarship;

(d) Not accept payment of educational allowances from any other entity if that allowance conflicts with the scholar's obligation under this part; and

(e) Maintain satisfactory progress toward the degree, certificate, endorsement, or license as determined by the grantee.

(f) Provide information necessary for the grantee to track the scholar's progress in meeting the service obligation under § 304.23(b).

(Authority: 20 U.S.C. 1473(h))

§ 304.31 What are the requirements for obtaining a deferral or exception to performance or repayment under an agreement?

(a) An exception to the repayment requirement in § 304.23(c) may be granted, in whole or part, if the scholar—

(1) Is unable to continue the course of study or perform the service obligation because of a disability that is expected to continue indefinitely; or

(2) Has died.

(b) Deferral of the repayment requirement in § 304.23(c) may be granted during the time the scholar—

(1) Is engaging in a full-time course of study at an institution of higher education;

(2) Is serving, not in excess of three years, on active duty as a member of the armed services of the United States;

(3) Is serving as a volunteer under the Peace Corps Act;

(4) Is serving as a full-time volunteer under Title I of the Domestic Volunteer Service Act of 1973;

(5) Has a disability which prevents the individual from working, for a period not to exceed three years; or

(6) Is unable to secure employment as required by the agreement by reason of the care provided to a disabled family member for a period not to exceed 12 months.

(c) Deferrals or exceptions to performance or repayment may be provided by grantees based upon sufficient evidence to substantiate the grounds for an exception under paragraph (a) of this section or a deferral under paragraph (b) of this section.

(Authority: 20 U.S.C. 1473(h))

§ 304.32 What are the consequences of a scholar's failure to meet the terms and conditions of a scholarship agreement?

If a scholar fails to meet the terms and conditions of a scholarship agreement

under § 304.23(b) or to obtain a deferral or an exception as provided in § 304.31, the scholar shall repay all or part of the scholarship assistance to the Secretary as follows:

(a) *Amount.* The amount of the scholarship to be repaid is proportional to the service obligation not completed.

(b) *Interest Rate.* The Secretary charges the scholar interest on the unpaid balance owed in accordance with 31 U.S.C. 3717.

(c) *Interest accrual.* (1) Interest on the unpaid balance accrues from the date the scholar is determined to have entered repayment status under paragraph (e) of this section.

(2) Any accrued interest is capitalized at the time the scholar's repayment schedule is established.

(3) No interest is charged for the period of time during which repayment has been deferred under § 304.31.

(d) *Collection costs.* Under the authority of 31 U.S.C. 3717, the Secretary may impose reasonable collection costs.

(e) *Repayment status.* A scholar enters repayment status on the first day of the first calendar month after the earliest of the following dates, as applicable:

(1) The date the scholar informs the grantee that he or she does not plan to fulfill the service obligation under the agreement.

(2) Any date when the scholar's failure to begin or maintain employment makes it impossible for that individual to complete the service obligation within the number of years required in § 304.23(b).

(3) Any date on which the scholar discontinues enrollment in the course of study under § 304.30(a).

(f) *Amounts and frequency of payment.* The scholar shall make payments to the Secretary that cover principal, interest, and collection costs according to a schedule established by the Secretary.

(Authority: 20 U.S.C. 1473(h))

[FR Doc. 98–18303 Filed 7–9–98; 8:45 am]

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Federal Register

Vol. 63, No. 132

Friday, July 10, 1998

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FEDERAL REGISTER PAGES AND DATES, JULY

35787–36150 1
36151–36338 2
36339–36540 6
36541–36830 7
36831–37058 8
37059–37242 9
37243–37474 10

CFR PARTS AFFECTED DURING JULY

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:
7107 36531
Executive Orders:
11958 (Amended by EO 13091).....36153
12163 (Amended by EO 13091).....36153
13090 36151
13091 36153
Administrative Orders:
Presidential Orders:
No. 98–31 36149

5 CFR

Proposed Rules:
2420 35882
2421 35882
2422 35882
2423 35882
2470 35882
2472 35882

7 CFR

2 35787
301 36155
457 .....36156, 36157
1980 36157
Proposed Rules:
958 36194
1755 36377

8 CFR

3 36992

12 CFR

611 36541
614 36541
620 36541
630 36541

9 CFR

78 37243

10 CFR

34 37059

14 CFR

39 .....35787, 35790, 35792, 35793, 35794, 35796, 36158, 36549, 36551, 36553, 36831, 36832, 36834, 36835, 36836, 37061, 37063
71 .....36161, 36554, 36838, 36839, 36840, 36841, 36843, 36844, 36845, 37065
95 37243
97 .....36162, 36165, 36170
Proposed Rules:
39 .....35884, 36377, 36619, 36621, 36622, 36624, 36626, 36628, 36630, 36864, 37072, 37074, 37078, 37080, 37083
65 .....37171, 37210
66 .....37171, 37210
147 37171

15 CFR

280 37170
902 37246
922 36339

16 CFR

0 36339
1 36339
3 36339
303 36171
304 36555
432 37233
Proposed Rules:
432 37237

17 CFR

Proposed Rules:
210 35886
229 35886
230 36136
240 .....35886, 36138
249 35886
275 36632
279 36632

19 CFR

162 .....35798, 36992
178 .....35798, 36992
Proposed Rules:
4 036379

20 CFR

404 36560
416 36560

21 CFR

101 37029
172 .....36344, 36362
175 37246
177 36175
178 .....35798, 36176, 36177
510 36178
520 36178
558 36179
Proposed Rules:
120 37057

22 CFR

40 36365
41 36365
140 36571

25 CFR

Proposed Rules:
61 36866

26 CFR

1 36180

48 35799
145 35799
602 35799
648 36180
Proposed Rules:
1 37296
48 35893
301 37296

28 CFR

0 36846
16 36295

30 CFR

250 37066
901 35805
Proposed Rules:
206 36868
944 36868

31 CFR

357 35807
501 35808
515 35808
538 35809
560 35808
Proposed Rules:
103 37085

32 CFR

204 36992
588 37068
Proposed Rules:
199 36651
655 37296

33 CFR

Ch. I 36384
100 ....36181, 36182, 36183, 36849, 36850, 37249
117 ....35820, 37250, 37251
155 35822
165 36851
401 36992
402 36992
Proposed Rules:
100 36197
110 37297

34 CFR

74 36144
80 36144
Proposed Rules:
304 37465

36 CFR

327 35826
1220 35828
1222 35828
1228 35828
1230 35828
1234 35828
1238 35828

37 CFR

1 36184

38 CFR

21 35830
Proposed Rules:
17 37299

39 CFR

20 37251
111 37254

40 CFR

52 ....35837, 35839, 35842, 36578, 36578, 36852, 36854, 37255
62 36858
81 37258
180 ....35844, 36366, 37280, 37286, 37289
271 36587
300 ....36861, 37069
Proposed Rules:
52 ....35895, 35896, 36652, 36870, 37307
62 36871
131 36742
136 36810
180 37307
264 37309
265 37309
271 36652
281 37311
300 37085

41 CFR

101–20 35846

42 CFR

121 35847
422 36488

45 CFR

303 36185

46 CFR

Proposed Rules:
502 35896
503 35896
510 35896
514 ....35896, 37088
540 35896
572 35896
585 35896
587 35896
588 35896

47 CFR

1 ....35847, 36591
2 36591
5 36591
15 36591
18 36591
21 36591
22 36591
24 36591
26 36591
64 ....36191, 37069
73 ....36191, 36192, 36591
74 36591
78 36591
80 36591
87 36591
90 36591
95 36591
97 36591
101 36591
Proposed Rules:
2 35901
73 ....36199, 36387, 37090

48 CFR

Ch. 1 36128
1 36120
12 36120
15 36120
19 36120
52 36120
53 36120
235 36862
Proposed Rules:
13 36522
16 36522
32 36522
52 36522

49 CFR

171 37453
172 37453
173 37453
175 37453
177 37453
178 37453
180 37453
195 36373
199 36862
223 36376

50 CFR

285 36611
600 36612
622 ....37070, 37246
660 ....36612, 36614
679 ....36193, 36863, 37071
Proposed Rules:
17 36993

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 JULY 10, 1998

COMMERCE DEPARTMENT

Export Administration Bureau

National security industrial base regulations:

National security; effect of imported articles; published 6-10-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico shrimp; correction; published 7-10-98

ENVIRONMENTAL PROTECTION AGENCY

Air quality implementation plans; approval and promulgation; various States:

Louisiana; published 5-11-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Bifenthrin; published 7-10-98

Gliocladium catenulatum (strain J1446); published 7-10-98

Myclobutanil; published 7-10-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Food additives:

Adhesive coatings and components—

Polyurethane resins; published 7-10-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Community facilities:

Community development work study program; repayment requirements; published 6-10-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Bull trout; Klamath River and Columbia River populations; published 6-10-98

NUCLEAR REGULATORY COMMISSION

Byproduct material; medical use:

License terms; published 6-10-98

POSTAL SERVICE

International Mail Manual:

Global package link (GPL) service—

Germany and France; published 7-10-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

Glaser-Dirks Flugzeugbau GmbH; published 5-28-98

Rolls-Royce Ltd.; published 6-25-98

Dornier; published 5-28-98

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT

Agricultural Marketing Service

Almonds grown in—

California; comments due by 7-17-98; published 6-17-98

Pork promotion, research, and consumer information order; comments due by 7-13-98; published 6-11-98

Potatoes (Irish) grown in—

Southeastern States; comments due by 7-17-98; published 6-17-98

AGRICULTURE DEPARTMENT

Animal and Plant Health Inspection Service

Exportation and importation of animals and animal products:

African horse sickness; disease status change—

Qatar; comments due by 7-13-98; published 5-12-98

AGRICULTURE DEPARTMENT

Forest Service

National Forest System:

Cooperative funding; contributions for cooperative work, reimbursable payments by cooperators, and protection of Government's interest; comments due by 7-17-98; published 5-18-98

AGRICULTURE DEPARTMENT

Farm Service Agency

Farm marketing quotas, acreage allotments, and production adjustments:

Tobacco

Correction; comments due by 7-13-98; published 5-14-98

COMMERCE DEPARTMENT

National Oceanic and Atmospheric Administration

Fishery conservation and management:

Caribbean, Gulf, and South Atlantic fisheries—

Gulf of Mexico Fishery Management Council; hearings; comments due by 7-17-98; published 6-4-98

South Atlantic Fishery Management Council; hearings; comments due by 7-15-98; published 6-3-98

South Atlantic golden crab; comments due by 7-13-98; published 6-26-98

Northeastern United States fisheries—

New England Fishery Management Council; hearings; comments due by 7-15-98; published 6-24-98

COMMODITY FUTURES TRADING COMMISSION

Over-the-counter derivatives; concept release; comments due by 7-13-98; published 5-12-98

ENERGY DEPARTMENT

Energy Efficiency and Renewable Energy Office

Energy conservation:

Alternative fueled vehicle acquisition requirements for private and local government fleets; comments due by 7-16-98; published 4-17-98

ENERGY DEPARTMENT

Federal Energy Regulatory Commission

Natural gas companies (Natural Gas Act):

Natural gas pipeline facilities and services on Outer Continental Shelf; alternative regulatory methods; comments due by 7-16-98; published 6-5-98

ENVIRONMENTAL PROTECTION AGENCY

Air pollution; standards of performance for new stationary sources:

Municipal solid waste landfills; comments due by 7-16-98; published 6-16-98

Air quality implementation plans; approval and promulgation; various States:

Pennsylvania; comments due by 7-13-98; published 6-12-98

Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:

Azoxystrobin; comments due by 7-13-98; published 5-12-98

Myclobutanil; comments due by 7-13-98; published 5-12-98

Radiation protection program:

Spent nuclear fuel, high-level and transuranic radioactive waste management and disposal; waste isolation pilot program compliance—

Certification decision; comments due by 7-17-98; published 5-18-98

FEDERAL COMMUNICATIONS COMMISSION

Common carrier services:

Pay telephone reclassification and compensation provisions; comments due by 7-13-98; published 7-2-98

Radio stations; table of assignments:

Iowa; comments due by 7-13-98; published 6-3-98

Vermont; comments due by 7-13-98; published 7-6-98

Washington; comments due by 7-13-98; published 6-3-98

FEDERAL ELECTION COMMISSION

Presidential primary and general election candidates; public financing:

Electronic filing of reports; comments due by 7-17-98; published 6-17-98

FEDERAL RESERVE SYSTEM

Collection of checks and other items by Federal Reserve Banks (Regulation J) and availability of funds and collection of checks (Regulation CC):

Same-day settlement rule; modifications; comments due by 7-17-98; published 3-16-98

GENERAL SERVICES ADMINISTRATION

Freedom of Information Act; implementation; comments

due by 7-17-98; published 6-17-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Food and Drug Administration

Medical devices:

Premarket approval applications; 30-day notices and 135-day PMA supplement review; comments due by 7-13-98; published 4-27-98

HEALTH AND HUMAN SERVICES DEPARTMENT

Health Care Financing Administration

Medicare:

Skilled nursing facilities; prospective payment system and consolidated billing; comments due by 7-13-98; published 5-12-98

HOUSING AND URBAN DEVELOPMENT DEPARTMENT

Manufactured home construction and safety standards:

Metal roofing requirements in high wind areas; comments due by 7-13-98; published 5-12-98

Mortgage and loan insurance programs:

Multifamily mortgagees; electronic reporting requirements; comments due by 7-13-98; published 5-13-98

INTERIOR DEPARTMENT

Indian Affairs Bureau

Law and order on Indian reservations:

Courts of Indian Offenses and law and order code

Correction; comments due by 7-15-98; published 6-15-98

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:

Sacramento splittail; comments due by 7-17-98; published 5-18-98

INTERIOR DEPARTMENT

Minerals Management Service

Outer Countinental Shelf; oil, gas, and sulphur operations:

Postlease operations safety; update and clarification; comments due by 7-17-98; published 5-7-98

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:

West Virginia; comments due by 7-15-98; published 6-15-98

JUSTICE DEPARTMENT

Immigration and Naturalization Service

Immigration:

Asylum and removal withholding procedures—

Applicants who establish persecution or who may be able to avoid persecution in his or her home country by relocating to another area of that country; comments due by 7-13-98; published 6-11-98

JUSTICE DEPARTMENT

Executive Office for Immigration Review:

Aliens who are nationals of Guatemala, El Salvador, and former Soviet bloc countries; deportation suspension and removal cancellation; motion to open; comments due by 7-13-98; published 6-11-98

NORTHEAST DAIRY COMPACT COMMISSION

Over-order price regulations:

Compact over-order price regulations—

Diverted or transferred milk and reserve fund for reimbursement to school food authorities; comments due by 7-15-98; published 6-11-98

PERSONNEL MANAGEMENT OFFICE

Employment:

Reduction in force—

Vacant position offers; retention regulations; comments due by 7-13-98; published 5-13-98

SECURITIES AND EXCHANGE COMMISSION

Securities:

Belgium; securities exemption for purposes of trading futures contracts; comments due by 7-15-98; published 6-15-98

SMALL BUSINESS ADMINISTRATION

Business loan policy:

Unguaranteed portions of loans; securitization, sales, and pledges; comments due by 7-17-98; published 5-18-98

SOCIAL SECURITY ADMINISTRATION

Social security benefits:

Federal old age, survivors and disability insurance—

Endocrine system and obesity impairments; revised medical criteria for determining disability; comments due by 7-13-98; published 6-10-98

TRANSPORTATION DEPARTMENT

Coast Guard

Drawbridge operations:

Massachusetts; comments due by 7-17-98; published 5-18-98

New Jersey; comments due by 7-17-98; published 5-18-98

Merchant marine officers and seamen:

Maritime course approval procedures; comments due by 7-13-98; published 5-13-98

Ports and waterways safety:

Hackensack River, NJ; safety zone; comments due by 7-17-98; published 5-18-98

San Diego Bay, CA; security zone; comments due by 7-14-98; published 5-15-98

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Airworthiness directives:

de Havilland; comments due by 7-16-98; published 6-16-98

Aerospatiale; comments due by 7-13-98; published 6-12-98

Alexander Schleicher Segelflugzeugbau; comments due by 7-13-98; published 6-9-98

Bell; comments due by 7-13-98; published 5-13-98

Boeing; comments due by 7-13-98; published 5-12-98

British Aerospace; comments due by 7-17-98; published 6-12-98

Cessna; comments due by 7-17-98; published 6-8-98

Glaser-Dirks Flugzeugbau GmbH; comments due by 7-17-98; published 6-9-98

McDonnell Douglas; comments due by 7-13-98; published 5-28-98

New Piper Aircraft, Inc.; comments due by 7-17-98; published 6-9-98

Pilatus Aircraft Ltd.; comments due by 7-13-98; published 5-18-98

Pilatus Britten-Norman Ltd.; comments due by 7-17-98; published 6-9-98

Pratt & Whitney; comments due by 7-14-98; published 5-15-98

Raytheon; comments due by 7-17-98; published 6-8-98

S.N. Centrair; comments due by 7-17-98; published 6-9-98

Airworthiness standards:

Special conditions—

Eurocopter model AS-355 E, F, F1, F2, N Ecureuil II/Twinstar helicopters; comments due by 7-13-98; published 5-13-98

Sikorsky Aircraft Corp. model S76C helicopter; comments due by 7-17-98; published 6-17-98

Class B and Class C airspace; comments due by 7-14-98; published 5-15-98

Class E airspace; comments due by 7-13-98; published 5-28-98

TRANSPORTATION DEPARTMENT

Federal Highway Administration

Engineering and traffic operations:

Truck size and weight—

National Network for Commercial Vehicles; route addition in North Dakota; comments due by 7-17-98; published 5-18-98

Motor carrier safety standards:

Household goods transportation; consumer protection regulations; comments due by 7-14-98; published 5-15-98

Parts and accessories necessary for safe operation—

Trailers and semitrailers weighing 10,000 pounds or more and manufactured on or after January 26, 1998; rear impact guards and protection requirements; comments due by 7-13-98; published 5-14-98

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/fedreg.

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, 202–512–1808). 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.

S. 2069/P.L. 105–188

To permit the mineral leasing of Indian land located within the Fort Berthold Indian Reservation in any case in which there is consent from a majority interest in the parcel of land under consideration for lease. (July 7, 1998; 112 Stat. 620)

Last List June 26, 1998

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