10–7–98
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Wednesday
October 7, 1998

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WHO: Sponsored by the Office of the Federal Register.

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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: October 13, 1998 at 9:00 a.m.

WHERE: Office of the Federal Register
Conference Room,
800 North Capitol Street, N.W.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Rules and Regulations

Federal Register
Vol. 63, No. 194
Wednesday, October 7, 1998

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 25

RIN 0503–AA18

Designation of Rural Empowerment Zones and Enterprise Communities

AGENCY: Office of the Secretary, USDA.
ACTION: Final rule.

SUMMARY: This final rule establishes the policies and procedures for the designation of Round II Rural Empowerment Zones. This action authorizes the Secretary of the U.S. Department of Agriculture (USDA) to designate not more than 5 rural Empowerment Zones (Round II) as authorized by the Taxpayer Relief Act of 1997 (Pub. L. 105–34).

EFFECTIVE DATE: October 9, 1998.

FOR FURTHER INFORMATION CONTACT: Deputy Administrator for Community Development, USDA Rural Development, Office of Community Development, Reporters Building, Room 701, STOP 3203, 300 7th Street, SW, Washington, DC 20024–3203, telephone 1–800–851–3403, or by sending an Internet e-mail message to ''info@www.ezec.gov''. For hearing- and speech-impaired persons, information concerning this program may be obtained by contacting USDA's TARGET Center at (202) 720–2600 (Voice and TDD).

SUPPLEMENTARY INFORMATION:

Classification

This rule has been reviewed by the Office of Management and Budget (OMB) under E.O. 12866 and has been determined to be a significant regulatory action.

Programs Affected

The Catalog of Federal Domestic Assistance Program affected by this action is 10.772, Empowerment Zone Program.

Program Administration

The program is administered through the Office of Community Development within the Rural Development mission area of the Department of Agriculture.

Paperwork Reduction Act

The information collection requirements contained in 7 CFR part 25 has been approved by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control numbers 0570–0026 (Application burden) and 0570–0027 (Reporting burden). In accordance with the Paperwork Reduction Act, USDA may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number.

Environmental Impact Statement

It is the determination of the Secretary that this action is not a major Federal action significantly affecting the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, and 7 CFR part 1940, subpart G, an Environmental Impact Statement is not required.

Executive Order 12988

This final rule has been reviewed in accordance with E.O. 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule unless those regulations specifically allow bringing suit at an earlier time.

The Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, USDA must prepare a written statement, including a cost benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to state, local or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of UMRA generally requires USDA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for state, local, and tribal governments or the private sector. Therefore this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act is intended to encourage Federal agencies to utilize innovative administrative procedures in dealing with individuals, small businesses, small organizations, and small governmental bodies that would otherwise be unnecessarily adversely affected by Federal regulations. The provisions included in this rule will not impact a substantial number of small entities to a greater extent than large entities. Therefore, no regulatory flexibility analysis under the Regulatory Flexibility Act is necessary.

Executive Order 12611, Federalism

The policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal Government and the states, or on the distribution of power and responsibilities among the various levels of government. The purpose of this rule is to provide a cooperative atmosphere between the Federal Government and the states and local governments, and to reduce any regulatory burden imposed by the Federal Government that impedes the ability of state and local governments to solve pressing economic, social, and physical problems in their communities.

Background

The Secretary of Agriculture published on April 16, 1998, an interim final rule with request for comments and a notice inviting applications for 5 additional rural empowerment zone designations as authorized by title IX of the Taxpayer Relief Act of 1997 (Pub. L. 105–34, approved August 5, 1997)(Round II). The deadline for applications is October 9, 1998. The statutory deadline when Round II designations must be made by the Secretary is January 1, 1999.

These 5 new rural empowerment zones are in addition to the 3 rural empowerment zones and 30 enterprise communities designated on December 21, 1994 by the Secretary of Agriculture pursuant to Title XIII of the Omnibus Budget Reconciliation Act of 1993 (Round I).

Discussion of Comments

Only two comments were received. In each case the party commenting sought a change in USDA's implementation of the developable site provision available to Round II designees. The requested change is implemented by this final rule.

One change and one clarification of the Round II interim final rule in the final rule is as follows: a change to allow an aggregate of 6 noncontiguous land parcels, inclusive of developable sites, rather than 3 as published in the interim final rule, and clarification that the data to be utilized in demonstrating outmigration over the period 1980–1994 is to be taken from the 1980 Census together with interim data gathered after the 1990 Census. The clarification of data utilized in demonstrating outmigration corrects an unintended omission.

The original Empowerment Zone legislation (1993) provided that a nominated area wholly within a given state could consist of not more than three noncontiguous parcels. The August 1997 legislation modified the eligibility criteria for Round II designations to allow for special sites known as ''developable sites,'' not exceeding 2,000 acres (3.14 square miles) in the aggregate, not exceeding three in number. An interpretive question arose as to whether the 3 possible stand alone, non-contiguous developable sites were in addition to the original limit of 3, or whether 3 was an overarching cap on the number of possible noncontiguous parcels. Developable sites are not subject to the same poverty rate criteria as otherwise imposed on nominated areas.

List of Subjects in 7 CFR Part 25

Community development, Economic development, Empowerment zones, Enterprise communities, Housing, Indians, Intergovernmental relations, Reporting and recordkeeping requirements, Rural development.

In accordance with the reasons set out in the preamble, 7 CFR part 25 is amended by adopting the interim rule published April 16, 1998 [63 FR 19108] as a final rule with the following amendments as set forth below.

PART 25—RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

1. The authority citation for part 25 continues to read as follows:

Authority: 5 U.S.C. 301; 26 U.S.C. 1391

Subpart A—General Provisions

§ 25.101 [Amended]

2. Section 25.101(a) is amended by adding the words ''data from the 1980 Census and'' before the word ''interim''.

3. In § 25.103, the introductory text of paragraph (b)(3) is revised to read as follows:

§ 25.103 Area size and boundary requirements.

* * * * *

(b) * * *

(3) For purposes of applying paragraph (a)(2) of this section to Round II designations, the following shall not be treated as violating the continuous boundary requirement nor the limit on the number of noncontiguous parcels:

* * * * *

Dated: September 28, 1998.

Dan Glickman,

Secretary.

[FR Doc. 98–26542 Filed 10–6–98; 8:45 am]

BILLING CODE 3410–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 98–097–1]

Brucellosis in Cattle; State and Area Classifications; Mississippi

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Mississippi from Class A to Class Free. We have determined that Mississippi meets the standards for Class Free status. This action relieves certain restrictions on the interstate movement of cattle from Mississippi.

DATES: Interim rule effective October 7, 1998. Consideration will be given only to comments received on or before December 7, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–097–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–097–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. R.T. Rollo, Jr., Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 36, Riverdale, MD 20737–1231, (301) 734–7709; or e-mail: reed.t.rollo@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella.*

The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), provide a system for classifying States or portions of States according to the rate of *Brucella* infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail (1) maintaining a cattle herd infection rate not to exceed a stated level during

12 consecutive months; (2) tracing back to the farm of origin and successfully closing a stated percent of all brucellosis reactors found in the course of Market Cattle Identification (MCI) testing; (3) maintaining a surveillance system that includes testing of dairy herds, participation of all recognized slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection (including herds adjacent to infected herds and herds from which infected animals have been sold or received), and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) maintaining minimum procedural standards for administering the program.

Before the effective date of this interim rule, Mississippi was classified as a Class A State.

To attain and maintain Class Free status, a State or area must (1) remain free from field strain *Brucella abortus* infection for 12 consecutive months or longer; (2) trace back at least 90 percent of all brucellosis reactors found in the course of MCI testing to the farm of origin; (3) successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12 consecutive month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free; and (4) have a specified surveillance system, as described above, including an approved individual herd plan in effect within 15 days of locating the source herd or recipient herd.

After reviewing the brucellosis program records for Mississippi, we have concluded that this State meets the standards for Class Free status. Therefore, we are removing Mississippi 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). This action relieves certain restrictions on moving cattle interstate from Mississippi.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Mississippi.

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

Executive Order 12866 and Regulatory Flexibility Act

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

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the brucellosis status of Mississippi from Class A to Class Free will promote economic growth by reducing certain testing and other requirements governing the interstate movement of cattle from this State. Testing requirements for cattle moved interstate for immediate slaughter or to quarantined feedlots are not affected by this change. Cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The groups affected by this action will be herd owners in Mississippi, as well as buyers and importers of cattle from this State.

There are an estimated 30,000 cattle herds in Mississippi that will be affected by this rule. About 98 percent of these are owned by small entities. Test-eligible cattle offered for sale interstate from other than certified-free herds must have a negative test under present Class A status regulations, but not under regulations concerning Class Free status. If such testing were distributed equally among all animals affected by this rule, Class Free status would save approximately $4 per head.

Therefore, we believe that changing the brucellosis status of Mississippi will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 78

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

Accordingly, 9 CFR part 78 is amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

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).

§ 78.41 [Amended]

2. In § 78.41, paragraph (a) is amended by adding ''Mississippi,'' immediately after ''Minnesota,''.

3. In § 78.41, paragraph (b) is amended by removing ''Mississippi,''.

Done in Washington, DC, this 1st day of October 1998.

William R. DeHaven,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–26828 Filed 10–6–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 98–101–1]

Validated Brucellosis-Free States; South Carolina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of swine by adding South Carolina to the list of validated brucellosis-free States. We have determined that South Carolina meets the criteria for classification as a validated brucellosis-free State. This action relieves certain restrictions on the interstate movement of breeding swine from South Carolina.

DATES: Interim rule effective October 7, 1998. Consideration will be given only to comments received on or before December 7, 1998.

ADDRESSES: Please send an original and three copies of your comments to Docket No. 98–101–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–101–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m., and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Taft, Senior Staff Veterinarian, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–4916.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and humans, caused by bacteria of the genus *Brucella.* The brucellosis regulations, contained in 9 CFR part 78 (referred to below as the regulations), prescribe conditions for the interstate movement of cattle, bison, and swine.

Under the swine brucellosis regulations, States, herds, and individual animals are classified according to their brucellosis status. Interstate movement requirements for swine are based upon the disease status of the individual animal or the herd or State from which the animal originates.

We are amending § 78.43 of the regulations, which lists validated brucellosis-free States, to include South Carolina. A State may apply for validated brucellosis-free status when: (1) Any herd found to have swine brucellosis during the 2-year qualification period preceding the application has been depopulated. More than one finding of a swine brucellosis-infected herd during the qualification period disqualifies the State from validation as brucellosis-free; and (2) during the 2-year qualification period, the State has completed surveillance, annually, by either complete herd testing, market swine testing, or statistical analysis.

Breeding swine originating from a validated brucellosis-free State or herd may be moved interstate without having been tested with an official test for brucellosis within 30 days prior to interstate movement, which would otherwise be required.

After reviewing its brucellosis program records, we have concluded that South Carolina meets the criteria for classification as a validated brucellosis-free State. Therefore, we are adding South Carolina to the list of States in § 78.43. This action relieves certain restrictions on the interstate movement of breeding swine from South Carolina.

Immediate Action

The Administrator of the Animal and Plant Health Inspection Service has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of swine from South Carolina.

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

Executive Order 12866 and Regulatory Flexibility Act

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

This action removes the requirement that breeding swine be tested for brucellosis prior to movement interstate from South Carolina.

There are approximately 1,600 swine producers in South Carolina, and all of them are small businesses (defined by the Small Business Administration as having annual gross receipts of less than $500,000). Currently, these small producers have about 33,000 adult swine tested annually for brucellosis, at a cost to producers of approximately $5 per test. We are not able to determine exactly how many of these tests are performed for the purpose of certifying breeding swine for movement interstate, but we estimate the number to be small.

We anticipate, therefore, that this action will have a minimal positive economic impact, if any, on swine producers in South Carolina.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are in conflict with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

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

List of Subjects in 9 CFR Part 78

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

Accordingly, we are amending 9 CFR part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 continues to read as follows:

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).

§ 78.43 [Amended]

2. Section 78.43 is amended by adding ''South Carolina,'' immediately after ''Rhode Island,''.

Done in Washington, DC, this 30th day of September 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–26829 Filed 10–6–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 95–054–3]

Importation of Horses

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Technical amendment.

SUMMARY: We are making a technical amendment to the regulations regarding the importation of horses to restore a reference to vesicular stomatitis that was inadvertently removed from those regulations.

EFFECTIVE DATE: October 7, 1998.

FOR FURTHER INFORMATION CONTACT: Mrs. Kathy Holmes, Regulatory Coordination Specialist, Regulatory Analysis and Development, Policy and Program Development, APHIS, USDA, 4700 River Road Unit 118, Riverdale, MD 20737–1238; (301) 734–8682.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart C—Horses, §§ 93.300 through 93.326 of the regulations, pertains to the importation of horses into the United States.

(**Note:** At the time the final rules referred to in this document were published, the regulations described in the previous paragraph were located in 9 CFR part 92. However, on October 28, 1997, we published in the **Federal Register** (62 FR 56000–56026, Docket No. 94–106–9) a final rule that redesignated part 92 as part 93. In describing the actions taken in the final rules, we will cross-reference the former part 92 citations with their current locations in part 93.)

In a final rule published in the **Federal Register** on August 23, 1996 (61 FR 43417–43418, Docket No. 95–079–2), and effective September 23, 1996, we amended § 92.314 (current § 93.314) by adding vesicular stomatitis to the list of diseases from which a horse's premises of origin and adjoining premises must be free before the horse may be imported into the United States.

That same section of the regulations was amended again in a subsequent final rule published in the **Federal Register** on October 7, 1996 (61 FR 52236–52246, Docket No. 95–054–2), and effective November 6, 1996. In the October 1996 final rule, we amended the regulations by, among other things, organizing the undesignated regulatory text of § 92.314 (current § 93.314) into paragraphs (a) through (c). However, the text of the newly reorganized § 92.314 (current § 93.314) that we set out in the October 1996 final rule was the same text that had been included in our June 4, 1996, proposed rule (61 FR 28073–28085, Docket No. 95–054–1), so it failed to reflect the August 1996 addition of vesicular stomatitis to that section. It was never our intention to remove that reference to vesicular stomatitis; indeed, no such change was discussed in the final rule or in the proposed rule that preceded it. Therefore, to rectify that error, we are amending § 93.314(a)(4) (former § 92.314) to restore the reference to vesicular stomatitis. List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 93.314 [Amended]

2. In § 93.314, paragraph (a)(4) is amended by adding the words ''vesicular stomatitis,'' immediately following the word ''encephalomyelitis,''.

Done in Washington, DC, this 30th day of September 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–26826 Filed 10–6–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 94–115–2]

RIN 0579–AA70

Veterinary Diagnostic Services User Fees

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are revising user fees for veterinary diagnostic services to reflect changes in operating costs and changes in calculations. We are also adding user fees to cover the costs of additional veterinary diagnostic services. In addition, we are reorganizing these user fees to list user fees by type of service and location where the service is provided, and to group reagents into categories. We are also revising user fees for the use of animal import centers operated by the Animal and Plant Health Inspection Service and adding user fees for new spaces. These actions are necessary to ensure that we recover our costs. The Food, Agriculture, Conservation, and Trade Act of 1990, as amended, authorizes us to set and collect these user fees.

EFFECTIVE DATE: November 6, 1998.

FOR FURTHER INFORMATION CONTACT: For information concerning services provided for live animals and germ plasm, contact Dr. Gary S. Colgrove, Chief Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–3294.

For information concerning services provided for veterinary diagnostics, contact Dr. James E. Pearson, Director, National Veterinary Services Laboratories, VS, APHIS, P.O. Box 844, Ames, IA 50010; (515) 239–8266.

For information concerning program operations for Veterinary Services, contact Ms. Louise Lothery, Director, Veterinary Services Resource Management Staff, APHIS, 4700 River Road Unit 44, Riverdale, MD 20737–1231; (301) 734–7517.

For information concerning rate development of the proposed user fees, contact Ms. Donna Ford, Section Head, Financial Systems and Services Branch, Budget and Accounting Division, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User Fees Authorized Under the Farm Bill

The Food, Agriculture, Conservation and Trade Act of 1990, as amended (referred to below as the Farm Bill), authorizes the Secretary to prescribe regulations and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal Animal Quarantine Laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance (sec. 2509(c)(1) of the Farm Bill; 21 U.S.C. 136a(c)(1)). The Farm Bill also authorizes the Secretary of Agriculture, among other things, to prescribe regulations and collect fees to recover the costs of veterinary diagnostics relating to the control and eradication of communicable diseases of livestock or poultry within the United States (sec. 2509(c)(2) of the Farm Bill; see 21 U.S.C. 114a).

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130 (the regulations).

On May 4, 1998, we published in the **Federal Register** (63 FR 24473–24500, Docket No. 94–115–1) a proposal to amend the regulations by revising the user fees for certain veterinary diagnostic services, including certain diagnostic tests, reagents, and other veterinary diagnostic materials and services. Operating costs have increased since these user fees were established in a final rule published in the **Federal Register** on September 1, 1993 (58 FR 38954–38961, Docket No. 91–021–5). Additionally, reviews of these user fees showed that some of the original estimates did not include enough direct labor hours and that the direct labor calculations needed to be revised to accurately reflect the costs of providing services. We proposed a comprehensive overhaul of the veterinary diagnostic user fees to more accurately recover our costs and to provide clarity and ease of use for customers needing to look up user fees for our tests and other services. Our proposal included reorganizing the presentation of user fees in the regulations, implementing new user fees, and revising all of the existing veterinary diagnostic user fees.

We solicited comments concerning our proposal for 60 days ending July 6, 1998. We received four comments by that date. They were from a State department of agriculture, poultry associations, and a university veterinary laboratory. They are discussed below.

Comment: Increases in user fees will significantly impact diagnostic laboratories; user fee collections would rise by 60.3 percent.

Response: Veterinary diagnostic services user fees have not changed since 1993. We are no longer appropriated funds for these services. Therefore, to continue providing veterinary diagnostic services, we must increase the user fees we charge diagnostic laboratories and other customers who benefit from our veterinary diagnostic services. The total overall anticipated increase in user fee collections is $1,283,800 ($3,414,484 increased from $2,130,684), or 60.3 percent. As specified in the proposed rule, most of the individual increases will make only small contributions to the total new collections. Typically, the large percentage increases in user fees are related to veterinary diagnostic services which are ordered in small amounts. Therefore, the increases should not have a significant affect on diagnostic laboratories or other customers.

Comment: If fees continue to rise, many disease problems may go undetected because small laboratories will simply not order reagents or tests unless absolutely necessary. This will drive fees up even more as the National Veterinary Services Laboratories (NVSL) at Ames, IA, tries to meet its financial goals. APHIS mandates many programs, but seems unwilling to help conduct those mandates. The proposed fee increases will undermine any national efforts to collect data and protect animal and public health.

Response: We do not believe that these user fee increases will result in decreased testing or endanger animal or public health. Section 130.49 of the regulations specifies exemptions to our user fees for veterinary diagnostic services provided (1) in connection with Federal programs to control or eradicate diseases or pests of livestock or poultry in the United States (program diseases), (2) for zoonotic disease surveillance, or (3) for the detection of foreign animal diseases. Further, our user fees are calculated for full cost recovery only. They are not designed to meet any other financial goals and are not calculated based on the volume of tests conducted or reagents supplied. The costs of reagents are a small part of the actual costs of conducting a test. In addition, most of the individual user fee increases are small. Therefore, we do not expect that these increases will result in reduced testing by laboratories, large or small.

Comment: Public health concerns such as salmonella and its diagnosis through salmonella serotyping should be part of the appropriation. Unless this test is free of charge, no serotyping will be conducted and the nation will suffer.

Response: Salmonella serotyping is part of zoonotic disease surveillance and, therefore, is exempt from these user fees. It will continue to be covered by appropriated funds.

Comment: As an alternative to increasing the user fees, the administrative overhead costs should be trimmed to no more than 20 percent instead of 113 percent of direct labor.

Response: We continually strive to improve efficiency in operations and review our costs to make sure they are as low as possible. Our agency overhead and departmental charges are approximately 20 percent of our user fees. Our administrative support costs, which are 113 percent of direct labor, include costs that are required to operate the laboratories and perform veterinary diagnostic services. For every $1 incurred in direct labor at NVSL, another $1.13 is incurred in administrative support costs. Some of these costs would typically be broken out into costs for direct materials and other direct costs; however, for simplicity, we group them all as administrative support costs. As stated in the proposal, our administrative support costs include costs for clerical and administrative activities; direct materials; indirect labor hours; travel and transportation for personnel, supplies, equipment, and other necessary items; training; legal counsel; general supplies for offices, washrooms, cleaning, etc.; contractual services; grounds maintenance; and utilities. Direct materials include any materials needed to conduct the test or provide the diagnostic reagent, slide set, tissue set, or service. For example, direct materials for conducting a laboratory test include, but are not limited to, glassware, chemicals, and other supplies necessary to perform the test. Costs for these direct materials are included in administrative support costs because direct materials are standard laboratory supplies and not purchased solely for a specific test. Indirect labor hours include time required for supervision of personnel and time spent doing necessary work that is not directly connected with a test, diagnostic reagents, or other veterinary diagnostic material or service, such as equipment repair. Contractual services may include, but are not limited to, guard service and maintenance. Some administrative support items may or may not be contractual, depending on

local circumstances. For example, trash pickup may be provided as a utility or a contractual service. However, the costs are all for administrative support. Utilities include water, telephone, electricity, natural and propane gas, heating and diesel oil. We make every effort to keep all of these costs as low as possible.

Comment: The proposed user fees for test reagents and sample confirmation testing at NVSL and the Foreign Animal Disease Diagnostic Laboratory (FADDL) at Greenport, NY, for diseases of national importance, such as brucellosis and pseudorabies, will have a negative impact on State laboratories because the fee increases for test reagents would shift the cost from APHIS to the State laboratories. The projected cost would increase by $2000 per year for a State laboratory.

Response: The user fee changes in this rule will not negatively affect State laboratories or their testing for diseases of national importance, such as brucellosis and pseudorabies. We specify in § 130.49 of the regulations that user fees are not charged for veterinary diagnostic services provided in connection with Federal programs to control or eradicate diseases or pests of livestock or poultry in the United States.

Comment: The effect of the user fee increases for check samples, reference sera, confirmation analysis, and standard operating procedures and manuals is difficult to calculate. The estimated cost is $1,000 per year for a State laboratory. This would have a negative impact on State laboratories.

Response: We understand that adding user fees for check tests, standard operating procedures, manuals, training, and technical assistance will increase our customer's costs. We are no longer appropriated funds to pay for these services. Therefore, to continue providing these services, we must establish user fees to recover our costs.

Comment: APHIS is proposing to increase user fees for veterinary diagnostic services again. The poultry industry of Georgia opposes this increase.

Response: This is the first increase in the veterinary diagnostic user fees since they were established in 1993. We need to increase these user fees because, as stated in the proposal, operating costs have increased since these user fees were established in a final rule published in the **Federal Register** on September 1, 1993.

Comment: These proposed fee increases would severely impact the monitoring and diagnostic abilities of the extensive poultry laboratory network in Georgia. We believe this increase would impact the health and safety of the food supply of poultry and poultry products in Georgia. Total fees would increase from current costs of $2,700 to $42,881.25 ($1,305 from increased fees for DNA fingerprinting and pasteurella antiserums; $40,181.25 from new fees for salmonella bacterial serotyping, mycoplasma hemagglutination antigens, avian influenza antigen, and avian influenza).

Response: We disagree. The user fee changes in this rule should not affect monitoring and diagnostic abilities of the poultry laboratory network in Georgia, and therefore, will not affect the health and safety of the food supply of poultry and poultry products. While we are implementing some new user fees, because we are no longer allocated funds to pay for these services, we are not changing the exemptions from existing user fees as specified in § 130.49. Therefore, if you were exempt from a specific user fee in the past, then you are still exempt from that user fee. As stated above, we specify in the regulations that user fees are not charged for veterinary diagnostic services provided in connection with zoonotic disease surveillance, such as salmonella serotyping, or for the detection of foreign animal diseases, such as highly pathogenic avian influenza. Specifically, user fees will not be charged for salmonella bacterial serotyping, avian influenza antigen, and avian influenza antiserum. Because of these exemptions, we estimate that the actual increase in user fees for the services and reagents listed in the comment would be only $2,897.50, due to revised and new user fees for DNA fingerprinting, pasteurella antiserums, and mycoplasma hemagglutination antigens.

Comment: Delay the proposal until there can be a full discussion and review.

Response: By publishing the proposed rule and requesting comments for 60 days we believe that we have provided the public with ample opportunity to review and comment on the changes in the veterinary diagnostic services user fees.

Comment: If and when fee increases are justified, do them well in advance of the budgeting period.

Response: We understand the need to plan budgets and the concern about having budgets affected by increases in user fees. Different customers start their budgeting periods at different times of the year. Therefore, it would be impossible to schedule our fee changes in advance of all customers' budgeting periods. Our proposal signaled our intention to revise the user fees. The proposal was published in the **Federal Register** on May 4, 1998, and was open for public comment for 60 days. This rule will not take effect until 30 days after the date it is published in the **Federal Register**. This delay should give the commenter and others adequate time to prepare.

Miscellaneous

We are making minor, nonsubstantive, editorial changes in the rule for clarity.

Plain Language Change

On June 1, 1998, President Clinton issued a memorandum requiring agencies to write all documents in plain language. Specifically, for regulations, agencies must use plain language in all proposed rules published in the **Federal Register** after January 1, 1999. Agencies must also use plain language in all final rules published in the **Federal Register** after January 1, 1999, except when the proposed rule was published before January 1, 1999. For existing regulations, the memorandum encourages agencies to rewrite in plain language whenever possible.

We try to make our regulations as clear as possible. With the plain language initiative, we will increase our efforts to use active verbs and personal pronouns to clarify who is responsible for what action. We will also use a question and answer format where it makes sense, as well as other techniques, to make our regulations easier to understand.

In this final rule, we have rewritten the overtime requirements in § 130.50(b)(3). We have used a question and answer format, changed verbs from passive to active voice, used personal pronouns, and added a chart. The chart shows information that readers previously would have had to turn to 9 CFR part 97 to find.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, with the changes discussed in this document.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. This rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Below is a summary of the economic analysis for this final rule. The economic analysis provides a cost-benefit analysis as required by E.O. 12866 and a Final Regulatory Flexibility Analysis, analyzing the effects of this

action on small entities, as required by the Regulatory Flexibility Act. A copy of the full economic analysis, which includes comparisons of each user fee change and the change in collections for each user fee, is available for review at the location listed in the ADDRESSES section at the beginning of this document.

Need and Objective of This Rule

The provisions in 21 U.S.C. 114a authorize the Secretary of Agriculture to control and eradicate communicable diseases of livestock and poultry. The Food, Agriculture, Conservation and Trade Act of 1990, as amended (referred to below as the 1990 Farm Bill), authorizes the Secretary of Agriculture, among other things, to prescribe regulations and collect fees to recover the costs of carrying out the provisions of 21 U.S.C. 114a that relate to veterinary diagnostics (sec. 2509(c)(2) of the 1990 Farm Bill; see 21 U.S.C. 114a).

The 1990 Farm Bill further authorizes the Secretary to prescribe and collect fees to reimburse the Secretary for the cost of carrying out the provisions of the Federal animal quarantine laws that relate to the importation, entry, and exportation of animals, articles, or means of conveyance (section 2509(c)(1) of the 1990 Farm Bill; 21 U.S.C. 136a(c)(1)).

In addition, section 2509(d) of the 1990 Farm Bill (21 U.S.C. 136a(d)) provides that the Secretary may prescribe such regulations as the Secretary determines necessary to carry out these provisions of the 1990 Farm Bill.

New and Revised User Fees

We are revising the user fees for certain veterinary diagnostic services, including certain diagnostic tests, reagents, and other veterinary diagnostic materials and services. In addition, we are adding new user fees for other veterinary diagnostic services we provide. We are reorganizing the regulations in 9 CFR part 130 to list user fees by type of service and location where service is provided, and to group diagnostic reagents into categories.

Veterinary diagnostics is the work performed in a laboratory to determine if a disease-causing organism or chemical agent is present in body tissues or cells and to identify those organisms or agents. Services in this category include: (1) Performing laboratory tests and providing diagnostic reagents and other veterinary diagnostic materials and services at the Foreign Animal Disease Diagnostic Laboratory (FADDL) at Greenport, NY, and (2) performing identification, serology, and pathobiology tests and providing veterinary diagnostic reagents and other materials and services at the National Veterinary Services Laboratories (NVSL) at Ames, IA. Diagnostic reagents are biological materials used in diagnostic tests to detect disease agents or antibodies by causing an identifiable reaction. We also consider sterilization by gamma radiation to be a veterinary diagnostic service. Other miscellaneous veterinary diagnostic services include, but are not limited to, providing check tests, test kits, manuals, standard operating procedures, and training.

Impact on Small Entities

Users of these veterinary diagnostic services are importers, exporters, veterinarians, commercial laboratories, State laboratories, universities, and foreign governments.

The Small Business Administration's criteria for a small entity engaged in importing and exporting live animals, poultry, and birds is one whose total sales are less than $5 million annually. This is also the criteria for small testing laboratories, veterinary service providers, and research organizations.

Except for those entities who deal exclusively in purebred or registered animals, 1995 data from the Bureau of the Census shows that the majority of agricultural entities who deal in grade animals can be considered small. However, the number of entities who specifically trade in live animals and who would qualify as a small entity under this definition cannot be determined.

According to the Bureau of the Census, 94 percent of testing laboratories can be considered small. While veterinary testing laboratories comprise part of this classification, it cannot be determined how many entities performing veterinary services would be considered small under the Small Business Administration's guidelines.

To the extent that changes in user fees alter operational costs, any entity who utilizes APHIS'' services that are subject to user fees may be affected by the changes in user fees. The degree to which an entity is affected depends on its market power, or the ability to which costs can be either absorbed or passed on to its buyers. Without information on either profit margins and operational expenses of the affected entities [1], or the supply responsiveness of the affected industry [2], the scale of impacts cannot be precisely predicted.

Changes in Collections

The estimated increased collections generated by the revised user fees could be $1.28 million annually (collections could increase from $2.13 million collected in FY 97 to $3.41 million). This represents an increase in user fee collections for veterinary diagnostics and other import-and export-related services of approximately 60.3 percent. (See Table 13.)

TABLE 13.—SUMMARY OF CURRENT AND PROJECTED COLLECTIONS FOR APHIS USER FEES

User fee categories	Current user fee collections [1]	Revised user fee collections	Change in user fee collections
Revised Veterinary Diagnostics User Fees:			
FADDL: [2]			
Reagents, Tests, Other (§ 130.14)	508,297	1,074,542	566,245
NVSL:			
Identification Tests (§ 130.15)	398,023	428,581	30,558
Serology Tests (§ 130.16)	727,979	928,506	200,527
Pathobiology Tests (§ 130.17)	81,260	90,608	9,348
Reagents (§ 130.18)	76,534	84,321	7,787
Other (§ 130.19)	149,184	174,832	25,648

[1] Profits for sales of small entities are proprietary in nature and are not a part of the public record.

[2] The measurement of supply responsiveness would provide information on the likely impact on an entity's production due to changes in operating costs.

TABLE 13.—SUMMARY OF CURRENT AND PROJECTED COLLECTIONS FOR APHIS USER FEES—Continued

User fee categories	Current user fee collections [1]	Revised user fee collections	Change in user fee collections
Total Revised Veterinary Diagnostics User Fees	1,941,277	2,781,390	840,113
New Veterinary Diagnostics User Fees:			
FADDL:			
Reagents, Tests, Other (§130.14)	.....	98,126	98,126
NVSL:			
Identification Tests (§130.15)	.....	47,476	47,476
Serology Tests (§130.16)	.....	1,000	1,000
Pathobiology Tests (§130.17)	.....	1,397	1,397
Reagents (§130.18)	.....	154,929	154,929
Other (§130.19)	.....	104,589	104,589
Total New Veterinary Diagnostics User Fees	.....	407,517	407,517
Total Veterinary Diagnostics User Fees Collections	*1,941,277	3,188,907	1,247,630
Other User Fee Changes:			
Zoo Animals Quarantined in APHIS Animal Import Centers (§130.2 (a))	1,935	3,192	1,257
Non-Standard Care and Handling for Birds or Poultry (§130.2 (b))	33,780	37,965	4,185
Exclusive Use of Space at APHIS Animal Import Center in Newburgh, NY (§130.3)	126,164	121,450	(4,714)
User Fees for Other Services (§130.8)	27,528	62,970	35,442
Total Other User Fee Changes	*189,407	225,577	36,170
Total Changes in User Fee Collections	2,130,684	3,414,484	1,283,800

[1] Source: USDA—APHIS—FSO, NVSL, FADDL.
[2] Includes collections from cooperative agreements where user fees are the basis for determining amount to be charged.

The benefit of user fees is the shift in the payment of services from taxpayers as a whole to those persons who are receiving the government services. While taxes may not change by the same amount as the change in user fee collections, there is a related shift in the appropriations of taxes to government programs, which allows those tax dollars to be applied to other programs which benefit the public in general. Therefore, there could be a relative savings to taxpayers of $1.28 million annually as a result of the changes in user fees.

The administrative cost involved in obtaining these savings will be minimal. APHIS already has a user fee program and a mechanism for collecting user fees in place. The changes in this rule will update existing user fees in the system and require collection of additional user fees. Therefore, increases in administrative costs will be small. Because the savings are sufficiently large, and the administrative costs will be small, it is likely that the net gain in reducing the burden on taxpayers as a whole will outweigh the cost of administering the revisions of the user fees.

Estimated Impact

The user fee changes fall into two categories: New and revised user fees. The vast majority of the user fees changes are expected to make only small contributions to the total new collections. Most (nearly 70 percent) of the new user fees will be less than $50 each and 40 percent will be less than $25. Most (approximately 70 percent) of the revised user fees increase by less than 20 percent, with many (more than 50 percent) of them increasing by less than 10 percent.

Approximately 30 percent of the new and revised user fees are more than $50 or increase by more than 20 percent, respectively. We were concerned about the impact of these user fees, so we reviewed past requests for the services to which these fees apply. Requests for these services have been low and we do not expect them to change as a result of these user fees. Most of the new user fees that exceed $50 either include more direct labor time than those services with lower user fees or require premium costs to pay for special materials. The revised user fees that will increase by more than 20 percent include those user fees that were underestimated when initially established. Experience and more accurate accounting data have shown that most of these services require more direct labor hours, require premium costs to pay for special materials, or should be calculated using average lab salaries, which is consistent with the calculations for other user fees throughout 9 CFR part 130.

Alternatives

One alternative to this rule would be to make no changes to the current user fees. We do not consider making any changes to the current user fees a reasonable alternative because we would not recover the full cost of providing veterinary diagnostic and import- and export-related services. Therefore, the only way to pay for these services is through charges to the customer through user fees or other forms of reimbursable agreements.

Another alternative to this rule would be to either exempt small businesses from these user fees or establish a different user fee structure for small businesses. We do not consider exempting small businesses from these user fees or establishing a different user fee structure for small businesses as viable options. Every business, including small businesses, using a government service should pay the cost of that service, rather than having other businesses pay a disproportionate share or passing those costs on to the general public, who are not the primary beneficiary of the service.

Another alternative to this rule would be to spread the increased costs over all of the user fees, so no single user fee would increase significantly. Our user fees are calculated to recover the costs of the service for which each user fee is charged. To spread the increases among user fees would mean that some entities

would subsidize others. The intent of user fees is to shift the burden of the cost of these services from the general taxpayer to the entity receiving the service. Therefore, it would not be equitable for APHIS to spread the increases evenly over all of the user fees.

This rule contains no new information collection or recordkeeping requirements.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control numbers are 0579–0015, 0579–0040, 0579–0055, and 0579–0094.

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we are amending 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 is revised to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 130.1 is amended as follows:

a. The definitions for *APHIS animal health technician, APHIS veterinarian,* and *reference assistance testing* are removed.

b. Definitions for *APHIS representative, nonstandard care and handling,* and *nonstandard housing* are added, in alphabetical order, to read as set forth below.

c. The definitions for *export health certificate* and *pet birds* are revised to read as set forth below.

d. Footnotes 3 and 4 and their references are removed, and footnote 2 and its reference are redesignated as footnote 3.

e. At the end of the definitions for *zoo bird* and *zoo equine,* a reference to footnote 3 is added.

§ 130.1 Definitions.

* * * * *

APHIS representative. An individual, including, but not limited to, an animal health technician or veterinarian, authorized by the Administrator to perform the services for which the user fees in this part are charged.

* * * * *

Export health certificate. An official document that, as required by the importing country, is endorsed by an APHIS representative and states that animals, animal products, organisms, vectors, or birds to be exported from the United States were found to be healthy and free from evidence of communicable diseases and pests.

* * * * *

Nonstandard care and handling. Nonstandard care and handling includes hand-feeding, more than one feeding per day, frequent observation, and any handling or observation that requires personnel to attend to the birds or poultry outside of normal business hours.[2]

Nonstandard housing. Nonstandard housing is individual housing not normally available at an APHIS animal import center, any housing constructed or purchased at the request of the importer, any housing with blinds, dense foliage, or plants, and any housing where the temperature can be adjusted.

* * * * *

Pet birds. Birds, except hatching eggs and ratites, that are imported or exported for the personal pleasure of their individual owners and are not intended for resale.

* * * * *

4. Section 130.2 is revised to read as follows:

§ 130.2 User fees for individual animals and certain birds quarantined in APHIS Animal Import Centers.

(a) *Standard requirements.* User fees for each animal or bird receiving standard housing, care, feed, and handling while quarantined in an APHIS owned or operated animal import center or quarantine facility are listed in the following table. Each user fee listed in the table is assessed per animal or bird quarantined by APHIS. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Animal or bird	Daily user fee
Birds (excluding ratites and pet birds imported in accordance with part 93 of this subchapter):	
0–250 grams	$1.00
251–1,000 grams	3.25
Over 1,000 grams	7.50
Domestic or zoo animals (except equines, birds, and poultry):	
Bison, bulls, camels, cattle, or zoo animals	56.50
All other—including but not limited to alpacas, llamas, goats, sheep, and swine	15.00
Equines (including zoo equines, but excluding miniature horses):	
1st through 3rd day	149.50
4th through 7th day	108.25
8th and subsequent days	91.75
Miniature horses	40.25
Poultry:	
Doves, pigeons, quail	2.00
Chickens, ducks, grouse, guinea fowl, partridges, pea fowl, pheasants	3.50
Large poultry and large waterfowl including but not limited to game cocks, geese, swans, and turkeys	8.25
Ratites:	
Chicks (less than 3 months old)	5.75
Juveniles (between 3 and 10 months old)	8.00

[2] Normal business hours at the APHIS Animal Import Centers are: 7:30 a.m. to 11:30 a.m., Honolulu, HI; 7 a.m. to 3:30 p.m., Miami, FL; and 8 a.m. to 4:30 p.m., Newburgh, NY.

Animal or bird	Daily user fee
Adults (11 months old and older)	16.25

(b) *Special requirements.* User fees for birds or poultry, including zoo birds or poultry, receiving nonstandard housing, care, or handling to meet special requirements while quarantined in an APHIS owned or operated Animal Import Center or quarantine facility are listed in the following table. The user fees listed in the table are assessed for each bird or poultry quarantined by APHIS. Special requirements may be requested by the importer or required by an APHIS representative. Certain conditions or traits, such as pregnancy or aggression, may necessitate special requirements for certain birds or poultry. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Bird or poultry (nonstandard housing, care, or handling)	Daily user fee
Birds 0–250 grams and doves, pigeons, and quail	$3.25
Birds 251–1,000 grams and poultry such as chickens, ducks, grouse, guinea fowl, partridges, pea fowl, and pheasants	7.50
Birds over 1,000 grams and large poultry and large waterfowl including but not limited to game cocks, geese, swans, and turkeys	14.00

(c) *Feed.* The importer must either provide feed or pay for it on an actual cost basis, including the cost of delivery to the APHIS owned or operated Animal Import Center or quarantine facility, for any animal or bird that requires a diet other than standard feed, including but not limited to diets of fruit, insects, nectar, or fish. (Approved by the Office of Management and Budget under control number 0579–0094)

5. Section 130.3 is amended by revising paragraph (a)(1), including the table, to read as follows:

§ 130.3 User fees for exclusive use of space at APHIS Animal Import Centers.

(a)(1) An importer may request to exclusively occupy a space at an APHIS animal import center. The user fees for spaces at APHIS animal import centers are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

APHIS animal import center	Space	Monthly (30 day) user fee
Miami, FL:		
South Wing	6,952 sq. ft. (645.9 sq. m.)	$30,285.00
North Wing	6,545 sq. ft. (608.1 sq. m.)	$29,377.00
Newburgh, NY:		
Space A	5,396 sq. ft. (503.1 sq. m.)	43,102.00
Space B	8,903 sq. ft. (827.1 sq. m.)	71,118.50
Space C	905 sq. ft. (84.1 sq. m.)	7,229.00

* * * * * * *

6. Sections 130.5 through 130.8 are revised to read as follows:

§ 130.5 User fees for services at privately operated permanent and temporary import quarantine facilities.

(a) User fees for each animal quarantined in a privately operated permanent or temporary import quarantine facility will be calculated at $56.00 per hour, or $14.00 per quarter-hour, with a minimum fee of $16.50, for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

(b) [*Reserved*]

(Approved by the Office of Management and Budget under control number 0579–0094)

§ 130.6 User fees for import or entry services for live animals at land border ports along the United States-Mexico border.

(a) User fees, with a minimum fee of $16.50, for live animals presented for importation into or entry into the United States through a land border port along the United States-Mexico border are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

Type of live animal	User fee (per head)
Feeder	$1.75
Slaughter	2.50
Horses, other than slaughter	29.25
In-bond or in transit	3.75
Any ruminants not covered above	6.00

(b) [*Reserved*]

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

§ 130.7 User fees for import or entry services for live animals at all other ports of entry.

(a) User fees, with a minimum fee of $16.50, for live animals presented for importation into or entry into the United States through any port of entry, other than a land border port along the border between the United States and Mexico, are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

Type of live animal	User fee
Animals being imported into the United States:	
Horses, other than slaughter and in transit	$19.00 per head.
Breeding animals (grade animals, except horses):	
Swine	0.50 per head.
Sheep and goats	0.50 per head.
All others	2.25 per head.
Registered animals, all types	4.00 per head.
Feeder animals:	
Cattle (not including calves)	1.00 per head.
Swine	0.25 per head.
Sheep and calves	0.25 per head.
Slaughter animals, all types	16.50 per load.
Poultry (including eggs), imported for any purpose	33.00 per load.
Animals transiting [1] the United States.	
Cattle	1.00 per head
Swine	0.25 per head
Sheep and goats	0.25 per head
Horses and all other animals	4.50 per head

[1] The user fee in this section will be charged for intransit authorizations at the port where the authorization services are performed. For additional services provided by APHIS, at any port, the applicable hourly user fee will apply.

(b) [*Reserved*]

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

§ 130.8 User fees for other services.

(a) User fees for other services that are not specifically addressed elsewhere in part 130 are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

Service	User fee
Germ plasm being exported: [1]	
Embryo:	
(up to 5 donor pairs)	$54.75 per certificate.
(each additional group of donor pairs, up to 5 pairs per group, on the same certificate)	24.75 per group of donor pairs.
Semen	33.50 per certificate.
Germ plasm being imported: [2]	
Embryo	39.50 per load.
Semen	39.50 per load.
Import compliance assistance:	
Simple (2 hours or less)	51.25 per release.
Complicated (more than 2 hours)	131.75 per release.
Inspection for approval of slaughter establishment:	
Initial approval	246.50 for all inspections required during the year.
Renewal	213.50 for all inspections required during the year
Inspection of approved establishments, warehouses, and facilities under 9 CFR parts 94 through 96:	
Approval (Compliance Agreement)	262.75 for first year of 3-year approval (for all inspections required during the year).
Renewed approval	152.00 per year for second and third years of 3-year approval (for all inspections required during the year).
Pet birds, except pet birds of U.S. origin entering the United States from Canada:	
Which have been out of United States 60 days or less	71.25 per lot.
Which have been out of United States more than 60 days	169.75 per lot.
Processing VS form 16–3, ''Application for Permit to Import Controlled Material/Import or Transport Organisms or Vectors'':	
For permit to import fetal bovine serum when facility inspection is required	208.50 per application.
For all other permits	27.50 per application.
Amended application	11.50 per amended application.

Service	User fee
Application renewal	15.00 per application.
Release from export agricultural hold:	
Simple (2 hours or less)	51.25 per release.
Complicated (more than 2 hours)	131.75 per release.

[1] This user fee includes a single inspection and resealing of the container at the APHIS employee's regular tour of duty station or at a limited port. For each subsequent inspection and resealing required, the applicable hourly user fee would apply.

[2] For inspection of empty containers being imported into the United States, the applicable hourly user fee would apply, unless a user fee has been assessed under 7 CFR 354.3.

(b) [*Reserved*]

(Approved by the Office of Management and Budget under control numbers 0579–0015, 0579–0040, 0579–0055, and 0579–0094)

7. Section 130.9 is amended by revising the introductory text of paragraph (a) to read as follows and by removing and reserving paragraph (b).

§ 130.9 User fees for miscellaneous import or entry services.

(a) User fees for import or entry services listed in (a)(1) through (a)(4) of this paragraph will be calculated at $56.00 per hour, or $14.00 per quarter hour, with a minimum fee of $16.50, for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

* * * * *

8. In § 130.10, the introductory text of paragraph (a) is revised to read as follows:

§ 130.10 User fees for pet birds quarantined at APHIS-owned or supervised quarantine facilities.

(a) User fees for each pet bird quarantined in an animal import center [4] or other APHIS-owned or supervised quarantine facility are listed in the following table. These user fees include standard care, feed, and handling. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

* * * * *

9. Sections 130.14 through 130.18 are revised to read as follows:

§ 130.14 User fees for FADDL veterinary diagnostics.

(a) Diagnostic reagents. User fees for diagnostic reagents [5] provided by FADDL are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Reagent	User fee	Unit
Bovine antiserum, any agent	$80.00	1 ml.
Caprine antiserum, any agent	97.50	1 ml.
Cell culture antigen/microorganism	63.75	1 ml.
Equine antiserum, any agent	100.50	1 ml.
Fluorescent antibody conjugate	120.25	1 ml.
Guinea pig antiserum, any agent	104.50	1 ml.
Monoclonal antibody	122.75	1 ml.
Ovine antiserum, any agent	94.25	1 ml.
Porcine antiserum, any agent	81.25	1 ml.
Rabbit antiserum, any agent	98.50	1 ml.

(b) *Veterinary diagnostics tests.* User fees for veterinary diagnostic tests performed at FADDL are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Agar gel immunodiffusion	$14.75	Test.
Card	8.25	Test.
Complement fixation	33.00	Test.
Direct immunofluorescent antibody	11.00	Test.
Enzyme linked immunosorbent assay	12.75	Test.
Fluorescent antibody neutralization (hog cholera)	96.00	Test.
Hemagglutination inhibition	27.75	Test.
Immunoperoxidase	18.25	Test.
Indirect fluorescent antibody	23.25	Test.
In-vitro safety	299.50	Test.
In-vivo safety	4345.75	Test.
Latex agglutination	11.00	Test.
Tube agglutination	14.00	Test.
Virus isolation (oesophageal/pharyngeal)	88.25	Test.
Virus isolation in embryonated eggs	176.00	Test.
Virus isolation, other	84.50	Test.

[4] APHIS animal import centers are located in Honolulu, HI, Miami, FL, and Newburgh, NY. The addresses of these facilities are published in part 93 of this chapter.

[5] Reagents provided by FADDL are for the diagnosis of animal diseases foreign to the United States. These reagents may be available to customers on the mainland after safety testing with permission from the Administrator. The customer may have to pay the cost for the safety test in addition to the reagent user fee. For more information on the specific reagents contact: Laboratory Chief, USDA, APHIS, VS, FADDL, Greenport, NY 11344; phone (516) 323–2500, FAX (516) 323–2798.

Test	User fee	Unit
Virus neutralization	25.75	Test.

(c) *Other veterinary diagnostic services.* User fees for other veterinary diagnostic services performed at FADDL are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Veterinary diagnostic service	User fee	Unit
Bacterial isolation	$55.00	Test.
Hourly user fee services [1]	220.00	Hour.
Hourly user fee services—Quarter hour	55.00	Quarter hour.
Infected cells on chamber slides or plates	31.00	Slide.
Reference animal tissues for immunohistochemistry	94.25	Set.
Sterilization by gamma radiation	530.00	Can.
Training (school or technical assistance)	450.00	Per person per day.
Virus titration	55.00	Test.

[1] For all veterinary diagnostic services for which there is no flat rate user fee, the hourly rate user fee will be calculated for the actual time required to provide the service.

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

§ 130.15 User fees for veterinary diagnostic isolation and identification tests performed at NVSL (excluding FADDL) or other authorized site.

(a) *Bacteriology isolation and identification tests.* User fees for bacteriology isolation and identification tests performed at NVSL (excluding FADDL) or other authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Bacterial identification, automated	$16.00	Isolate.
Bacterial identification, non-automated	61.25	Isolate.
Bacterial isolation	16.00	Sample.
Bacterial serotyping, all other	30.75	Isolate.
Bacterial serotyping, Pasteurella multocida	7.50	Isolate.
Bacterial serotyping, Salmonella	21.25	Isolate.
Bacterial toxin typing	91.50	Isolate.
Bacteriology requiring special characterization	27.00	Test.
DNA fingerprinting	36.50	Test
DNA probe	29.50	Test.
Fluorescent antibody [1]	9.75	Test.
Leptospira culturing	27.00	Sample.
Leptospira serotyping	80.50	Isolate.
Mycobacterium avian serotyping	157.50	Isolate.
Mycobacterium identification (biochemical)	63.25	Isolate.
Mycobacterium identification (gas chromatography)	26.50	Procedure.
Mycobacterium isolation, animal inoculations	520.50	Submission.
Mycobacterium isolation, all other	105.50	Submission.
Mycobacterium paratuberculosis isolation	26.50	Submission.
Mycology culture identification	52.75	Isolate.
Mycology/fungus culture or isolation	26.50	Isolate.
Mycoplasma isolation	26.25	Sample.
Mycoplasma identification	26.25	Isolate.
Phage typing, all other	26.50	Isolate.
Phage typing, Salmonella enteritidis	10.75	Isolate.
Plasmid typing	26.50	Isolate.
Warburg	316.50	Isolate.

[1] A discount will apply to all diagnostic, non-import related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody, virus neutralization, and peroxidase linked antibody tests. This discount only applies to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. The user fee for each discounted test will be 20 percent of the original user fee rounded up to the nearest quarter. This discount will apply for tests for all diseases except equine piroplasmosis, bovine piroplasmosis, dourine, and glanders.

(b) *Virology identification tests.* User fees for virology identification tests performed at NVSL (excluding FADDL) or other authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Fluorescent antibody tissue section	$18.25	Test.
Virus isolation for Newcastle disease virus	15.25	Test.
Virus isolation (except for Newcastle disease virus)	31.50	Test.

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

§ 130.16 User fees for veterinary diagnostic serology tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) *Bacteriology serology tests.* User fees for bacteriology serology tests performed at NVSL (excluding FADDL) or other authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Brucella milk ELISA	$15.75	Test.
Brucella ring (BRT)	10.50	Test.
Brucella ring, Heat inactivated (HIRT)	10.50	Test.
Brucella ring, Serial (Serial BRT)	15.75	Test.
Buffered acidified plate antigen presumptive	4.00	Test.
Card	2.00	Test.
Complement fixation [1]	9.00	Test.
Enzyme linked immunosorbent assay for dourine, glanders, or piroplasmosis	9.00	Test.
Enzyme linked immunosorbent assay, all other	4.75	Test.
Indirect fluorescent antibody [1]	9.75	Test.
Mercaptoethanol	4.00	Test.
Microscopic agglutination—includes up to 5 serovars [2]	11.00	Sample.
Mycology/fungus serology	10.50	Test.
Particle concentration fluorescent immuno assay (PCFIA)	18.25	Test.
Plate	4.00	Test.
Rapid automated presumptive	4.25	Test.
Rivanol	4.00	Test.
Tube agglutination	4.00	Test.

[1] A discount will apply to all diagnostic, non-import related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody, virus neutralization, and peroxidase linked antibody tests. This discount only applies to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. The user fee for each discounted test will be 20 percent of the original user fee rounded up to the nearest quarter. This discount will apply for tests for all diseases except equine piroplasmosis, bovine piroplasmosis, dourine, and glanders.

[2] The user fee for the sixth and subsequent serovar will be $2.00 each.

(b) *Virology serology tests.* User fees for virology serology tests performed at NVSL (excluding FADDL) or at authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Agar gel immunodiffusion	$5.00	Test.
Complement fixation [1]	9.00	Test.
Enzyme linked immunosorbent assay	4.75	Test.
Hemagglutination inhibition [1]	7.50	Test.
Indirect fluorescent antibody [1]	9.75	Test.
Latex agglutination	5.00	Test.
Peroxidase linked antibody [1]	9.75	Test.
Plaque reduction neutralization	7.75	Test.
Rabies fluorescent antibody neutralization	26.50	Test.
Virus neutralization [1]	7.75	Test.

[1] A discount will apply to all diagnostic, non-import related complement fixation, hemagglutination inhibition, fluorescent antibody, indirect fluorescent antibody, virus neutralization, and peroxidase linked antibody tests. This discount only applies to the 11th and subsequent tests on the same submission by the same submitter for the same test and antigen. The user fee for each discounted test will be 20 percent of the original user fee rounded up to the nearest quarter. This discount will apply for tests for all diseases except equine piroplasmosis, bovine piroplasmosis, dourine, and glanders.

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

§ 130.17 User fees for other veterinary diagnostic laboratory tests performed at NVSL (excluding FADDL) or at authorized sites.

(a) User fees for veterinary diagnostics tests performed at the Pathobiology Laboratory at NVSL (excluding FADDL) or at authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Test	User fee	Unit
Aflatoxin quantitation	$20.50	Test.
Aflatoxin screen	11.25	Test.
Agar gel immunodiffusion spp. identification	6.25	Test.
Antibiotic (bioautography) quantitation	25.00	Test.
Antibiotic (bioautography) screen	50.00	Test.
Antibiotic inhibition	25.25	Test.
Arsenic	6.75	Test.
Ergot alkaloid screen	25.25	Test.
Ergot alkaloid confirmation	33.00	Test.

Test	User fee	Unit
Feed microscopy	25.25	Test.
Fumonisin only	20.50	Test.
Gossypol	37.75	Test.
Mercury	56.00	Test.
Metals screen	29.75	Test.
Metals single element confirmation	6.75	Test.
Mycotoxin: aflatoxin-liver	82.25	Test.
Mycotoxin screen	34.00	Test.
Nitrate/nitrite	25.00	Test.
Organic compound confirmation	34.00	Test.
Organic compound screen	114.75	Test.
Parasitology	19.25	Test.
Pesticide quantitation	52.25	Test.
Pesticide screen	38.00	Test.
pH	10.00	Test.
Plate cylinder	37.75	Test.
Selenium	33.25	Test.
Silicate/carbonate disinfectant	25.00	Test.
Temperature disks	50.25	Test.
Toxicant quantitation, other	42.25	Test.
Toxicant screen, other	25.00	Test.
Vomitoxin only	20.75	Test.
Water activity	12.50	Test.
Zearaleone quantitation	20.50	Test.
Zearaleone screen	11.25	Test.

(b) [*Reserved*]

(Approved by the Office of Management and Budget under control numbers 0579–0055 and 0579–0094)

§ 130.18 User fees for veterinary diagnostic reagents produced at NVSL or other authorized site (excluding FADDL).

(a) *Bacteriology reagents.* User fees for bacteriology reagents produced by the Diagnostic Bacteriology Laboratory at NVSL (excluding FADDL) or other authorized site are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Reagent	User fee	Unit
Anaplasma card test antigen	$34.00	2 ml.
Anaplasma card test kit without antigen	105.50	Kit.
Anaplasma CF antigen	17.00	2 ml.
Anaplasma stabilate	67.25	4.5 ml.
Avian origin bacterial antiserums, mycoplasma	11.50	1 ml.
Avian origin bacterial antiserums, all other	17.75	1 ml.
Bacterial agglutinating antigens other than brucella and salmonella pullorum	30.50	5 ml.
Bacterial conjugates	36.00	1 ml.
Bacterial disease CF antigens, all other	8.50	1 ml.
Bacterial ELISA antigens	9.50	1 ml.
Bacterial or protozoal antiserums, all other	7.25	1 ml.
Bacterial reagent culture [1]	21.25	Culture.
Bacterial reference culture [2]	63.25	Culture.
Bacteriophage reference culture	63.25	Culture.
Bovine serum factor	1.25	2 ml.
Brucella abortus CF antigen	34.00	60 ml.
Brucella agglutination antigens, all other	34.00	60 ml.
Brucella buffered plate antigen	50.00	60 ml.
Brucella canis tube antigen	30.50	25 ml.
Brucella card test antigen (packaged)	19.50	Package.
Brucella card test kit without antigen	70.25	Kit.
Brucella cells	5.25	Gram.
Brucella cells, dried	2.00	Pellet.
Brucella ring test antigen	72.75	60 ml.
Brucella rivanol solution	8.75	60 ml.
Dourine CF antigen	17.50	1 ml.
Dourine stabilate	34.75	4.5 ml.
Equine and bovine origin hemoparasitic antiserums	21.25	1 ml.
Equine negative control CF antigen	171.25	1 ml.
Equine origin glanders antiserum	18.25	1 ml.
Flazo-orange	6.25	3 ml.
Glanders CF antigen	17.50	1 ml.
Hemoparasitic disease CF antigens, all other	158.25	1 ml.
Leptospira transport medium	3.25	10 ml.
Monoclonal antibody	37.50	1 ml.
Mycobacterium spp. old tuberculin	3.75	1 ml.

Reagent	User fee	Unit
Mycobacterium spp. PPD	3.25	1 ml.
Mycoplasma hemagglutination antigens	105.50	5 ml.
Negative control serums	4.00	1 ml.
Other spp. antiserum, any	32.75	1 ml.
Rabbit origin bacterial antiserum	14.25	1 ml.
Salmonella pullorum microagglutination antigen	6.25	5 ml.
Stabilates, all other	258.25	4.5 ml.

[1] A reagent culture is a bacterial culture that has been subcultured one or more times after being tested for purity and identity. It is intended for use as a reagent with a diagnostic test such as the leptospiral microagglutination test.
[2] A reference culture is a bacterial culture that has been thoroughly tested for purity and identity. It should be suitable as a master seed for future cultures.

(b) *Virology reagents.* User fees for virology reagents produced by the Diagnostic Virology Laboratory at NVSL (excluding FADDL) or at authorized sites are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Reagent	User fee	Unit
Antigen, except avian influenza and chlamydia psittaci antigens, any	$41.50	2 ml.
Avian antiserum except avian influenza antiserum, any	23.00	2 ml.
Avian influenza antigen, any	9.25	2 ml.
Avian influenza antiserum, any	53.75	6 ml.
Bovine or ovine serum, any	88.00	2 ml.
Cell Culture	20.00	Flask.
Chlamydia psittaci spp. of origin monoclonal antibody panel	47.25	Panel.
Conjugate, any	20.25	1 ml.
Diluted positive control serum, any	6.75	2 ml.
Equine antiserum, any	12.25	2 ml.
Hog Cholera tissue sets	81.50	Tissue set.
Monoclonal antibody	37.50	1 ml.
Other spp. antiserum, any	32.75	1 ml.
Porcine antiserum, any	60.50	2 ml.
Positive control tissues, all	4.25	2 cm^2 section.
Rabbit origin antiserum	14.25	1 ml.
Reference virus, any	63.50	0.6 ml.
Viruses (except reference viruses), chlamydia psittaci agent, or chlamydia psittaci antigen, any	5.50	0.6 ml.

(Approved by the Office of Management and Budget under control number 0579–0094)

10. A new § 130.19 is added to read as follows:

§ 130.19 User fees for other veterinary diagnostic services or materials provided at NVSL (excluding FADDL).

(a) User fees for other veterinary diagnostic services or materials available from NVSL (excluding FADDL) are listed in the following table. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

Service	User fee	Unit
Antimicrobial susceptibility test	$30.50	Isolate.
Avian safety test	2,701.75	Test.
Check tests, anaplasma complement fixation	132.00	Kit [1].
Check tests, culture	88.00	Kit [1].
Check tests, serology, all other	125.75	Kit [1].
Fetal bovine serum safety test	673.50	Verification.
Hourly user fee services: [2].		
Hour	56.00	Hour.
Quarter hour	14.00	Quarter Hour.
Minimum	16.50	
Manual, Brucellosis complement fixation	13.00	1 copy.
Manual, Brucellosis culture	52.75	1 copy.
Manual, Tuberculosis culture (English or Spanish)	79.25	1 copy.
Manual, Veterinary mycology	105.50	1 copy.
Manual, Anaplasmosis, Johne's disease, mycoplasma hyopneumonia, piroplasmosis, dourine, or glanders	21.25	1 copy.
Manuals or standard operating procedure (SOP), all other	13.25	1 copy.
Manuals or SOP, per page	2.00	1 page.
Training (school or technical assistance)	120.00	Per person per day.

[1] Any reagents required for the check test will be charged separately.

[2] For veterinary diagnostic services for which there is no flat rate user fee the hourly rate user fee will be calculated for the actual time required to provide the service.

(b) [*Reserved*]

(Approved by the Office of Management and Budget under control number 0579–0094)

11. Section 130.20 is amended by revising the introductory text in paragraphs (a) and (b)(1) to read as follows and by removing paragraph (d).

§ 130.20 User fees for endorsing export health certificates.

(a) User fees for the endorsement of export health certificates that do not require the verification of tests or vaccinations are listed in the following table. The user fees apply to each export health certificate [6] endorsed for the following types of animals, birds, or animal products, regardless of the number of animals, birds, or animal products covered by the certificate. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

* * * * *

(b)(1) User fees for the endorsement of export health certificates that require the verification of tests or vaccinations are listed in the following table. The user fees apply to each export health certificate [6] endorsed for animals and birds depending on the number of animals or birds covered by the certificate and the number of tests required. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

* * * * *

12. Section 130.21 is amended by revising the section heading and the introductory text in paragraph (a) to read as follows, by removing and reserving paragraph (b), and by removing paragraph (c).

§ 130.21 User fees for inspection and supervision services provided within the United States for export animals, birds, and animal products.

(a) User fees for inspection and supervision services listed in (a)(1) through (a)(7) of this paragraph will be calculated at $56.00 per hour, or $14.00 per quarter-hour, with a minimum fee of $16.50, for each employee required to perform the service. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with §§ 130.50 and 130.51.

* * * * *

§ 130.49 [Amended]

13. In § 130.49, paragraph (a) introductory text is amended by removing the reference ''130.18'' and adding the reference ''130.19'' in its place.

14. Sections 130.50 and 130.51 are revised to read as follows:

§ 130.50 Payment of user fees.

(a) *Who must pay APHIS user fees?* Any person for whom a service is provided related to the importation, entry, or exportation of an animal, article, or means of conveyance or related to veterinary diagnostics, and any person requesting such service, shall be jointly and severally liable for payment of fees assessed.

(b) *Associated charges*—(1) *Reservation fee.* Any reservation fee paid by an importer under part 93 of this chapter will be applied to the APHIS user fees specified in §§ 130.2 and 130.3 for animals or birds quarantined in an animal import center.

(2) *Special handling expenses.* The user fees in this part do not include any costs that may be incurred due to special mail handling, including, but not limited to, express, overnight, or foreign mailing. If any service requires special mail handling, the user must pay all costs incurred, in addition to the user fee for the service.

(3) *When do I pay an additional amount for employee(s) working overtime?* You must pay an additional amount if you need an APHIS employee to work on a Sunday, on a holiday, or at any time outside the normal tour of duty of that employee. You pay the amount specified in paragraphs (b)(3) (i) or (ii), as relevant, for each employee needed to get the work done.

(i) *What additional amount do I pay if I receive a flat rate user fee service?* In addition to the flat rate user fee(s), you pay the overtime rate listed in the following table for each employee needed to get the work done:

OVERTIME [1] [2] FOR FLAT RATE USER FEES

	Outside the employee's normal tour of duty	
	Monday through Saturday and holidays	Sundays
Amount per hour if we must inspect, test, certify, or quarantine your animals, animal products, or other commodities (see § 97.1(a) for details)	$37.84	$47.96
Amount per hour if we must inspect your commercial aircraft (see § 97.1(a)(3) for details)	30.64	39.36

[1] Minimum charge of 2 hours, unless performed on the employee's regular work day and performed in direct continuation of the regular work day or begun within an hour of the regular work day.

[2] When the 2 hour minimum applies, you may need to pay commuted travel time. (See § 97.1(b) for specific information about commuted travel time.)

(ii) *What additional amount do I pay if I receive an hourly rate user fee service?* Instead of paying the hourly rate user fee, you pay the rate listed in the following table for each employee needed to get the work done:

[6] An export health certificate may need to be endorsed for an animal being exported from the United States if the country to which the animal is being shipped requires one. APHIS endorses export health certificates as a service.

PREMIUM RATE USER FEE

	Outside the employee's normal tour of duty	
	Monday through Saturday and holidays	Sundays
Per hour	$65.00	$74.00
Per quarter-hour	16.25	18.50
Minimum	16.50	16.50

(c) *When are APHIS user fees due?*—(1) *Animal and bird quarantine and related tests.* User fees specified in §§ 130.2, 130.3, 130.5, 130.10, and tests specified in §§ 130.14 through 130.19 for animals and birds in an Animal Import Center or privately operated permanent or temporary import quarantine facilities, including user fees for tests conducted on these animals or birds, must be paid prior to the release of those animals or birds from quarantine.

(2) *Supervision and inspection services for export animals, animal products.* User fees for supervision and inspection services specified in § 130.21 must be paid when billed, or, if covered by a compliance agreement signed in accordance with this chapter, must be paid when specified in the agreement.

(3) *Export health certificates.* User fees for export health certificates specified in § 130.20 must be paid prior to receipt of endorsed certificates unless APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed.

(4) *Veterinary diagnostics.* User fees specified in §§ 130.14 through 130.19 for veterinary diagnostic services, such as tests on samples submitted to NVSL or FADDL, diagnostic reagents, slide sets, tissue sets, and other veterinary diagnostic services, must be paid when the veterinary diagnostic service is requested, unless APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed.

(5) *Other user fee services.* User fees specified in §§ 130.6, 130.7, 130.8, and 130.9 must be paid when service is provided (for example when live animals are inspected when presented for importation at a port of entry), unless APHIS determines that the user has established an acceptable credit history, at which time payment may, at the option of the user, be made when billed.

(d) *What payment methods are acceptable?* Payment must be for the exact amount due and may be paid by:

(1) Cash, will be accepted only during normal business hours if payment is made at an APHIS office [7] or an Animal Import Center;

(2) All types of checks, including traveler's checks, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA;

(3) Money orders, drawn on a U.S. bank in U.S. dollars and made payable to the U.S. Department of Agriculture or USDA; or

(4) Credit cards (VISA™ and MasterCard™) if payment is made at an Animal Import Center or an APHIS office that is equipped to process credit cards.[7]

§ 130.51 Penalties for nonpayment or late payment.

(a) *Unpaid debt.* If any person for whom the service is provided fails to pay when due any debt to APHIS, including any user fee due under 7 CFR chapter III or chapter I of this title, then:

(1) *Subsequent user fee payments.* Payment must be made for subsequent user fees before the service is provided if:

(i) For unbilled fees, the user fee is unpaid 60 days after the date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 60 days after date of bill;

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(2) *Resolution of difference between estimate and actual.* APHIS will estimate the user fee to be paid; any difference between the estimate and the actual amount owed to APHIS will be resolved as soon as reasonably possible following the delivery of the service, with APHIS returning any excess to the payor or billing the payor for the additional amount due.

(3) *Prepayment form.* The prepayment must be in guaranteed form, such as money order, certified check, or cash. Prepayment in guaranteed form will continue until the debtor pays the delinquent debt.

(4) *Denied service.* Service will be denied until the debt is paid if:

(i) For unbilled fees, the user fee is unpaid 90 days after date the pertinent regulatory provision indicates payment is due;

(ii) For billed fees, the user fee is unpaid 90 days after date of bill;

(iii) The person for whom the service is provided or the person requesting the service has not paid the late payment penalty or interest on any delinquent APHIS user fee; or

(iv) Payment has been dishonored.

(b) *Unpaid debt during service.* If APHIS is in the process of providing a service for which an APHIS user fee is due, and the user has not paid the fee within the time required, or if the payment offered by the user is inadequate or unacceptable, then APHIS will take the following action:

(1) *Animals or birds in quarantine.* If an APHIS user fee specified in § 130.2 or § 130.3 is due for animals or birds in quarantine at an animal import center or at a privately operated import quarantine facility, APHIS will not release them.

(2) *Export health certificate.* If an APHIS user fee specified in § 130.20 is due for an export health certificate, APHIS will not release the certificate.

(3) *Veterinary diagnostics.* If an APHIS user fee specified in §§ 130.14 through 130.19 is due for a veterinary diagnostic test or service, APHIS will not release the test result, any endorsed certificate, or any other veterinary diagnostic service.

(c) *Late payment penalty.* If for unbilled user fees, the user fees are

[7] A list of APHIS offices and Animal Import Centers that accept cash or credit cards may be obtained from the Animal and Plant Health Inspection Service, Veterinary Services, National Center for Import and Export, 4700 River Road Unit 38, Riverdale, MD 20738–1231.

unpaid 30 days after the date the pertinent regulatory provisions indicates payment is due, or if billed, are unpaid 30 days after the date of the bill, APHIS will impose a late payment penalty and interest charges in accordance with 31 U.S.C. 3717.

(d) *Dishonored payment penalties.* User fees paid with dishonored forms of payment, such as a check returned for insufficient funds, will be subject to interest and penalty charges in accordance with 30 U.S.C. 3717. Administrative charges will be assessed at $20.00 per dishonored payment to be paid in addition to the original amount owed. Payment must be in guaranteed form, such as cash, money order, or certified check.

(e) *Debt collection management.* In accordance with the Debt Collection Improvement Act of 1996, the following provisions apply:

(1) *Taxpayer identification number.* APHIS will collect a taxpayer identification number from all persons, other than Federal agencies, who are liable for a user fee.

(2) *Administrative offset.* APHIS will notify the Department of Treasury of debts that are over 180 days delinquent for the purposes of administrative offset. Under administrative offset, the Department of Treasury will withhold funds payable by the United States to a person (i.e., Federal income tax refunds) to satisfy the debt to APHIS.

(3) *Cross-servicing.* APHIS will transfer debts that are over 180 days delinquent to the Department of Treasury for cross-servicing. Under cross-servicing, the Department of Treasury will collect debts on behalf of APHIS. Exceptions will be made for debts that meet certain requirements, for example, debts that are already at a collection agency or in payment plan.

(4) *Report delinquent debt.* APHIS will report all unpaid debts to credit reporting bureaus.

(f) *Animals or birds abandoned after quarantine at an animal import center.* Animals or birds left in quarantine at an animal import center for more than 30 days after the end of the required quarantine period will be deemed to be abandoned.

(1) After APHIS releases the abandoned animals or birds from quarantine, APHIS may seize them and sell or otherwise dispose of them, as determined by the Administrator, provided that their sale is not contrary to any Federal law or regulation, and may recover all expenses of handling the animals or birds from the proceeds of their sale or disposition.

(2) If animals or birds abandoned in quarantine at an animal import center cannot be released from quarantine, APHIS may seize and dispose of them, as determined by the Administrator, and may recover all expenses of handling the animals or birds from the proceeds of their disposition and from persons liable for user fees under § 130.50(a).

Done in Washington, DC, this 30th day of September 1998.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 98–26825 Filed 10–6–98; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–266–AD; Amendment 39–10818; AD 98–21–10]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–200 and –300 series airplanes, that requires repetitive inspections for cracking of the lower skin panels of the outer wings; and repair, if necessary. This amendment also requires modification of the panels and a follow-on inspection to detect cracking of the modified areas, which constitute terminating action for the repetitive inspections. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracking of the lower skin panels of the outer wings, and consequent reduced structural integrity of the airplane.

DATES: Effective November 12, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of November 12, 1998.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200 and –300 series airplanes was published in the **Federal Register** on February 10, 1998 (63 FR 6683). That action proposed to require repetitive inspections for cracking of the lower skin panels of the outer wings; repair, if necessary; modification of the panels; and a follow-on inspection to detect cracking of the modified areas, which would constitute terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed AD.

Request to Revise Applicability of the Proposal

One commenter, the manufacturer, requests that the applicability of the proposed AD be revised to exclude airplanes on which ATR Modification 2805 has been accomplished. The commenter states that this modification was developed to address cracking that was detected during full-scale fatigue testing and has been accomplished on certain airplanes during production. The commenter also points out that French airworthiness directive 93–190–051(B), which was referenced in the proposal as the parallel French airworthiness directive, excludes airplanes on which ATR Modification 2805 has been accomplished.

The FAA concurs with the commenter's request and has revised the applicability of the final rule to exclude airplanes on which ATR Modification 2805 has been accomplished.

Request To Revise Compliance Time

This same commenter expresses concern regarding the planned compliance time for the actions specified in the proposed AD. The commenter states that, for certain airplanes, the proposal allows a delay of

500 landings before the actions must be accomplished, and that such a delay could allow those airplanes to exceed the thresholds specified in the French airworthiness directive. The commenter points out that those thresholds were defined according to a specific fatigue and damage tolerance analysis.

Although no specific request to change the final rule is made by the commenter in this regard, the FAA infers that the commenter is requesting that the FAA reduce or eliminate the grace period in the final rule. The FAA does not concur with the commenter's request and notes that the compliance times, as stated in the proposal, do indeed follow those specified by the French airworthiness directive. Specifically, the French airworthiness directive calls for accomplishment of the initial inspection prior to the accumulation of 26,000 total flights. Paragraph (a) of this final rule specifies that the initial inspection is to be accomplished prior to the accumulation of 25,500 total landings, or within 500 landings after the effective date of the AD, whichever occurs later.

Similarly, the French airworthiness directive calls for accomplishment of the modification prior to the accumulation of 33,000 total flights. Paragraph (b) of the final rule specifies that the modification is to be accomplished prior to the accumulation of 32,500 total landings, or within 500 landings after the effective date of this AD, whichever occurs later. The FAA considers that the grace period of 500 landings allows operators whose airplanes have exceeded the thresholds of 25,500 and 32,500 total landings adequate time to accomplish the inspections and modification, respectively, while adhering as closely as possible to the compliance times specified in the French airworthiness directive. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 101 airplanes of U.S. registry will be affected by this AD.

It will take approximately 4 work hours per airplane to accomplish the required ultrasonic inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the ultrasonic inspection required by this AD on U.S. operators is estimated to be $24,240, or $240 per airplane, per inspection cycle.

It will take approximately 280 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. The cost of required parts will range from $1,576 to $6,373 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be between $1,855,976 ($18,376 per airplane) and $2,340,473 ($23,173 per airplane).

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–21–10 Aerospatiale: Amendment 39–10818. Docket 97–NM–266–AD.

Applicability: Model ATR42–200 and –300 series airplanes on which Avions de Transport Regional Service Bulletins ATR42–57–0040, dated April 21, 1994, and ATR42–57–0038, Revision 2, dated December 18, 1997, have not been accomplished; except for those airplanes on which ATR Modification 2805 has been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the lower skin panels of the outer wings between ribs 13 and 18, and consequent reduced structural integrity of the airplane, accomplish the following:

(a) Prior to the accumulation of 25,500 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection for cracking of the lower skin panels of the outer wings, in accordance with Avions de Transport Regional Service Bulletin ATR42–57–0040, dated April 21, 1994. If any crack is detected, prior to further flight, repair it in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Thereafter, repeat the inspection at intervals not to exceed 9,000 landings.

(b) Prior to the accumulation of 32,500 total landings, or within 500 landings after the effective date of this AD, whichever occurs later, modify the lower skin panels of the outer wings, and perform a follow-on high frequency eddy current (HFEC) inspection for cracking of the modified areas, in accordance with Avions de Transport Regional Service Bulletin ATR42–57–0038, Revision 2, dated December 18, 1997. If any crack is detected, prior to further flight,

repair it in accordance with a method approved by the Manager, International Branch, ANM–116. Accomplishment of the modification and follow-on HFEC inspection constitutes terminating action for the repetitive ultrasonic inspection requirements of paragraph (a) of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

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

(e) Except for the repairs provided for in paragraphs (a) and (b) of this AD, the actions shall be done in accordance with the following Avions de Transport Regional Service Bulletins, which contain the specified list of effective pages:

Service bulletin referenced and date	Page number shown on page	Revision level shown on page	Date shown on page
ATR42–57–0040, April 21, 1994	1–15	Original	April 21, 1994.
ATR42–57–0038, Revision 2, December 18, 1997.	1–11, 21, 31–36 53, 55	2	December 18, 1997.
	18, 22, 27, 28, 37, 38, 51, 52, 56, 57	1	December 20, 1995.
	12–17, 19, 20, 23–26, 29, 30, 39–50, 54	Original	December 19, 1994.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directive 93–190–051(B), dated October 27, 1993.

(f) This amendment becomes effective on November 12, 1998.

Issued in Renton, Washington, on September 29, 1998.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 98–26660 Filed 10–6–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–SW–47–AD; Amendment 39–10820; AD 98–21–12]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Helicopter Systems Model 369D, 369E, 369FF, 500N, AH–6, and MH–6 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to McDonnell Douglas Helicopter Systems (MDHS) Model 369D, 369E, 369FF, 500N, AH–6 and MH–6 helicopters. This action requires visual inspections of the overrunning clutch retainer, carrier, housing, and pin for wear from spinning of the bearing outer race. This amendment is prompted by a report of inflight vibrations and subsequent investigations of three other overrunning clutches, which indicated wear of the bearing carrier due to spinning of the bearing outer race. The actions specified in this AD are intended to detect wear of other clutch components, excessive vibration which could lead to failure of the overrunning clutch, wear on the bearing carrier, and subsequent loss of power to the helicopter rotor drive system.

DATES: Effective October 22, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 22, 1998.

Comments for inclusion in the Rules Docket must be received on or before December 7, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 97–SW–47–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from McDonnell Douglas Helicopter Systems, Field Service Department, 5000 E. McDowell Road, Mesa, Arizona, telephone (800) 388–3378, fax (602) 891–6782. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Conze, Aerospace Engineer, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712, telephone (562) 627–5261, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: This amendment adopts a new AD that is applicable to MDHS Model 369D, 369E, 369FF, 500N, AH–6, and MH–6 helicopters. This action requires a visual inspection of the overrunning clutch retainer, part number (P/N) 369F5460–1, carrier, P/N 369F5461–1, housing, P/N 369F5451–1, and pin, P/N MS16556–801, for wear due to spinning of the bearing retainer and the outer race of the bearing. This amendment is prompted by a report of an operator that experienced inflight vibrations. Subsequent investigation revealed that the bearing retainer and the outer race of the bearing were spinning, which led to wear of the bearing carrier and movement of the bearing outer race. Investigations of three other overrunning clutches with the same P/N also indicated there had been spinning of the retainer. This condition, if not corrected, could result in wear on the bearing carrier, which could lead to failure of the overrunning clutch, excessive vibration, wear of other clutch components, and subsequent loss of power to the helicopter rotor drive system.

The FAA has reviewed MDHS Service Information Notice No. DN–190, EN–83, FN–70, NN–011, dated July 25, 1997, which describes procedures for visually inspecting the overrunning clutch

retainer, carrier, and pin for clutch or carrier wear, or pin damage, and replacing any unairworthy clutch assembly with an airworthy clutch assembly.

Since an unsafe condition has been identified that is likely to exist or develop on other MDHS Model 369D, 369E, 369FF, 500N, AH–6, and MH–6 helicopters of the same type design, this AD is being issued to detect wear of other clutch components, excessive vibration which could lead to failure of the overrunning clutch, wear on the bearing carrier, and subsequent loss of power to the helicopter rotor drive system. This AD requires visual inspections of the overrunning clutch retainer, carrier, housing, and pin, for wear from spinning of the bearing retainer. The actions are required to be accomplished in accordance with the service information notice described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability of the helicopter. Therefore, inspections of the overrunning clutch components is required within 25 hours time-in-service (TIS) and this AD must be issued immediately.

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

The FAA estimates that 2,200 helicopters of U.S. registry will be affected by this AD, that it will take approximately 2 work hours to accomplish the inspection and 14 work hours to accomplish either the replacement of components, or replacement the entire clutch assembly, and that the average labor rate is $60 per work hour. Required parts will cost approximately $1,098 if only components are replaced, or $7690 if the entire clutch assembly is replaced, per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,527,600 to accomplish one inspection and replace components, or $19,030,000 to accomplish one inspection and replace the entire clutch assembly.

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. 97–SW–47–AD.'' The postcard will be date stamped and returned to the commenter.

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

AD 98–21–12 McDonnell Douglas Helicopter Systems: Amendment 39–10820. Docket No. 97–SW–47–AD.

Applicability: Model 369D, 369E, 369FF, 500N, AH–6, and MH–6 helicopters, with overrunning clutch assembly, part number (P/N) 369F5450–501, installed, certificated in any category.

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

Compliance: Required as indicated, unless accomplished previously.

To detect wear of other clutch components, excessive vibration which could lead to failure of the overrunning clutch, wear on the bearing carrier, and subsequent loss of power to the helicopter rotor drive system, accomplish the following:

(a) Visually inspect the overrunning clutch retainer, P/N 369F5460–1, carrier, P/N 369F5461–1, housing, P/N 369F5451–1, and pin, P/N MS16556–801, for clutch or carrier wear or pin damage in accordance with the Accomplishment Instructions in McDonnell Douglas Helicopter Systems Service Information Notice No. DN–190, EN–83, FN–70, NN–011, dated July 25, 1997. For

helicopters with a clutch assembly having less than 100 hours time-in-service (TIS), conduct the visual inspection before or upon reaching 100 hours TIS. For helicopters with a clutch assembly having 100 or more hours TIS, conduct the visual inspection within 25 hours TIS.

(b) Repeat the inspection required by paragraph (a) at intervals not to exceed 100 hours TIS.

(c) If the inspections specified in paragraph (a) or (b) reveal wear or damage to components, replace those components with airworthy components prior to further flight.

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

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles Aircraft Certification Office.

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

(f) The inspections shall be done in accordance with McDonnell Douglas Helicopter Systems Service Information Notice No. DN–190, EN–83, FN–70, NN–011, dated July 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Helicopter Systems, Field Service Department, 5000 E. McDowell Road, Mesa, Arizona, telephone (800) 388–3378, fax (602) 891–6782. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on October 22, 1998.

Issued in Fort Worth, Texas, on September 30, 1998. original signed by

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–26821 Filed 10–6–98; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AWA–1]

RIN 2120–AA66

Revision of the Legal Description of the Memphis Class B Airspace Area; Tennessee

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects the graphic of the Memphis, TN, Class B airspace area by changing the associated geographic coordinates. This action is necessary to correct the erroneous data published in the graphic depiction of the Class B airspace area.

EFFECTIVE DATE: October 7, 1998.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

On August 19, 1998, Airspace Docket No. 98–AWA–1, **Federal Register** Document 98–22244, was published revising the legal description for the Memphis, TN, Class B airspace area (63 FR 44374). The rule included a graphic depicting the Class B airspace area with specific points annotated by geographic coordinates. These geographic coordinates were published on the graphic to assist the airspace users in identifying the lateral boundaries of that area. However, several points were published with incorrect latitudes and longitudes. This action will correct those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the graphic for the Memphis, TN, Class B airspace area as published in the **Federal Register** on August 19, 1998 (63 FR 44374); **Federal Register** Document 98–22244, and incorporated by reference in 14 CFR 71.1, is corrected as follows:

§ 71.1 [Corrected]

On page 44377, remove the existing graphic containing the geographic coordinates used to define the lateral boundaries and substitute it with the revised graphic.

Issued in Washington, DC, on September 30, 1998.

Reginald C. Matthews,

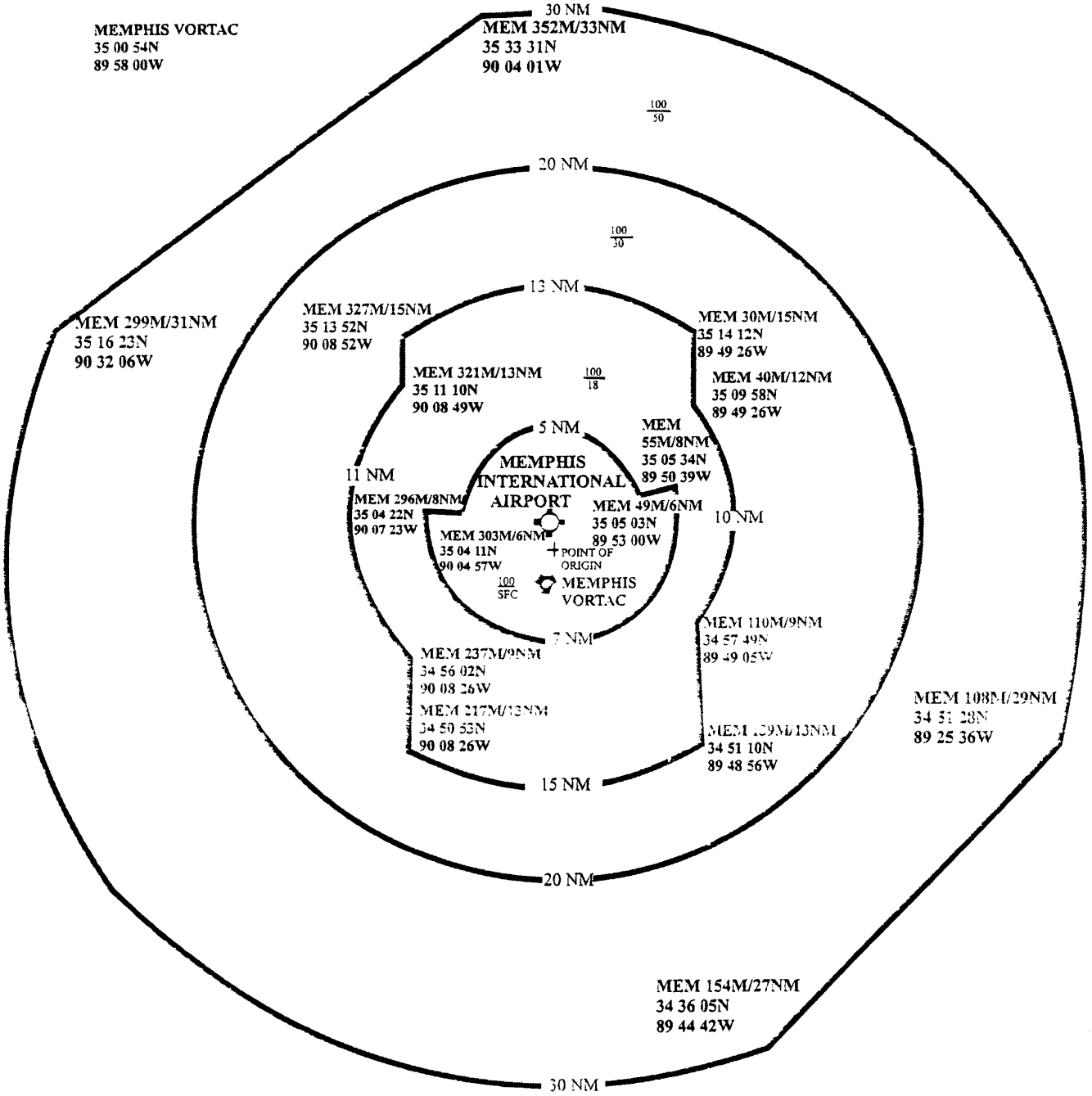
Acting Program Director for Air Traffic Airspace Management.

BILLING CODE 4910–13–P

MEMPHIS, TN
CLASS B AIRSPACE

(Not to be used for navigation)

(Not to scale)



Prepared by the
FEDERAL AVIATION ADMINISTRATION
Air Traffic Publications
ATA-10

[FR Doc. 98–26891 Filed 10–6–98; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 98–ASO–13]

RIN 2120–AA66

Amendment of Restricted Area R–5313C, Long Shoal Point, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action corrects an error in the legal description of Restricted Area R–5313C. A database review by the National Imagery and Mapping Agency identified one point in the description for R–5313C that did not reflect the required conversion to North American Datum of 1983 (NAD 83).

EFFECTIVE DATE: 0901 UTC, December 3, 1998.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On May 5, 1990, the FAA designated four restricted areas (R–5313A, R–5313B, R–5313C, and R–5313D) to provide special use airspace over a sunken ship used for target practice in the Pamlico Sound, North Carolina, area (55 FR 11897). Several of the boundaries used to describe R–5313C and R–5313D were based on an arc that extended from the center point of Restricted Area R–5313A. This center point (lat. 35°32′48″ N., long. 75°41′26″ W) was published in the legal description of all three restricted areas. At the time these areas were established, the coordinates used for airspace descriptions were calculated in reference to the North American Datum of 1927 (NAD 27). Subsequently, in accordance with Public Law 101–508, the FAA was required, by Congress, to convert all geodetic coordinate information used in the National Airspace System to the NAD 83. The NAD has been adopted as the official horizontal coordinate system of the United States. The conversion to the more precise NAD 83 caused the coordinates used for the restricted areas to change by one second. The NAD 83 correction was applied to all points in the descriptions for R–5313A and R–5313D. However, the correction was inadvertently not applied to the description for R–5313C when the revision to FAA Order 7400.8 (a compilation of special use airspace legal descriptions) was published. The current legal description for R–5313C therefore contains one coordinate based on NAD 27. This action corrects that error. The position of the restricted areas on aeronautical charts did not change by the conversion to NAD 83. The NAD 83 conversion caused a slight shift of the grid used to measure latitude and longitude on aeronautical charts. However, the actual position of the restricted areas themselves, did not change.

The Rule

This amendment to 14 CFR part 73 (part 73) corrects the legal description for Restricted Area R–5313C by changing the coordinates from ''lat. 35°32′48″ N., long. 75°41′26″ W.'' to ''lat. 35°32′49″ N., long. 75°41′25″ W.'' This change converts the point to the required NAD 83 reference, and brings it into agreement with the published legal descriptions of R–5313A and R–5313D in FAA Order 7400.8. This administrative correction will not alter usage or charted location of Restricted Area R–5313C; therefore, I find that notice and public procedures under 5 U.S.C. 553(b) are unnecessary.

Section 73.53 of part 73 was republished in FAA Order 7400.8E, dated November 7, 1997.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is a minor administrative change to correct an error in one coordinate used to describe the boundaries of R–5313C. There are no changes to air traffic control procedures or routes as a result of this action. Therefore, this action is not subject to environmental assessments and procedures in accordance with FAA Order 1050.1D, ''Policies and Procedures for Considering Environmental Impacts,'' and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

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

PART 73—SPECIAL USE AIRSPACE

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

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

§ 73.53 [Amended]

2. § 73.53 is amended as follows:

* * * * *

R–5313C Long Shoal Point, NC [Amended]

By removing from the Boundaries the point ''lat. 35°32′48″ N., long. 75°41′26″ W.'' and adding the point ''lat. 35°32′49″ N., long. 75°41′25″ W.''

* * * * *

Issued in Washington, DC, on September 30, 1998.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 98–26892 Filed 10–6–98; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

Operating Requirements: Commuter and On–Demand Operations

CFR Correction

In Title 14 of the Code of Federal Regulations, parts 60 to 139, revised as of Jan. 1, 1998, page 716, § 135.243 is corrected in paragraph (b)(2) by inserting the words ''of flight'' between the words ''hours'' and ''time''.

BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 35

[Docket No. RM93–24–000; Order No. 600]

Revision of Fuel Cost Adjustment Clause Regulation Relating to Fuel Purchases From Company-Owned or Controlled Source

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its regulations to state that where a regulatory body has jurisdiction over the price of fuel purchased from a company-owned or controlled source, and exercises that jurisdiction to approve such price, the Commission will presume, subject to rebuttal, that the cost of fuel so purchased is reasonable and includable in the fuel adjustment clause.

EFFECTIVE DATE: This final rule is effective November 6, 1998.

FOR FURTHER INFORMATION CONTACT: Wayne W. Miller, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street, N.E., Washington, D.C. 20426, (202) 208–0466.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International Inc. RVJ International Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

Before Commissioners: James J. Hoecker, Chairman; Vicky A. Bailey, William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending the second sentence of 18 CFR 35.14(a)(7) to make clear that where a regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or controlled source, and exercises that jurisdiction to approve such price, the cost of fuel so purchased shall be presumed, subject to rebuttal (rather than conclusively ''deemed''), to be reasonable and includable in the fuel adjustment clause.[1]

II. Discussion

In the Notice of Proposed Rulemaking (NOPR), issued September 24, 1993,[2] the Commission explained that 18 CFR 35.14(a)(7) has been interpreted by the United States Court of Appeals for the District of Columbia, in *Ohio Power Company* v. *FERC*, 954 F.2d 779 (D.C. Cir.), *cert. denied*, 506 U.S. 981 (1992) (*Ohio Power*), to establish a conclusive presumption that the price of fuel purchased from an affiliate, subject to the jurisdiction of another regulatory body, is just and reasonable. The Commission stated that the proposed revision to § 35.14(a)(7) was intended to provide that the Commission would instead employ a rebuttable, rather than a conclusive, presumption, and thus make clear that the Commission had no intention (through a conclusive presumption of reasonableness) of abdicating its statutory responsibility to independently review wholesale rates (including fuel adjustment clauses) subject to its jurisdiction to ensure that they are just and reasonable. The Commission explained, however, that the proposed revision would not affect the other, independent basis of the *Ohio Power* decision; *i.e.*, when a public utility member of a registered public utility holding company system buys fuel from an affiliate in accordance with section 13(b) of the Public Utility Holding Company Act of 1935 (PUHCA),[3] the Commission may not deny recovery of those costs in the utility's wholesale rates.

The Commission received comments on the NOPR from the following: Municipal Resale Service Customers of Ohio Power Company (Municipal Customers); Coalition for Full Oversight and Regulation of Public Utility Holding Companies and Affiliates (Coalition FOR PUHCA, or Coalition); Florida Cities (including the Florida Municipal Power Agency and the Cities of Alachua, Bartow, Havana, Mount Dora, Newberry, Quincy, and Williston, Florida); Registered Systems (including American Electric Power Service Company, GPU Service Corporation and New England Power Company, each of which is associated with a registered public utility holding company under PUHCA); Public Utilities Commission of Ohio (Ohio Commission); Allegheny Power Service Corporation (Allegheny) (on behalf of Monongahela Power Company, Potomac Edison Company and West Penn Power Company, wholly-owned subsidiaries of Allegheny Power System, Inc., a registered public utility holding company under PUHCA); the law firm of Paul, Hastings, Janofsky & Walker (Paul, Hastings); Transok, Inc. (Transok) (a wholly-owned subsidiary of Central and South West Corporation, a registered public utility holding company under PUHCA); Wisconsin Wholesale Customers (Wisconsin Customers) (consisting of Wisconsin Public Power Incorporated SYSTEM, Badger Power Marketing Authority, 41 municipal electric systems and four rural electric cooperatives); Edison Electric Institute (EEI); American Public Power Association (APPA); West

[1] This Final Rule addresses only the fuel adjustment clause and fuel cost recovery through the fuel adjustment clause. It does not address Commission review of fuel costs and fuel cost recovery in base rates.

[2] Revision of Fuel Cost Adjustment Clause Regulation Relating to Fuel Purchases From Company-Owned or Controlled Source, 58 FR 51259 (October 1, 1993), IV FERC Stats. & Regs. ¶ 32,502 (1993).

[3] 15 U.S.C. 79m(b).

Virginia Public Service Commission and the National Association of Regulatory Utility Commissioners (NARUC).

While either supportive of or at least neutral concerning the intention of this rulemaking, the commentors suggest various modifications to the proposed rule. The suggested modifications principally involve three concerns: (a) whether the relevant sentence of § 35.14(a)(7) should simply be eliminated altogether, rather than revised to set forth a rebuttable presumption; (b) the meaning of the term ''regulatory body;'' and (c) retroactivity.

A. Need for the Change in the Regulation

In light of *Ohio Power,* the Commission believes that it is necessary to amend 18 CFR 35.14(a)(7) to clearly specify that when a regulatory body has jurisdiction over the price of fuel purchased by a utility from a company-owned or controlled source and exercises that jurisdiction by approving such price, the cost shall be ''presumed, subject to rebuttal'' (rather than conclusively ''deemed'') to be reasonable and includable in the fuel adjustment clause. By amending § 35.14(a)(7) in this manner, the Commission is making clear that it has no intention of abdicating its regulatory responsibilities under sections 205 and 206 of the Federal Power Act (FPA), 16 U.S.C. 824d, 824e.

As the Commission previously stated in the NOPR:

> [t]he Commission has an independent obligation under sections 205(a) and 206(a) of the FPA to ensure that rates are ''just and reasonable.'' This obligation requires the Commission to independently review rates subject to its jurisdiction to ensure that they are ''just and reasonable.'' While the Commission can give deference to decisions of another regulatory body and still fulfill its statutory obligation, it cannot in effect delegate its jurisdictional responsibilities to others. In addition the Commission must exercise greater regulatory scrutiny when affiliate fuel costs are at issue; while there may be a presumption of reasonableness as to costs incurred in arm's-length bargaining, there is no such presumption of reasonableness as to affiliate costs * * *. Thus, the Commission believes that § 35.14(a)(7) should be amended to provide that for affiliate transactions the presumption of reasonableness provided for by the regulation is merely rebuttable and is not conclusive.

Amending § 35.14(a)(7) is also consistent with the Commission's mandate under section 205(f) of the FPA to undertake review of automatic adjustment clauses, including fuel cost adjustment clauses, to ensure ''economical purchase and use of fuel.'' Given an express Congressional mandate to ensure ''economical purchase and use of fuel,'' the Commission believes § 35.14(a)(7) should be amended to eliminate what otherwise would be an absolute bar to Commission inquiry into affiliate fuel prices.[4]

B. Response to Comments: Whether the Presumption Should Be Eliminated

The Municipal Customers, the Coalition, the Wisconsin Customers and NARUC request the Commission to eliminate any presumption of reasonableness of the price of fuel purchased from company-owned or controlled sources, even if that price has been previously reviewed and approved by another regulatory body. [5] This can be done, they argue, by eliminating entirely the relevant sentence of § 35.14(a)(7), rather than by revising it to provide for a rebuttable presumption. By eliminating the relevant sentence, they argue, this Commission would be able to exercise its full statutory authority over affiliate fuel costs passed through wholesale fuel adjustment clauses, while still continuing to take the relevant decisions of other regulatory bodies into account on a case-by-case basis.

In this respect, the Municipal Customers also argue that it is not clear when or to what the presumption of reasonableness attaches because many state regulatory authorities have standards which differ from this Commission's FPA standards. They maintain that elimination of the presumption altogether would avoid litigation over when and to what deference attaches.[6] Additionally, according to NARUC, the proposal would create a rebuttable presumption of reasonableness only when a state commission has jurisdiction over and approves the *price* of fuels sold by an affiliated supplier to a public utility. NARUC points out, however, that state commissions do not exercise authority over a fuel seller's *prices,* but, instead, regulate a fuel buyer's ability to recover prudent expenditures, *i.e.*, recovery of fuel *costs.* NARUC states that while the recovery of a public utility buyer's costs in its rates may be determined by reference to competitive prices available in the marketplace, the affiliate seller's actual prices are not set by the state commission.

The Municipal Customers and the Coalition further argue that amending § 35.14(a)(7) to set forth a rebuttable presumption would impose an unreasonable burden on the public utility's ratepayers who seek to challenge that utility's rates. Because a utility may, for example, request that its records be kept confidential,[7] the ratepayers may not be able to obtain access to information needed to challenge the justness and reasonableness of affiliate fuel costs.[8] On the other hand, they argue, elimination of the relevant sentence of § 35.14(a)(7), and thus elimination of any presumption, would place the burden of demonstrating justness and reasonableness on the utility, ensuring comparable treatment between the rates of utility subsidiaries of registered public utility holding companies and the rates of all other utilities.

In this regard, the APPA further requests that this Commission make FERC Form 580 (General Interrogatory on Fuel and Energy Purchase Practices),[9] and FERC Form 423 (Monthly Report of Cost and Quality of Fuels for Electric Plants) [10] available to

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[4] NOPR, IV FERC Stats. & Regs. at 32,803–04 (citations and footnotes omitted).

[5] The Ohio Commission notes that the proposed rule does not correct the essential jurisdictional problem created as the result of *Ohio Power,* and urges the Commission to continue to direct its efforts toward legislation required to solve this problem. *See also* NOPR, IV FERC Stats. & Regs. at 32,803 n.1, 32,804 n.7.

[6] The Coalition also argues that to base a rebuttable presumption on another agency's review, without independently evaluating the quality of that review, is an abdication of this Commission's authority.

[7] 18 CFR 388.112.

[8] The Municipal Customers and the Coalition submit that the Commission's policy is to deny requests for hearing unless complainants meet their initial burden of coming forward and presenting evidence casting serious doubt as to the reasonableness of the challenged costs, citing Municipal Resale Service Customers v. Ohio Power Co., 63 FERC ¶ 61,336 at 63,201 (1993). The Municipal Customers and the Coalition argue, however, that complainants cannot meet this burden unless a hearing is first ordered and discovery of the company's documents and data is thereafter obtained. Thus, they contend, complainants are in a ''chicken and egg'' quandary, or a ''Catch-22'' situation, and have no practical way to rebut the presumption.

[9] The Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601, *et seq.,* amended section 205 of the FPA, 16 U.S.C. 824d, by adding subsection (f)(2), which requires the Commission to review, at least once each two years, the practices of public utilities using automatic adjustment clauses to ensure that each such public utility makes efficient use of resources (including fuel). 16 U.S.C. 824d(f)(2). In response, the Commission instituted an investigation, in Docket No. IN79–6, of practices under automatic adjustment clauses. *See* Investigation of Practices Under Automatic Adjustment Clauses, 7 FERC ¶ 61,090 (1979); *see also* Consolidated Edison Company of New York, 39 FERC ¶ 61,329 (1987); Kentucky Utilities Company, 29 FERC ¶ 61,159 at 61,338 (1984). Pursuant to this investigation, the Commission (through its staff) has issued interrogatories on Form 580 and its predecessors (Forms 560 and 565) every two years, beginning in 1979. The Form 580 interrogatories are currently mailed to the over 120 public utilities with significant fuel trades and with wholesale rates that may contain automatic adjustment clauses.

[10] A separate form must be completed by every electric power producer for each of its electric

the public in the absence of ''conclusive evidence'' that disclosure of the information on those forms will damage the business interests of the reporting utility. APPA argues that without the information in these forms, the Commission's staff, as well as the general public, are unable to rebut the presumption of reasonableness of fuel costs.

Similarly, if the Commission decides to adopt a rebuttable presumption, the Municipal Customers request that in addition the Commission also revise the fourth sentence of § 35.14(a)(7). The Municipal Customers request that the Commission require the filing of all contracts, terms, conditions, and procedures (and all amendments) relating to the purchase of fuel from company-owned or controlled sources, whether or not the prices are subject to the jurisdiction of another regulatory body. This revision, the Municipal Customers argue, will allow ratepayers access to contracts where prices are subject to regulatory authority (and thus to a presumption of reasonableness) so that the ratepayers can have an opportunity to rebut the presumption.[11]

The Florida Cities argue that the Commission should clearly state that the proposed revision represents a clarification that this Commission will not conclusively presume reasonable affiliate fuel costs subject to state jurisdiction.[12] Similarly, the Wisconsin Customers argue that the rule as currently drafted could be read to limit this Commission's ability to review costs related to wholesale sales when a regulatory body dealing with retail jurisdiction has approved the fuel purchases at issue.

Commission Ruling

We decline to eliminate the presumption. The Commission's intent in this proceeding was to address *Ohio Power's* reading of § 35.14(a)(7) as creating a conclusive presumption. The revision adopted here accomplishes that—creating a rebuttable presumption when another regulatory body both has and exercises its jurisdiction to approve the price of affiliate fuel.

This is not to suggest that we are either abdicating our responsibility or doing more than we are permitted. While we will retain a presumption, it will apply only when another regulatory body has jurisdiction and exercises that jurisdiction by approving the price of the affiliate fuel, and even in that circumstance it will be rebuttable; the reasonableness, and thus the recovery in Commission-jurisdictional rates, of affiliate fuel costs will ultimately be for the Commission to determine.[13]

Likewise, we are not doing more than we are permitted to do. The D.C. Circuit's alternate ground for its decision in *Ohio Power*—that this Commission is barred, in the case of affiliate fuel purchases among the members of registered public utility holding company systems (where, under PUHCA, the SEC is authorized to review the prices of such purchases), from either altering the affiliate fuel price or from disallowing full recovery of the affiliate fuel price in Commission-jurisdictional rates—remains. That alternative ground continues to bar Commission review of both the reasonableness of registered public utility holding company affiliate fuel costs, and of the recovery of such costs in Commission-jurisdictional rates.

The relevant sentence of § 35.14(a)(7) refers to the *price* of affiliate fuel being subject to the jurisdiction of a regulatory body, and that sentence as amended here also refers to the *price* of affiliate fuel being approved by such a body. NARUC, however, notes that the states normally do not possess jurisdiction to regulate the *price* of affiliate fuel, *i.e.*, the price charged by the fuel supplier (as opposed to rate recovery of the *costs* of affiliate fuel). NARUC then questions the precise reach of that sentence in § 35.14(a)(7) and of the presumption found there. Section 35.14(a)(7) has always drawn an express distinction between the price charged for affiliate fuel by the affiliate fuel supplier, and the cost of that affiliate fuel incurred by

generating plants (including leased plants) that has a rated steam-electric generating capacity of 50 MW or greater. 18 CFR 141.61.

[11] The fourth sentence now reads as follows: With respect to the price of fuel purchases from company-owned or controlled sources pursuant to contracts which are *not* subject to regulatory authority, the utility company shall file such contracts and amendments thereto with the Commission for its acceptance at the time it files its fuel clause or modification thereof. (emphasis added)

The Municipal Customers propose the following modification: With respect to the price of fuel purchases from company-owned or controlled sources pursuant to contracts or other terms, conditions, and procedures, *whether subject to another regulatory authority or not,* the utility company shall file such contracts, terms, conditions, procedures and amendments thereto with the Commission at the time it files its fuel clause (or within 30 days of the effective date of this regulation if the fuel clause is already on file) or modifications thereof. (emphasis added)

[12] The Florida Cities point to an ''Order on Motion of Florida Cities to Compel Production of Certain Coal-Related Data,'' issued July 16, 1993 in *Florida Power Corporation,* Docket Nos. ER93–299–000 and EL93–18–000. The presiding administrative law judge rejected Florida Power Corporation's (Florida Power) argument that, consistent with *Ohio Power,* § 35.14(a)(7) should be construed as conclusively foreclosing this Commission from deciding for itself the prudence and reasonableness of the cost of fuel purchased from Florida Power's affiliates since the Florida Public Service Commission (Florida Commission) had ruled on those issues. The judge found that if § 35.14(a)(7) is construed, as claimed by Florida Power, as conclusively foreclosing this Commission from ruling on the justness and reasonableness of costs associated with the utility's fuel purchases from affiliates, it would ''stand the FPA on its head.'' The judge found that, under Florida Power's construction of § 35.14(a)(7), this Commission would have unlawfully delegated to the state commission, and thus abdicated, its statutory responsibility under the FPA. The judge thus limited the application of *Ohio Power's* interpretation of § 35.14(a)(7) to situations involving FERC/SEC jurisdiction only. He stated the following, at page 7 of the order:

Given the SEC's independent statutory authority under PUHCA to set inter-affiliate fuel sales prices *for all purposes* it would be lawful if that authority was recognized by FERC in 35.14(a)(7). However, this is not the case if the section were applied to the [Florida Commission] since that agency lacks any federal statutory authority over affiliate fuel sales prices and at most it has Florida State authority over such prices for retail rate setting purposes only.

It would be anomalous if the section were applied to foreclose FERC determination of the reasonableness and prudence of affiliate fuel purchases. Such transactions are not arms length and are more suspect than fuel purchases from non-affiliates. Yet section 35.14(a)(7), on its face applies to affiliate but not to non-affiliate fuel purchases. We should not extend that anomalism by interpreting 35.14(a)(7) in the manner sought by Florida Power.

[13] The FPA requires this Commission, not other regulatory bodies such as state commissions, to determine the justness and reasonableness of wholesale rates. This Commission will not and, indeed, cannot tie itself to state determinations involving retail rates, but must independently determine the justness and reasonableness of wholesale rates. As we stated in Southern California Edison Co., Opinion No. 361, 55 FERC ¶ 61,074 at 61,223, *reh'g denied*, Opinion No. 361–A, 56 FERC ¶ 61,117 (1991), *petition for review denied*, City of Vernon v. FERC, 983 F.2d 1089 (D.C. Cir. 1993), ''the Commission must fulfill its statutory responsibilities and cannot defer to the actions of a state regulatory agency. Even where the wholesale customer agrees for wholesale ratemaking purposes to abide by the decision of a state ratemaking authority, this Commission has an independent responsibility to review such an agreement.''

Accord, Bangor Hydro-Electric Co., 35 FERC ¶ 61,200 at 61,473 (1986) (in refusing to bind itself to state treatment of Seabrook-related abandonment charges, the Commission stated: ''this Commission cannot simply rely on the state commission's evaluation . . . ; rather, we must make our own, independent evaluation.''); Union Electric Co., 36 FERC ¶ 61,234 at 61,573 (1986) (prudence disallowances by, *inter alia,* three state commissions do not support a finding that wholesale rates that include contested costs were substantially excessive and warranted a five-month suspension; the Commission stated: ''[a]s to the decisions of the State commissions, while they may bring into question the prudence of [a utility's] expenditures, they are not controlling upon this Commission for suspension or other purposes.''). *Cf.* Alabama Power Co. v. FERC, 993 F.2d 1557, 1564 (D.C. Cir. 1993) (''We know of no doctrine that requires the Commission, in determining a just and reasonable rate for an off-system sale, to give dispositive weight to the fact that a state commission has assumed, for purposes of establishing native load rates, that the off-system rate would be higher. In other contexts, the Commission has not done so, and we see no reason why it should here'').

the public utility buyer and passed through to ratepayers. Thus, the second sentence has always provided that only when the ''price'' of affiliate fuel is subject to the jurisdiction of a regulatory body, ''such cost'' was deemed to be reasonable and includable in the fuel adjustment clause.[14] This distinction pre-dated *Ohio Power*, and the Commission has not proposed to change it, and is not changing it, here.

Several of the commentors object to the continued use of a presumption because complaining parties will not have access to the data necessary to challenge the utility's recovery in rates of the price of affiliate fuel, and utilities may, in fact, invoke claims of privilege to keep this data confidential.[15] Put simply, our past experience suggests that there does not seem to have been any unreasonable barriers to complainants making a sufficient showing to justify an investigation before *Ohio Power*, and we are not aware of any reason why that may have changed since *Ohio Power*. [16]

C. Response to Comments: The Meaning of the Term ''Regulatory Body''

Allegheny, EEI, the Registered Systems, Paul, Janofsky and Transok contend that the Commission's use of the term ''regulatory body'' in the NOPR and the proposed revision is confusing, since that term can be construed to apply to the SEC as well as to state commissions. They request that, to eliminate confusion and avoid litigation, the Commission expressly acknowledge in the text of § 35.14(a)(7) that it has no authority to review affiliate fuel prices for registered public utility holding company systems.[17]

Commission Ruling

The term ''regulatory body'' appears in the current § 35.14(a)(7), and we did not propose any change to it. We thus decline to modify the proposed rule in the manner requested by these commentors. We also believe that at this time there is no reason to distinguish expressly among various regulatory bodies in the text of the regulation. Our silence, however, should not be construed to imply a failure on our part to follow the alternate ground for decision in *Ohio Power*, discussed above—*i.e.*, that in instances involving a conflict between this Commission and the SEC over affiliate fuel prices for registered public utility holding company systems under *Ohio Power*, the SEC ruling controls.[18]

D. Response to Comments: Retroactivity Concerns

The Florida Cities observe that *Ohio Power* unsettled the otherwise settled law that affiliate fuel purchases subject to state jurisdiction were also subject to this Commission's review for wholesale rate purposes. The Florida Cities argue that the Commission should provide for retroactive application of the proposed revision, or at least its application to pending and future cases involving past fuel clause collections, to ensure that the Commission's responsibilities are not abandoned with regard to past fuel adjustment clause collections. If the Commission decides not to make the proposed rule retroactive, the Florida Cities request that the Commission steer clear of prejudging the issue of the applicability of *Ohio Power* to affiliate fuel transactions that have been subject to state retail ratemaking jurisdiction. Instead, the Florida Cities argue, this issue should be addressed when it is squarely presented to the Commission in a pending case.[19]

The Registered Systems request that if the Commission, as the result of new legislation, ultimately is afforded jurisdiction over the type of transaction at issue in *Ohio Power*, it should only apply the proposed revision of § 35.14(a)(7) to affiliate fuel contracts entered into after both the conferral of jurisdiction on this Commission through new legislation and the effective date of this rule. The Registered Systems explain that prior investments by registered public utility holding company systems in affiliate fuel operations were based on the SEC's findings that the fuel supply arrangements were in the public interest. Moreover, they argue, since 1974, the registered public utility holding company systems made these investments knowing that this Commission's regulation ensured the inclusion in the utility's wholesale fuel adjustment clause of the prices paid pursuant to SEC approval; the Registered Systems object to retroactive application of a rule change that would result in cost-trapping. Further, the Registered Systems argue, considerations of fairness preclude altering profoundly the rules upon which investors relied when they financed the previously-approved arrangements.[20]

Commission Ruling

As to challenges to affiliate fuel prices recovered in rates after the effective date of this rule change (and which are not subject to the alternate ground for

[14] *See* 954 F.2d at 783 (''adopt[ing] Judge Mikva's approach'' that ''[u]nder the regulation, because the prices of Ohio Power's fuel from its affiliate are subject to the jurisdiction of the SEC, such costs must be conclusively presumed reasonable,'' and ''agree[ing] with Judge Mikva that 'section 35.14(a)(7) establishes as a policy matter, that if another regulatory body has already passed on the fuel price, then FERC will abide by that determination' ''); *accord*, *id.* at 784 (''By precluding FERC from declaring a SEC-approved price unreasonable, our interpretation of § 35.14(a)(7) provides Ohio Power with some succor . . . .''), 786 (''[W]e hold that 18 CFR § 35.14(a)(7) prevents FERC from finding the coal price approved by the SEC not includable in determining Ohio Power's wholesale rate.''); *see also* Fuel Adjustment Clauses in Wholesale Rate Schedule, 52 FPC 1304, 1306 (1974) (in explanatory discussion of text of § 35.14(a)(7), Commission distinguished between price paid to a fuel supplier and costs incurred by a utility buyer); Wholesale Rate Schedules Fuel Adjustment Clause, 39 FR 28,910, 28,911 (1974) (in Notice of Proposed Rulemaking, in discussing proposed text of what would become § 35.14(a)(7), Commission drew distinction between prices charged on the one hand and costs incurred and recovered in rates on the other hand).

[15] On November 24, 1993, in Treatment of Responses to FERC Form No. 580 Interrogatories, 58 FR 63312 (Dec. 1, 1993), IV FERC Stats. & Regs., Proposed Regulations ¶ 32,503 (1993), the Commission issued a Notice of Proposed Rulemaking in which it proposed to amend its regulations to codify an existing requirement that each public utility with a steam-electric generating station of 50 megawatts or more file responses to FERC Form 580 interrogatories, and explicitly disqualifying these responses to Form 580 interrogatories from claims of privilege under 18 CFR 388.112. The Commission also proposed to make public past responses to Form 580 interrogatories. That Notice is pending.

[16] *E.g.*, Kentucky Utilities Company, 29 FERC ¶ 61,159 (1984) (order on complaint instituting investigation regarding fuel costs). While this particular case involved non-affiliate fuel costs, we are not aware of any reason why access to the relevant information would be any more or less difficult in the case of affiliate fuel costs.

[17] The Municipal Customers, the Coalition and NARUC also argue that it is unclear what is meant by the term ''approve'' as it applies to SEC determinations, since the SEC currently conducts no review of individual affiliate fuel contracts and makes no findings regarding the reasonableness of affiliate fuel prices.

Given the alternate ground for decision in *Ohio Power*, discussed above, the issue of whether the SEC has ''approved'' affiliate fuel prices within the meaning of § 35.14(a)(7) as amended here is presently moot. As to whether other regulatory bodies may have ''approved'' such prices, that is a matter best left to determination on a case-by-case basis.

[18] *See, e.g.*, Municipal Resale Service Customers v. Ohio Power Company, 62 FERC ¶ 61,207, *reh'g denied*, 64 FERC ¶ 61,034 (1993), *petition for review denied*, Municipal Resale Serv. Customers v. FERC, 43 F.3d 1046 (6th Cir. 1995) (declining to order an investigation of affiliate fuel prices for registered public utility holding company as a consequence of *Ohio Power*).

[19] The Florida Cities argue that such an issue was pending in Florida Power Corporation, Docket Nos. ER93–299–000 and EL93–18–000. *See supra* n.11. This Commission, by letter-order issued March 30, 1994 in Florida Power Corporation, 66 FERC ¶ 61,365 (1994), approved a settlement agreement filed by the parties and terminated these dockets.

[20] The Registered Systems also note that all of their affiliate fuel supply arrangements were in place well before the Commission announced its preference for a market-based rate recovery standard in Public Service Co. of New Mexico, Opinion No. 133, 17 FERC ¶ 61,123 (1981), *order on reh'g*, Opinion No. 133–A, 18 FERC ¶ 61,036 (1982), *aff'd*, 832 F.2d 1201 (10th Cir. 1987).

decision in *Ohio Power*, discussed above), we will apply this rule change; our responsibility under the FPA to ensure that wholesale rates are just and reasonable, as discussed at length above, permits us to do nothing less. As to challenges to affiliate fuel prices recovered through the fuel adjustment clause prior to the effective date of this rule change (and which are not subject to the alternate ground for decision in *Ohio Power*, discussed above), we believe that whether we should apply this rule change or not is best decided in each individual case in which the issue arises rather than generically in the abstract.[21]

Finally, we do not believe that it is appropriate for the Commission, at this time, to address in the abstract the Registered Systems' concern regarding retroactivity in the event future legislation gives this Commission, rather than the SEC, authority to determine the reasonableness of the recovery in rates of affiliate fuel costs for registered public utility holding company systems.

III. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[22] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[23] No environmental consideration is necessary for the promulgation of a rule that involves electric rate filings that public utilities submit under sections 205 and 206 of the FPA and the establishment of just and reasonable rates. [24] Because this final rule involves such filings submitted under sections 205 and 206 of the FPA and the establishment of just and reasonable rates, no environmental consideration is necessary.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA)[25] requires rulemakings to either contain a description and analysis of the impact the rule will have on small entities or to certify that the rule will not have a substantial economic impact on a substantial number of small entities. Because most of the entities that would be required to comply with this rule are large public utilities that do not fall within the RFA's definition of small entities, [26] the Commission certifies that this rule will not have a ''significant impact on a substantial number of small entities.''

V. Information Collection Statement and Public Reporting Burden

The Office of Management and Budget (OMB) regulations in 5 CFR 1320.11 require that OMB approve certain information collection requirements imposed by an agency. This rule neither contains new information collection requirements nor significantly modifies any existing information collection requirements in Part 35; [27] therefore, it is not subject to OMB approval. However, the Commission will submit a copy of this rule to OMB for information purposes only.

Interested persons may send comments regarding collections of information to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, (202) 208–1415]; and to the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) [Attention : Desk Officer for the Federal Energy Regulatory Commission]. Telephone: (202) 395–3087. FAX: (202) 395–7285.

VI. Effective Date and Congressional Notification

This Final Rule will take effect on November 6, 1998. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this rule is not a ''major rule'' within the meaning of section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.[28] The Commission will submit the rule to both houses of Congress and the Comptroller General prior to its publication in the **Federal Register**.

List of Subjects in 18 CFR Part 35

Electric power rates, Electric utilities, Electricity, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends part 35, chapter I, title 18, *Code of Federal Regulations*, as set forth below.

PART 35—FILING OF RATE SCHEDULES

1. The authority citation for part 35 continues to read as follows:

Authority: 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 35.14 is amended by revising the second sentence of paragraph (a)(7) to read as follows:

§ 35.14 Fuel cost and purchased economic power adjustment clauses.

(a) * * *

(7) * * * Where the utility purchases fuel from a company-owned or controlled source, the price of which is subject to the jurisdiction of a regulatory body, and where the price of such fuel has been approved by that regulatory body, such costs shall be presumed, subject to rebuttal, to be reasonable and includable in the adjustment clause. * * *

* * * * *

[FR Doc. 98–26888 Filed 10–6–98; 8:45 am]
BILLING CODE 6717–01–P

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: Final rule.

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[21] The fuel adjustment clause allows public utilities to pass through to their ratepayers increases or decreases in the cost of their fuel, without having to make separate filings to reflect each change in fuel cost, and without having to obtain prior Commission review of each change in fuel cost. Missouri Public Service Company, Opinion No. 327, 48 FERC ¶ 61,011 at 61,078 (1989); Fuel Adjustment Clauses in Wholesale Rate Schedules, 52 FPC 1304, 1305–06 (1974); *see also* Public Service Co. of New Hampshire v. FERC, 600 F.2d 944, 947, 952 (D.C. Cir.), *cert denied*, 444 U.S. 990 (1979). Consequently, the Commission has sanctioned after-the-fact review and refunds in later proceedings. *See, e.g.*, Central Vermont Public Service Corporation, 44 FERC ¶ 61,127 at 62,027 (1988); Alamito Co., 33 FERC ¶ 61,286 at 61,574 (1985); see also Louisiana Power & Light Company, Opinion No. 366, 57 FERC ¶ 61,101 at 61,388–89 (1991). Without later review and the ability to order refunds, overcharges collected through the fuel adjustment clause would be exempt from all scrutiny and refunds. *See* Kansas Municipal and Cooperative Electric Systems, 16 FERC ¶ 61,227 at 61,488, *reh'g denied*, 17 FERC ¶ 61,141 (1981).

[22] Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–90 ¶ 30,783 (1987).

[23] 18 CFR 380.4.

[24] 18 CFR 380.4(15).

[25] 5 U.S.C. 601–12.

[26] 5 U.S.C. 601(3) (citing section 3 of the Small Business Act, 15 U.S.C. 632). Section 3 of the Small Business Act defines a small business concern as a business that is independently owned and operated and that is not dominant in its field of operation. 15 U.S.C. 632(a).

[27] These requirements were previously submitted to OMB and assigned control number 1902–0096.

[28] 5 U.S.C. 804(2).

SUMMARY: This final rule 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 revision includes descriptions of ionizing radiation sources that require Army radiation permits and criteria for application approval. The 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.

EFFECTIVE DATE: October 7, 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:

a. Background

Basic information on approval of Radiation Sources on Army Land was previously published in the proposed rule section of the **Federal Register**, Vol. 63, No. 132, pages 37296–37297, Friday, July 10, 1998 for public comment.

b. Comments and Responses

Comment: Only one respondent provided comment. An individual representing himself strongly supported the proposed rule on the basis that it improved timely approval to possess radiation sources on Army land.

Response: The respondent supports the Army intent of this rule.

Executive Order 12866

This rule is not a major rule as defined under Executive Order 12866. The 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 rule was reviewed with regard to the requirements of the Regulatory Flexibility Act. The rule does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Pursuant to Section 3507(d) of the Paperwork Reduction Act of 1995, the reporting provisions of this rule have been approved by the Office of Management and Budget (OMB) and assigned OMB Control Number 0702–0109.

List of Subjects in 32 CFR Part 655

Environmental protection, Radiation protection, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 655 is 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 applicant 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 allow 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. 98–26653 Filed 10–6–98; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 200

Organization, Functions, and Procedures; Freedom of Information Act

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture is revising the Forest Service's Freedom of Information Act (FOIA) procedures to permit the Chief of the Forest Service to designate Washington Office staff directors to receive requests for records, extend the reply deadline period, make discretionary releases of records exempt form mandatory disclosure, and deny records pursuant to the Act. The intent is to achieve more efficiency and to balance the assignment of the FOIA workload. Since this rule change relates solely to internal administration and the carrying out of the Secretary's executive function of delegating authority to agency heads, notice and comment prior to adoption of this rule are not necessary.

EFFECTIVE DATE: This rule is effective October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Naomi Charboneau, Freedom of Information Act Officer, MAIL STOP 1143, Forest Service, USDA, P.O. Box 6090, Washington, D.C. 20090–6090. Telephone: (703) 235–9488.

SUPPLEMENTARY INFORMATION: Forest Service rules governing requests for information made pursuant to the Freedom of Information Act are set out in 36 CFR 200.7 and 200.8. In § 200.7, Request for records, the Deputy Chief for the program area involved is authorized to receive and act on requests and to extend the 20-day administrative deadline for reply, to make discretionary releases of material not exempt from mandatory disclosure, and to deny records requested. Under § 200.8, appeals of details are made to and rendered by the Chief or other official to whom such authority is delegated. Through the Forest Service Manual Chapter 6270, the Chief has delegated all appeals to the Deputy Chief for Operations.

An Internal Forest Service review reveals that this practice has resulted in a disproportionate appeal workload being assigned to the Deputy Chief for Operations. In response to this finding, the Chief has determined that all Deputy Chiefs should share in the appeal decision workload. This reassignment necessitates a change in who may respond to initial requests. This final rule revises § 200.7(a) to permit the Washington office Staff Directors to exercise the authority to respond to initial requests and make other decisions authorized in § 200.7(b). In addition, the final rule also adds the Direct of the Institute of Tropical Forestry to the list of field officers authorized under paragraph (a) to respond to initial requests. This position was inadvertently omitted from a June 19, 1997, amendment updating Forest Service unit names and addresses. The revised delegations of authority to staff Directors, and Deputy Chiefs for FOIA responses to requests and appeals, respectively, will be issued by the Chief in an amendment to Chapter 6270 of the Forest Service Manual, which is the principal source of internal agency procedure (36 CFR 200.4).

In addition, in order to insure uniformity in treatment by the various program and staff offices handling appeals, the Forest Service is formalizing current practice, in a revision of 36 CFR 200.8, by requiring that all proposed responses to appeals be reviewed by the Forest Service Freedom of Information Act/Privacy Act Officer before signature by the Deputy Chiefs.

This final rule involves matters of internal agency procedure, namely the assignment and allocation of work and the delegation of authority by the Chief of the Forest Service. Therefore, pursuant to 5 U.S.C. 553(a)(3)(A), this final rule is exempt from the notice and comment requirements of 5 U.S.C. 553(b). Accordingly, this rule is also exempt from review under Executive Order 12866 on Regulatory Review, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), and the Congressional review requirements of the Small Business Regulatory Enforcement Act of 1996 (Pub. L. No. 104–121, Title II, Subtitle E).

In accordance with Executive Order 12630, regarding Governmental Action and Interference with Constitutionally Protected Property Rights, the Forest Service finds that this final rule, involving matters of internal agency procedure in connection with the processing of FOIA requests and appeals, implicates no takings, in that it does not propose or implement licensing, permitting, or other conditions, requirements, or limitations on private use, nor does it require dedications or exactions from owners of private property.

The Forest Service has reviewed this final rule in accordance with Executive Order 12988, Civil Justice Reform, and has determined that this rule will preempt all State and local laws and regulations that are in conflict with this rule; (2) this rule will have no retroactive effect; and (3) parties will not be required to participate in administrative proceedings before filing suit in court challenging the rule. The rule meets the applicable standards provided in section 3(b) of the Executive Order.

Finally, this rule does not contain any recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 and, therefore, imposes no paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and implementing regulations at 5 CFR part 1320 do not apply.

List of Subjects in 36 CFR Part 200

Administrative practice and procedure, Freedom of information, and Organization and functions (Government agencies).

Therefore, for the reasons set forth in the preamble, Part 200 of Title 36 of the Code of Federal regulations is amended as follows:

PART 200—ORGANIZATION, FUNCTIONS, AND PROCEDURES

1. The authority citation for Part 200 continues to read:

Authority: 5 U.S.C. 552; 7 U.S.C. 6706; 16 U.S.C. 472, 521, 1603, and 2101 *et seq.*

2. Section 200.7 is amended by revising paragraph (a) to read as follows:

§ 200.7 Request for records.

* * * * *

(a) The Regional Forester, Regional Special Agent in charge, Research Station Director, Area Director, and Institute Director at the field locations and addresses listed in § 200.2; the Director of Law Enforcement and Investigations, other Staff Directors, or other officials whom the Chief may authorize, located in the Washington Office, are authorized to receive requests for such records, to make

determinations regarding whether records exist, and to grant or deny requests for records exempt form disclosure under the provisions of 5 U.S.C. 552(b).

* * * * *

3. Section 200.8 is revised to read as follows:

§ 200.8 Appeals.

(a) Appeals form denials of requests submitted under § 200.7 shall be submitted in accordance with U.S. Department of Agriculture rules at 7 CFR part 1, subpart A, and the appendix to subpart A to the Chief, Forest Service, U.S. Department of Agriculture, Auditors Building, 14th and Independence Avenue, S.W., P.O. Box 96090, Washington, DC 20090–6090.

(b) The Chief, or other official to whom such authority is delegated, shall determine whether to grant or deny the appeal and make all necessary determinations relating to an extension of the 20-day administrative deadline for reply, discretionary release of records exempt from mandatory disclosure under 5 U.S.C. 552(b), and charging the appropriate fees, pursuant to U.S. Department of Agriculture rules at 7 CFR part 1, subpart A, and the appendix to subpart A.

(c) The Forest Service Freedom of Information Act/Privacy Act Officer must review all proposed responses to appeals prior to signature.

Dated: September 30, 1998.

Anne Kennedy,

Deputy Under Secretary, Natural Resources and Environment.

[FR Doc. 98–26813 Filed 10–6–98; 8:45 am]

BILLING CODE 3410–11–M

POSTAL SERVICE

39 CFR Part 501

Manufacture, Distribution, and Use of Postage Meters

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule clarifies and expands the sources of and uses of applicant information derived from applications for a license to lease and use postage meters, both printed and electronic versions.

EFFECTIVE DATE: October 5, 1998.

FOR FURTHER INFORMATION CONTACT: Nicholas S. Stankosky, (202) 268–5311.

SUPPLEMENTARY INFORMATION: This rule is intended to provide greater specificity regarding uses of the information derived from the meter license applications received by the United States Postal Service from meter users and authorized meter Manufacturers. Such information is hereafter referred to as ''Applicant Information.'' Applicant information is derived from postal forms, both printed and electronic versions.

Discussion of Comments

A total of one hundred and forty one parties made comments on the proposed rule. Of this number, an overwhelming number indicated general support for the Postal Service's ability to communicate more effectively with its meter users. One common thought among these comments was that the Postal Service should be able to include the names of the four currently authorized meter manufacturers in customer communications. One party had a number of what were presented as business and legal concerns. These involved the Postal Service in possibly:

1. Using a customer list to promote USPS services in competition with the private sector;
2. Promoting or advancing the business interests of competitors;
3. Listing competitors names in customer communications;
4. Using a list for unspecified future uses;
5. Having access to a manufacturer's computer files; and
6. Issuing a communication without prior notification to the meter manufacturers.

These concerns were specifically addressed and resolved with this party prior to the issuance of the final rule. However, this same party had an objection to the use of the list beyond contacts related to the meter program. The Postal Service considered this comment and concluded that inasmuch as remote set meter customers would no longer have the need to visit a retail facility to have their meter set, it was appropriate to use the list to convey information that a customer could have otherwise obtained from a retail outlet. Since this rule was proposed, the Postal Service has completed relicensing of all meter users. This resulted in an updated customer list.

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR part 501 is amended as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for 39 CFR part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a): 39 U.S.C. 101, 401, 410, 2610, 2605; Inspector General Act of 1978, as amended (Pub L. 95–452, as amended), 5 U.S.C. App 3.

2. Add section 501.29, as follows:

§ 501.29 Licensee information.

(a) As stated in § 501.22(b) manufacturers must transmit electronically, copies of completed PS Forms 3601–A, Application for a License to Lease and Use Postage meters, to the designated Postal Service central data processing facility.

(b) The Postal Service may use applicant information in the administration of postage meter and metered mail activities, and to communicate with customers who may no longer be visiting a traditional USPS retail outlet. The Postal Service will also use applicant information to communicate with USPS customers through any new retail channels, and for the following purposes:

(1) Issuance (including re-licensing, renewal, transfer, revocation or denial, as applicable) of a meter license to a postal patron that uses a postage meter, and communications with respect to the status of such license.

(2) Disclosure to a meter manufacturer of the identity of any meter required to be removed from service by that meter manufacturer, and any related licensee data, as the result of revocation of a meter license, questioned accurate registration of that meter, or de-certification by the Postal Service of any particular class or model of postage meter.

(3) Use for the purpose of tracking the movement of meters between a meter manufacturer and its customers and communications to a meter manufacturer (but not to any third party other than the applicant/licensee) concerning such movement. The term ''meter manufacturer'' includes a meter manufacturer's dealers and agents.

(4) To transmit general information to all meter customers concerning rate and rate category changes implemented or proposed for implementation by the United States Postal Service.

(5) To advertise Postal Service services relating to the acceptance, processing and delivery of, or postage payment for, metered mail.

(6) To allow the Postal Service to communicate with USPS customers on products, services and other information otherwise available to USPS customers through traditional retail outlets. .

(7) Any internal use by Postal Service personnel, including identification and monitoring activities relating to postage meters, provided that such use does not result in the disclosure of applicant

information to any third party or will not enable any third party to use applicant information for its own purposes; except that the applicant information may be disclosed to other governmental agencies for law enforcement purposes as provided by law.

(8) Identification of authorized meter manufacturers or announcements of de-authorization of an authorized meter manufacturer, or provision of currently available public information, where an authorized meter manufacturer is identified.

(9) To promote and encourage the use of postage meters, including remotely set postage meters, as a form of postage payment, provided that the same information is provided to all meter customers, and no particular meter manufacturer will be recommended by the Postal Service.

(10) To contact meter customers in cases of revenue fraud or revenue security except that any meter customer suspected of fraud shall not be identified to other meter customers.

(11) Disclosure to a meter manufacturer of applicant information pertaining to that meter manufacturer's customers that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes.

(12) To transmit to a manufacturer all applicant and postage meter information pertaining to that manufacturer's customers and postage meters that may be necessary to permit such meter manufacturer to synchronize its computer meter database with information contained in the computer files of the Postal Service, including but not limited to computerized data that reside in Postal Service meter management databases.

(13) Subject to the conditions stated herein, to communicate in oral or written form with any or all applicants any information that the Postal Service views as necessary to enable the Postal Service to carry out its duties and purposes under part 501.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 98–26754 Filed 10–6–98; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300729; FRL–6034–7]
RIN 2070–AB78

Tebuconazole; Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends time-limited tolerances for residues of the fungicide tebuconazole and its metabolites in or on sunflower, seed and sunflower, oil at 0.2 and 0.4 parts per million (ppm) for an additional 1-year period, to September 30, 1999. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on sunflowers. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (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.

DATES: This regulation becomes effective October 7, 1998. Objections and requests for hearings must be received by EPA, on or before December 7, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300729], 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–300729], 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, Crystal Mall #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. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, 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: Rm. 267, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9362; e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of October 29, 1997 (62 FR 56089) (FRL–5752–4), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established time-limited tolerances for the residues of tebuconazole and its metabolites in or on sunflower, seed and sunflower, oil at 0.2 and 0.4 ppm, with an expiration date of September 30, 1998. EPA established the tolerances because 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.

EPA received a request to extend the use of tebuconazole on sunflowers for this year's growing season due to the continued emergency situation facing sunflower growers in Colorado, Kansas, Nebraska and North Dakota. Rust outbreaks in 1996 and 1997 have resulted in a buildup of inoculum, making the potential for an outbreak probable given favorable environmental conditions . After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of tebuconazole on sunflowers for control of rust in sunflowers.

EPA assessed the potential risks presented by residues of tebuconazole in or on sunflower seed and sunflower oil. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with

FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of October 29, 1997 (62 FR 56089). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 1-year period. Although these tolerances will expire and are revoked on September 30, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on sunflower, seed and sunflower, oil after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. 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.

I. 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 December 7, 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'scontentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information thatdoes 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.

II. Public Record and Electronic Submissions

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.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

Objections and hearing requests will also be accepted on disks in WordPerfect 51/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300729]. No 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.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule extends a time-limited tolerance that was previously extended by EPA 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). 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 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).

Since this extension of an existing time-limited tolerance does 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is

unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. 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: September 28, 1998.

Arnold E. Layne,

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.

§ 180.474 [Amended]

2. In § 180.474, by amending paragraph (b)(1) by changing the date for ''sunflower oil'' and ''sunflower seed'' from ''9/30/98'' to read ''9/30/99.''

[FR Doc. 98–26785 Filed 10–6–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300730; FRL–6034–8]
RIN 2070–AB78

Maleic Hydrazide; Extension of Tolerances for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends time-limited tolerances for residues of the herbicide maleic hydrazide and its metabolites in or on rice, grain at 105 parts per million (ppm); rice, straw at 75 ppm; rice, hulls at 240 ppm; and rice, bran at 180 ppm. In addition, this rule extends time-limited tolerances for secondary residues in milk at 1.0 ppm; at 2.5 ppm in meat, 7 ppm in liver, 32 ppm in kidney, and 3 ppm in fat of cattle, goats, hogs, horses and sheep; at 0.5 ppm in meat, liver, and fat of poultry; 1.4 ppm in poultry meat byproducts; and 0.5 ppm in eggs. All of these time-limited tolerances are extended for an additional 1-year period, to September 30, 1999. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on rice. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (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.

DATES: This regulation becomes effective October 7, 1998.. Objections and requests for hearings must be received by EPA, on or before December 7, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300730], 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–300730], 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, Crystal Mall #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. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, 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: Rm. 267, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)–308–9362; e-mail: schaible.stephen@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of December 5, 1997 (62 FR 64287) (FRL–5754–5), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established time-limited tolerances for the residues of maleic hydrazide and its metabolites in or on rice, grain at 105 ppm; rice, straw at 75 ppm; rice, hulls at 240 ppm; and rice, bran at 180 ppm; in milk at 1.0 ppm; at 2.5 ppm in meat, 7 ppm in liver, 32 ppm in kidney, and 3 ppm in fat of cattle, goats, hogs, horses and sheep; at 0.5 ppm in meat, liver, and fat of poultry; 1.4 ppm in poultry meat byproducts; and 0.5 ppm in eggs, with an expiration date of September 30, 1998. EPA established the tolerances because 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.

EPA received a request to extend the use of maleic hydrazide on rice for this year's growing season due to the continued emergency situation facing rice growers in Louisiana, as well as growers in Mississippi and Texas. Heavy and untimely rainfall has limited the effectiveness of soybean herbicides at controlling red rice, which has resulted in less than adequate control of red rice in the soybean crops and increasing red rice infestations in the intervening commercial rice crops. Heavy rains also forced some growers in Louisiana to rework their fields last autumn, which buried red rice seed which is normally consumed by wildlife feeding at the surface. Red rice competes with the commercial rice crop to lower absolute yield, but also lowers both milled yield and quality. After having reviewed the submission, EPA concurs that emergency conditions exist for these states. EPA has authorized under FIFRA section 18 the use of maleic hydrazide on rice for control of red rice in rice.

EPA assessed the potential risks presented by residues of maleic hydrazide in or on rice and secondary residues in meat, milk, poultry and eggs. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerances under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of December 5, 1997 (62 FR 64287). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerances will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 1-year period. Although these tolerances will expire and are revoked on September 30, 1999, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerances remaining in or on rice commodities, meat, milk, poultry and eggs after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerances. EPA will take action to revoke these tolerances earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. 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 December 7, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

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.

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

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

Objections and hearing requests will also be accepted on disks in

WordPerfect 51/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300730]. No 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.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule extends time-limited tolerances that were previously extended by EPA 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). 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 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).

Since this extension of existing time-limited tolerances does 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. 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: September 28, 1998.

Arnold E. Layne,

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.

§ 180.175 [AMENDED]

2. In § 180.175 by amending the table in paragraph (b) for all of the commodities by changing the date ''9/30/98'' to read ''9/30/99.''

[FR Doc. 98–26786 Filed 10–6–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300731; FRL 6034–9]

RIN 2070–AB78

Bifenthrin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide bifenthrin and its metabolites in or on canola at 0.5 part per million (ppm) for an additional 18–month period, to March 30, 2000. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act authorizing use of the pesticide on canola. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (FFDCA) requires EPA to establish a time-limited tolerance or exemption from the requirement of 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.

DATES: This regulation becomes effective October 7, 1998. Objections and requests for hearings must be received by EPA, on or before December 7, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300731, 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–300731, 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, Crystal Mall #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. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

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: Rm. 267, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9356; e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of September 5, 1997 (62 FR 46894) (FRL–5740–6), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of bifenthrin and its metabolites in or on canola at 0.5 ppm, with an expiration date of September 30, 1998. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement of 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.

EPA received requests to extend the use of bifenthrin on canola for this year's growing season due to the situation which has remain unchanged. Aphid populations in canola have significantly increased in recent years, and are not adequately controlled through available means. Mild and wet winters have exacerbated this situation, as they allow high aphid carryover from the previous year, and delay planting so that flowering of the canola occurs when aphid populations are at their peak. Significant economic losses were expected without adequate control of aphids in canola. After having reviewed the submission, EPA concurs that emergency conditions exist for Idaho, Oregon, and Washington states. EPA has authorized under FIFRA section 18 the use of bifenthrin on canola for control of aphids in canola.

EPA assessed the potential risks presented by residues of bifenthrin in or on canola. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of September 5, 1997 (62 FR 46894). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18 month period. Although this tolerance will expire and is revoked on March 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on canola after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. 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.

I. 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 December 7, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a

summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP–300731] (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, CM #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.

III. Regulatory Assessment Requirements

A. Certain Act and Executive Orders

This final rule extends a time-limited tolerance that was previously extended by EPA 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). 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 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).

Since this extension of an existing time-limited tolerance does 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of

section 3(b) of Executive Order 13084 do not apply to this rule.

IV. 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 this 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: September 28, 1998.

Arnold E. Layne,

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.

§ 180.442 [Amended]

2. In §180.442, by amending the entry for ''Canola, seed'' in the table in paragraph (b) by changing the date ''9/30/98'' to read ''3/30/00.''

[FR Doc. 98–26901 Filed 10–6–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300738; FRL–6036–8]

RIN 2070–AB78

Fludioxonil; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of fludioxonil (4-(2,2-difluoro 1,3 benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile) in or on the following raw agricultural commodities (RACs): rape seed, rape forage, peanuts, meat (hulls removed), peanut hay, sunflower seed, leafy vegetables except brassica, brassica leafy vegetables, legume vegetables, foliage of legume vegetables, fruiting vegetables except cucurbits, cucurbit vegetables, forage, fodder, and straw of cereal grains, grass, forage, fodder, and hay, and non-grass animal feeds at 0.01 parts per million (ppm); root and tuber vegetables, leaves of root and tuber vegetables, bulb vegetables, cereal grains, and herbs and spices at 0.02 ppm; and cotton seed and cotton gin byproducts at 0.05 ppm. Novartis Crop Protection, Inc, requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996 (Pub. L. 104–170).

DATES: This regulation is effective October 7, 1998. Objections and requests for hearings must be received by EPA on or before December 7, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300738], 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–300738], 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, Crystal Mall #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–300738]. No Confidential Business Information (CBI) should be submitted through e mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 26, 1998 63 FR 45497 (FRL–6023–4), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a announcing the filing of a pesticide petition (PP 8F4978) for tolerances by Novartis Crop Protection, Inc., 410 Swing Road, Greensboro, NC 27419. This notice included a summary of the petition prepared by Novartis Crop Protection Inc., the registrant. There were no comments received in response to the Notice of Filing.

The petition requested that 40 CFR 180.516 be amended by establishing tolerances for residues of fludioxonil in or on the following RACs: rape seed and rape forage (reported as canola in the Notice of Filing), peanuts, meat (hulls removed) and peanut hay (reported as peanuts in the Notice of Filing), sunflower seed, leafy vegetables except brassica (Crop Group 4); brassica leafy vegetables (Crop Group 5); legume vegetables (Crop Group 6); foliage of legume vegetables (Crop Group 7); fruiting vegetables except cucurbits (Crop Group 8); cucurbit vegetables (Crop Group 9); forage, fodder, and straw of cereal grains (Crop Group 16); grass, forage, fodder, and hay (Crop Group 17); and non-grass animal feeds (Crop Group 18) at 0.01 ppm; root and tuber vegetables (Crop Group 1); leaves of root and tuber vegetables (Crop Group 2); bulb vegetables (Crop Group 3); cereal grains (Crop Group 15); and herbs and spices (Crop Group 19) at 0.02 ppm; cotton seed, and cotton gin byproducts at 0.05 ppm.

I. Risk Assessment and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to

mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.....''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of fludioxonil and to make a determination on aggregate exposure, consistent with section 408(b)(2), for tolerances in or on the following raw agricultural commodities (RACs): rape seed, rape forage, peanuts, meat (hulls removed), peanut hay, sunflower seed, leafy vegetables except brassica, brassica leafy vegetables, legume vegetables, foliage of legume vegetables, fruiting vegetables except cucurbits, cucurbit vegetables, forage, fodder, and straw of cereal grains, grass, forage, fodder, and hay, and non-grass animal feeds at 0.01 ppm; root and tuber vegetables, leaves of root and tuber vegetables, bulb vegetables, cereal grains, and herbs and spices at 0.02 ppm; and cotton seed and cotton gin byproducts at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. A battery of acute toxicity studies place technical fludioxonil in Toxicity Category IV for oral, inhalation, and dermal irritation studies, and Category III for dermal and eye irritation studies. Fludioxonil is not a skin sensitizer.

2. A subchronic oral toxicity study in rats dosed orally with technical fludioxonil at levels of 0, 0.8, 6.6, 64, 428, and 1,283 mg/kg/day (males); 0, 1.0, 7.1, 70, 462, and 1,288 mg/kg/day (females) resulted in the Lowest-Observed-Adverse-Effect Level (LOAEL) of 428 mg/kg/day in males and 462 mg/kg/day in females, based on the increased incidence of microscopic pathology of the kidney and liver and the deceased body weight gain. The No-Observed-Adverse-Effect level (NOAEL) is 64 mg/kg/day in males; 70 mg/kg/day in females.

3. In a subchronic oral toxicity study, fludioxonil technical was administered to dogs for 13 weeks at 0, 200, 2,000, and 15,000/10,000 ppm (15,000 ppm for 17 days and 10,000 ppm from day 18 until study termination). These dose levels correspond to nominal doses of 0, 5, 50, or 375/250 mg/kg/day, as actual intake data were not provided. A LOAEL of 2,000 ppm in males and females was determined based on the observation of diarrhea. The NOAEL is 5 mg/kg/day in males and females.

4. In a subchronic oral toxicity study, technical fludioxonil was administered to mice at doses of 0, 1.3, 13.9, 144, 445, or 1,052 mg/kg/day (males); 0, 1.9, 16.8, 178, 559, or 1,307 mg/kg/day (females). The LOAEL is 1,052 mg/kg/day in males, and 1,307 mg/kg/day in females, based on decreased body weight gain in female mice, changes in serum chemistry in male and female mice, increased liver to body weight ratio, and the increased incidence of nephropathy and centrilobular hypertrophy of the liver in both sexes. The NOAEL is 445 mg/kg/day in males and 559 mg/kg/day in females.

5. In a 28 day repeated dermal toxicity test, rats were dosed with technical fludioxonil under occlusive dressing (6 hrs/day, 5 days/week, for 4 weeks) at 0, 40, 200, and 1,000 mg/kg/day. The dermal irritation LOAEL and NOAEL are both greater than 1,000 mg/kg for males and females. The systemic toxicity LOAEL is 1,000 mg/kg for females based on increased AST and adrenal weight, and 1,000 mg/kg for males based on increased creatinine and adrenal weight and the systemic toxicity NOAEL is 200 mg/kg/day for males and females.

6. In a chronic oral toxicity study, dogs were dosed with technical fludioxonil for 52 weeks at 0, 3.1, 33.1, and 297.8 mg/kg/day (males); 3.3, 35.5, and 330.7 mg/kg/day (females). The LOAEL for male dogs is 297.8 mg/kg/day based on decreased body weight, hematology alterations (increased platelets and fibrin), clinical chemistry alterations (increased cholesterol and alkaline phosphatase) and increased liver weight. The LOAEL for female dogs is 35.5 mg/kg/day based on a marked decrease in body weight gain for weeks 1–13 and 1–52 of the study. The NOAEL is 33.1 mg/kg/day for male dogs and 3.3 mg/kg/day for female dogs.

7. In a combined chronic toxicity/carcinogenicity study, rats were fed technical fludioxonil at 0, 10, 30, 100, 1,000, and 3,000 ppm (males: 0, 0.37, 1.1, 3.7, 37 and 113 mg/kg/day; females: 0, 0.44, 1.3, 4.4, 44, and 141 mg/kg/day) for either 12 or 24 months. In addition, rats from the control and 3,000 ppm groups were fed the test diets for 12 months and then allowed to recover for 1 month prior to sacrifice. There was no treatment related effect on food or water consumption. Males dosed at 1,000 and 3,000 ppm and females dosed at 3,000 ppm exhibited a number of effects including higher incidence of dark stool and urine, staining (mostly blue) around the pelvic region and abdomen, higher frequency of diarrhea (males only), and decreased body weight gain. Females dosed at 3,000 ppm had some evidence of slight anemia at the 12 month evaluation. At necropsy, males at the 3,000 ppm dose level exhibited an increased incidence of enlarged livers and kidneys with discolored foci or general discoloration and an increased severity of progressive nephropathy; kidneys with cysts were reported at both the 1,000 and 3,000 ppm dose levels. For females in the 1,000 and 3,000 ppm dose levels there was an increase incidence of discoloration of the kidneys. Males and females in the 3,000 ppm group had an increased incidence and more severe grade of histopathological changes in the liver. There was an increased incidence of hepatocellular tumors in both sexes of the 3,000 ppm group; however, the increase in males was not statistically significant. The statistically significant finding in females was an increase in combined adenomas and carcinomas (0/70, 1/60, 0/60, 1/60, 2/60 and 5/70 in the 0, 10, 30, 100, 1,000 and 3,000 ppm groups, respectively). Males and females in the 3,000 ppm group had an increased incidence of basophilic foci in the liver; males also had an increase in hepatocellular hypertrophy. The LOAEL

for males and females was 113 and 141 mg/kg/day, respectively (3,000 ppm) based on decreased body weight and weight gain, slight anemia in females at 12 months, and increased incidence and severity of histopathology changes in the liver. The NOAEL for males and females was 37 and 44 mg/kg/day, respectively. Fludioxonil technical was not carcinogenic in male rats. There was a statistically significant increase in the incidence of combined adenomas and adenocarcinomas of the liver in female rats in the 3,000 ppm group. The 3,000 ppm level is considered adequate for carcinogenicity testing based on decreased body weight and weight gain in both sexes, slight anemia in females at 12 months, and an increased incidence and severity of liver histopathology changes in both sexes.

8. A carcinogenicity study in mice administered technical fludioxonil in the diet at 0, 10, 100, 1,000, and 3,000 ppm (0, 1.1, 11.3, 112, and 360 mg/kg/day for males and 0, 1.4, 13.5, 133, and 417 mg/kg/day for females). Male mice at 360 mg/kg/day level exhibited clinical toxicity in the form of an incidence of ''convulsed'' when handled. No significant effects on body weight, weight gain, food consumption, hematology, or microscopic non neoplastic pathology were reported in either sex. Increased liver weight (9%) and spleen weight (34%) were observed in male mice at the 360 mg/kg/day dose level, which correlated with the macroscopic observations of enlarged spleen and raised foci of liver. Female mice showed a statistically significant increase in liver weight at the 417 mg/kg dose level and this is also supported by the macroscopic observation of enlarged liver. Other macroscopic changes in female mice were an increased incidence of enlarged thymus, spleen, mediastinal lymph node, and liver and an increased incidence of lymphoma in these organs. The LOAEL is 112 mg/kg/day for male mice, based on the increased incidence of clinical toxicity and 417 mg/kg/day for female mice, based on the increased liver weight and the increased incidence of macroscopic pathology. The NOAEL is 11.3 mg/kg/day and 133 mg/kg/day in male and female mice, respectively. There was evidence of carcinogenicity in female mice based on increased incidence of lymphomas, which contributed to death. This effect was due to the early onset and high incidence of lymphoma at the 3,000 ppm dose relative to the control group. Total incidence of lymphoma was 11/59, 10/59, 13/60, 12/60, and 18/60 for the 0, 10, 100, 1,000, and 3,000 ppm dose levels in female mice, respectively. This increase in total lymphoma was significant by a trend test, but not by a pair wise comparison. Whether an adequate dose level was used in this study to assess the carcinogenic potential of fludioxonil is complicated by the observation of an increased lymphoma incidence at the 3,000 ppm dose level. This dose level produced some systemic effects, such as an increased incidence of male mice which ''convulsed'' when handled and macroscopic pathology in both sexes. But this dose level produced no significant effects on body weight gain, food consumption, hematology, or microscopic non neoplastic pathology in either sex.

In a second carcinogenicity study in mice fludioxonil technical was administered in the diet at nominal dose levels of 0, 3, 30, 5,000, and 7,000 ppm (0, 0.33, 3.3, 590, and 851 mg/kg/ day in males; 0, 0.41, 4.1, 715, and 1,008 mg/kg/day for females). The 7,000 ppm dose level in males and females produced significant systemic effects in addition to significant nephropathy, which contributed to death in a majority of test animals. Survival in female mice was below 25% and exceeded the guideline criteria for survival in a mouse carcinogenicity study. Changes in liver weights were observed in both sexes at the 5,000 and 7,000 ppm dose levels, but could not be related to histological alterations in the liver. The LOAEL is estimated at 851 mg/kg/day in males, and 1,008 mg/kg/day in females. The NOAEL is 590 mg/kg/day in males, and 715 mg/kg/day in females. The 7,000 ppm dose is adequate for testing carcinogenic potential in male mice, based on the significant systemic effects and nephropathy observed at this dose. For female mice, the 7,000 ppm dose level is considered excessive, based on the reduction in survival of the test animals. There was no evidence of increased incidence of tumors in this study for male or female mice.

9. In a developmental toxicity (teratology) study, pregnant rats (gestation days 6–15 inclusive) were administered technical fludioxonil at 0, 10, 100, and 1,000 mg/kg/day by oral gavage. Maternal toxicity was evident at 1,000 mg/kg/day with a 16% reduction in corrected body weight gain. Developmental toxicity was evident at the 1,000 mg/kg/day dose with increased fetal and litter incidence of dilated renal pelvis and dilated ureter. Based on these observations, the Maternal LOAEL and Developmental toxicity LOAEL are at 1,000 mg/kg/day and the Maternal NOAEL and Developmental toxicity NOAEL are at 100 mg/kg/day.

10. In another developmental toxicity study, rabbits (gestation days 6 through 18) were dosed with technical fludioxonil by oral gavage at 0, 10, 100, and 300 mg/kg/day. Minimal maternal toxicity was noted in the mid and high dose groups as less body weight during the dosing period (gestation days 6 through 18) and dosing plus post dosing period (gestation days 6 through 28). The high dose group consumed less food than the control group during the dosing period, the post dosing period (gestation days 19 through 28), the dosing plus post dosing period, and for the overall gestation period. However, food efficiency was decreased in the mid and high dosed groups during the dosing plus post dosing periods, and for the entire gestation period. The Maternal Toxicity LOAEL is 100 mg/kg/day and the Maternal Toxicity NOAEL is 10 mg/kg/day based on decreased body weight gains and decreased food efficiency. No developmental toxicity was noted at the dose levels tested. The Developmental Toxicity LOAEL is greater than 300 mg/kg/day and the Developmental Toxicity NOAEL is equal to or greater than 300 mg/kg/day.

11. In a reproductive toxicity study, rats received 0, 2.19, 22.13, and 221.61 mg/kg/day (males) and 0, 2.45, 24.24, and 249.67 mg/kg/day (females) fludioxonil technical in the diet for 2 generations. The Parental Systemic Toxicity LOAEL is 221.61 mg/kg/day for males and 249.67 mg/kg/day for females. The Parental Systemic Toxicity NOAEL is 22.13 mg/kg/day for males, and 24.24 mg/kg/day for females based on clinical observations, reduced body weight and weight gains, and reduced food consumption. The Reproductive/Developmental Toxicity LOAEL is 221.61 mg/kg/day for males and 249.67 mg/kg/day for females. The Reproductive/Developmental Toxicity NOAEL is 22.13 mg/kg/day for males and 24.24 mg/kg/day for females based on reduced pup body weights.

12. Gene mutation and other genotoxic effects were studied using fludioxonil technical:

i. Ames Salmonella assay with and without metabolic activation provided evidence of cytotoxicity at 1,250 and 5,000 micrograms/plate (µg/plate) concentrations.

ii. Unscheduled DNA Synthesis assay (*in vitro*) indicated cytotoxicity at 313 µg/ml.

iii. Chromosome aberrations assay (*in vitro*) in Chinese hamster ovary (CHO) cells with and without S9 activation provided convincing evidence that

fludioxonil is a clastogen and polyploidy inducer.

iv. Chromosome Aberrations assay (*in vitro*) in Chinese hamster bone marrow cells noted occurrence of hyperploidy in one mid-dose female and trisomy in one high dose male.

v. Micro nucleus assay (*in vitro*) using rat hepatocytes provided no definitive conclusions as to dose related increase in micro nucleate hepatocytes and therefore, this study will be repeated.

vi. Dominant Lethal assay indicated no test material induced dominant lethal mutations in male mouse germinal cells sampled over the entire period of spermatogenesis.

vii. Point Mutation test in CHO cells (*in vitro*) with and without S9 activation produced no increase in the number of thioguanine resistant colonies, mutant frequency, or mutant factor.

viii. Mouse Micro nucleus assay using mouse bone morrow Micro nucleus test produced no statistically significant increase in number of micronucleated polychromatic erythrocytes in male and female mice.

B. Toxicological Endpoints

1. *Acute toxicity.* Fludioxonil exhibits very low mammalian toxicity when tested by the oral route. There is no concern for an acute dietary risk. The available data do not indicate any evidence of significant toxicity from 1 day or single event exposure by oral route.

2. *Short and intermediate term toxicity.* Subchronic studies conducted with fludioxonil contain no end points suggesting the need for short term occupational or residential risk assessments for the dermal route of exposure. For intermediate term, the recommended LOAEL and NOAEL are 50 mg/kg/day and 5 mg/kg/day, respectively from the 13 week oral toxicity study in dogs. For the intermediate term risk assessment, the 50 mg/kg/day is used as the NOAEL, since the effects of concern are believed to occur at doses in excess of 50 mg/kg/day.

3. *Chronic toxicity.* EPA has established the RfD for fludioxonil at 0.03 mg/kg/day. This RfD is based on the 1 year oral toxicity study in dogs with a NOAEL of 3.3 mg/kg/day in females and an uncertainly factor of 100 to account for both interspecies extrapolation and intraspecies variability.

4. *Carcinogenicity.* Fludioxonil has been classified as a Group D chemical not classifiable as to human carcinogenicity. That is, the evidence is inadequate and cannot be interpreted as showing either the presence or absence of a carcinogenic effect.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established at 40 CFR 180.516 for residues of fludioxonil in or on potatoes and time limited tolerances under the Section 18 program have been established for apricot, nectarines, peaches, and plums. Risk assessments were conducted by EPA to assess dietary exposures from fludioxonil 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. There is no concern for an acute dietary exposure to fludioxonil. The available data do not indicate any evidence of significant toxicity from 1 day or single event exposure by oral route.

ii. *Chronic exposure and risk.* Fludioxonil is currently registered for seed treatment uses on corn, sorghum, and potatoes and for greenhouse uses on non food crops. Section 18 requests have been approved for post harvest treatment on apricots, nectarines, peaches, and plums. There is no reasonable expectation of residues on corn and sorghum as a result of treatment of corn and sorgham seed, therefore, these uses did not require tolerances and no exposure was assumed to result from these registered uses. Potatoes has a tolerance of 0.02 ppm and apricots, nectarines, peaches, plums have a time limited tolerance of 5 ppm. There are no residential uses for fludioxonil; therefore no chronic residential exposure is expected. Based on a Novigen Dietary Exposure Evaluation Model (DEEM) and using conservative assumptions (100% of crops treated and tolerance level residues) and a chronic RfD of 0.03 mg/kg/day, EPA estimates the chronic exposure to fludioxonil from food will utilize 22% of the chronic RfD for the most highly exposed population subgroup, (non-nursing infants < 1 year old). All other population subgroups have risk estimates below that of the non-nursing infants.

2. *From drinking water.* There are no maximum contaminant levels or health advisory levels established for residues of fludioxonil in drinking water. In view of the currently registered use patterns and the proposed seed treatment of food and feed crops at very low levels (1.13 to 2.26 grams of active ingredient (ai) per 100 lbs seed), fludioxonil is not expected to impact ground or surface waters. Thus the likelihood of residues of fludioxonil entering in drinking water is considered negligible.

3. *From non-dietary exposure.* Fludioxonil is not currently registered for any residential non-food uses. Therefore, oral, dermal, and inhalation exposure from residential uses is not expected.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Fludioxonil is a representative of a new class of plant protection agents derived from the structure of a naturally occurring plant antibiotic called pyrrolnitrin. EPA does not have, at this time, available data to determine whether fludioxonil 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, fludioxonil 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 fludioxonil has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Chronic risk.* Using the Theoretical Maximum Residue Contribution (TMRC) exposure assumptions described in this preamble, EPA has concluded that aggregate exposure to fludioxonil from food will utilize 22% of the RfD for the most highly exposed population subgroup. The major identifiable subgroup with the highest aggregate exposure is the non-nursing infants, < 1 year old. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

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. Fludioxonil is not registered for indoor uses. Based on registered and proposed uses, exposure to fludioxonil from drinking water is not expected.

3. *Aggregate cancer risk for U.S. population*. Fludioxonil has been classified as a Group D chemical not classifiable as to human carcinogenicity. The available carcinogenicity studies in the rat and mouse show some increase in the combined tumors only in the female rat above that in the concurrent controls. However, this statistical increase in liver tumors in female rats was only at the high dose. Some of this significant increase was due to the lack of any liver tumors in the concurrent control, whereas the historical control from the same lab indicated a range of 1.4 to 15% for combined liver tumors. Therefore, based on available information, EPA believes that this pesticide does not pose a significant cancer risk.

4. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to fludioxonil residues.

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

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of fludioxonil, 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 margin of exposure (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 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. *Pre- and post-natal sensitivity*. The toxicity data base for fludioxonil includes acceptable prenatal developmental toxicity studies in rats and rabbits and an acceptable 2–generation reproduction study in rats. The data did not suggest any additional sensitivity to the embryo or neonate following *in utero* or early postnatal exposure to fludioxonil. In the rat developmental study, the Maternal NOAEL and the Developmental (fetal and pup) NOAEL were both 100 mg/kg/day. In the rabbit developmental study, the Maternal NOAEL was 10 mg/kg/day. No developmental toxicity was noted at any dosing level. The Developmental NOAEL was set equal to or greater than 300 mg/kg/day, the highest dose tested. Results from the 2–generation reproduction study for rats indicated a Developmental/Reproduction NOAEL of 22.13 mg/kg/day for males and 24.24 mg/kg/day for females. The Developmental/Reproductive NOAEL is at least 600 fold higher then the RfD (0.03 mg/kg/day), and should be protective for infants and children.

iii. *Conclusion*. There is a complete toxicity data base for fludioxonil and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Chronic risk*. Using the exposure assumptions described in Unit II.C. of this preaamble, EPA has concluded that aggregate exposure to fludioxonil from food will utilize 22% 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. As exposure from drinking water, non-dietary, or non-occupational sources are not anticipated, EPA does not expect aggregate exposure to exceed 100% of RfD.

3. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to fludioxonil residues.

III. Other Considerations

A. Metabolism In Plants and Animals

Plant metabolism studies in potatoes, rice, and wheat were previously submitted. Additional studies on cotton and soybeans were provided in conjunction with the proposed use. There is minimal uptake of the active ingredient when applied as a seed treatment. Based on these studies, EPA concludes that the nature of fludioxonil residues in plants are adequately understood and the residue of concern is the parent compound. Two animal metabolism studies conducted in ruminant and poultry indicate that there is no reasonable expectation of finite residues of fludioxonil in ruminant tissues, milk, poultry tissues, and eggs.

B. Analytical Enforcement Methodology

The Ciba-Geigy Analytical Method AG–597B has been adequately validated for use in enforcing the proposed tolerances. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229).

C. Magnitude of Residues

The submitted field trial data on cucumber, leaf lettuce, radish, succulent peas, and wheat indicate that residue levels were less than the limit of quantitation (LOQ) in each crop. The submitted residue data support the following proposed tolerance levels of fludioxonil. The RAC and the respective tolerance ppm are: rape seed (0.01 ppm), rape forage (0.01 ppm), sunflower seed (0.01 ppm), peanuts, meat (hulls removed) (0.01 ppm), peanut hay (0.01 ppm), leafy vegetables except brassica (0.01 ppm), brassica (cole) leafy vegetables (0.01 ppm), legume vegetables (0.01 ppm), foliage of legume vegetables (0.01 ppm), fruiting vegetables except cucurbits (0.01 ppm), cucurbit vegetables (0.01 ppm), forage, fodder, and straw of cereal grains (0.01 ppm), grass, forage, fodder, and hay (0.01 ppm), non-grass animal feeds (0.01 ppm), root and tuber vegetables (0.02 ppm), leaves and roots of tuber vegetables (0.02 ppm), bulb vegetables, (0.02 ppm), cereal grains (0.02 ppm), herbs and spices (0.02 ppm), cotton, undelinted seed (0.05 ppm), and cotton gin byproducts (0.05 ppm).

D. International Residue Limits

There are currently no established or proposed maximum residue limits

(MRLs) in Canada, CODEX, or Mexico for fludioxonil residues in/on crops and crop groups included in this submission. Therefore, problems with compatibility of tolerances/MRLs do not exist.

IV. Conclusion

Therefore, tolerances are established for residues of fludioxonil in the following RACs at (ppm): rape seed (0.01 ppm), rape forage (0.01 ppm), sunflower seed (0.01 ppm), peanuts, meat (hulls removed) (0.01 ppm), peanut hay (0.01 ppm), leafy vegetables except brassica (0.01 ppm), brassica (cole) leafy vegetables (0.01 ppm), legume vegetables (0.01 ppm), foliage of legume vegetables (0.01 ppm), fruiting vegetables except cucurbits (0.01 ppm), cucurbit vegetables (0.01 ppm), forage, fodder, and straw of cereal grains (0.01 ppm), grass, forage, fodder, and hay (0.01 ppm), non-grass animal feeds (0.01 ppm), root and tuber vegetables (0.02 ppm), leaves and roots of tuber vegetables (0.02 ppm), bulb vegetables, (0.02 ppm), cereal grains (0.02 ppm), herbs and spices (0.02 ppm), cotton, undelinted seed (0.05 ppm), and cotton gin byproducts (0.05 ppm)].

V. Objections and Hearing Requests

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

Any person may, by December 7, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number [OPP-300738] (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 Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. 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: September 29, 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 § 180.516 by revising paragraph (a) to read as follows:

§ 180.516 Fludioxonil; tolerances for residues.

(a) *General.* Tolerances are established for residues of the fungicide fludioxonil (4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1*H*-pyrrole-3-carbonitrile) in or on the following commodities:

Commodity	Parts per million
Bassica (cole) leafy vegetables	0.01
Bulb vegetables	0.02
Cereal grains	0.02
Cotton gin byproducts	0.05
Cotton, undelinted seed	0.05
Cucurbit vegetables	0.01
Foliage of legume vegetables	0.01
Forage, fodder, and straw of cereal grains	0.01
Fruiting vegetables except cucurbits	0.01
Grass, forage, fodder, and hay	0.01
Herbs and spices	0.02
Leafy vegetables except Brassica	0.01
Leaves and roots of tuber vegetables	0.02
Legume vegetables	0.01
Non-grass animal feeds	0.01
Peanut hay	0.01
Peanuts, meat (hulls removed)	0.01
Rape forage	0.01
Rape seed	0.01
Root and tuber vegetables	0.02
Sunflower seed	0.01

* * * * *

[FR Doc. 98–26902 Filed 10–6–98; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300743; FRL–6037–2]
RIN 2070-AB78

Imidacloprid; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends the time-limited tolerances for residues of the insecticide imidacloprid and its metabolites in or on the citrus fruits crop group at 1.0 part per million (ppm), dried citrus pulp at 5.0 ppm, beet roots at 0.3 ppm, turnip roots at 0.3 ppm, and turnip tops 3.5 ppm for an additional 18-month period, to June 30, 2000. This action is in response to EPA's granting of emergency exemptions under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on citrus, table beets and turnip greens. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (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.

DATES: This regulation becomes effective October 7, 1998. Objections

and requests for hearings must be received by EPA, on or before December 7, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300743], 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–300743], 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, Crystal Mall 2 (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. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Andrew Ertman, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 272, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9367; e-mail: ertman.andrew@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued two final rules, published in the **Federal Register** of July 9, 1997 (62 FR 36691)(FRL–5729–4), for citrus, and the **Federal Register** of December 12, 1997 (62 FR 65365)(FRL–5760–9), for beets and turnips, which announced that on its own initiative under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established time-limited tolerances for the residues of imidacloprid and its metabolites in or on the citrus fruits crop group at 1.0 part per million (ppm), dried citrus pulp at 5.0 ppm, beet roots at 0.3 ppm, turnip roots at 0.3 ppm, and turnip tops 3.5 ppm, with an expiration date of December 31, 1998 for citrus and November 29, 1998 for beets and turnips. EPA established the tolerances because 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.

EPA received a request to extend the use of imidacloprid on citrus for this year growing season due to the continuing emergency situation in Florida. The brown citrus aphid (BrCA) is a potentially devastating pest that was first introduced into southern Florida in the Fall of 1995 and as of January 24, 1997, has been detected in 15 counties in the southern portion of the state. Today, BrCA is found throughout Florida's citrus belt. The BrCA has the potential to become a major economic pest to citrus nurseries and young citrus groves by impacting citrus production in two ways. First, the BrCA, similar to the citrus leaf miner, has the ability to stunt the growth of young trees by feeding on the newly developing foliage, causing leaf distortion and/or premature leaf drop. These effects on foliage can reduce the trees' photosynthetic ability which can lead to defoliation. The second, and larger, concern for Florida citrus growers is that the BrCA is a transmitter of citrus tristeza virus (CTV).

The citrus leafminer (CLM) has spread throughout the state to all commercial citrus production areas since its initial discovery in May 1993, and has since become established as a major economic pest to citrus nurseries and young citrus groves. CLM has the ability to stop growth of young trees, by feeding on the newly developing foliage, causing eventual premature leaf drop. When the new growth twigs are attacked, it then also threatens the crop for the following year as well. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of imidacloprid on citrus for control of [the brown citrus aphid and citrus leafminer in Florida.

EPA also received a request to extend the use of imidacloprid on table beets and turnips for this year growing season due to the continuing emergency situation in California. According to the applicant, due to the lack of acceptable control with currently registered products, and the loss of the insecticide Phosdrin, this pest became a serious threat to the table beet and turnip green industry in 1996. Aphids can cause serious reductions due to contamination problems resulting from the large number of aphids remaining on the crop at harvest. The market will only allow 2 aphids or less per plant. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of imidacloprid on table beets and turnips for control of aphids in California.

EPA assessed the potential risks presented by residues of imidacloprid in or on citrus, beet roots, turnip roots and turnip tops. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of July 9, 1997 (62 FR 36691), for citrus, and December 12, 1997 (62 FR 65365), for beets and turnips. Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerances are extended for an additional 18-month period. Although these tolerances will expire and be revoked on June 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on citrus, beet roots, turnip roots, turnip tops after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. 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.

I. 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 December 7, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

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

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

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300743]. No 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.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule extends a time-limited tolerance that was previously established by EPA 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). 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 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).

Since this extension of an existing time-limited tolerance does 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the

regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. 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: September 29, 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.

§ 180.472 [Amended]

2. In § 180.472, by amending paragraph (b) by changing for the commodities ''beet roots,'' ''beet tops,'' ''turnip roots,'' and ''turnip tops'' the date ''11/29/98'' to read ''6/30/00'' and by changing for the commodities ''citrus fruits crop group'' and ''dried citrus pulp'' the date ''12/31/98'' to read ''6/30/00''.

[FR Doc. 98–26903 Filed 10–6–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300742; FRL–6036–9]

RIN 2070–AB78

Cyproconazole; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a permanent tolerance for residues of cyproconazole, (2RS,3RS)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1*H*-1,2,4-triazole-1-yl)butan-2-ol in or on coffee, bean, green. Novartis Crop Protection, Inc. requested this tolerance under the Federal Food, Drug and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996 (Pub. L. 104–170).

DATES: This regulation is effective October 7, 1998. Objections and requests for hearings must be received by EPA on or before December 7, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300742, 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–300742, 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, Crystal Mall 2 (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–300742]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

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

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 2, 1997 (62 FR 35804)(FRL–5722–9), EPA, issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) 0E3875 for a tolerance by Novartis Crop Protection, Inc., P.O. Box 18300, Greensboro, NC 27419. This notice included a summary of the petition prepared by Norvartis Crop Protection, Inc., the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.485 be amended by establishing a permanent tolerance for residues of the fungicide cyproconazole, (2RS,3RS)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1*H*-1,2,4-triazole-1-yl)butan-2-ol, in or on coffee, bean, green at 0.1 part per million (ppm). A time-limited tolerance for cyproconazole in or on coffee beans was established with an expiration date of July 1, 1997 in the **Federal Register** of September 27, 1995 (60 FR 49795)(FRL–4976–5). This rule will establish a permanent tolerance.

I. Risk Assessment and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is ''safe.'' Section 408(b)(2)(A)(ii) defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is

reliable information.'' This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .''

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances published in the **Federal Register** of November 26, 1997 (62 FR 62961)(FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of cyproconazole and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of cyproconazole, (2RS,3RS)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1*H*-1,2,4-triazole-1-yl)butan-2-ol on coffee, bean, green at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute studies.* Acute studies indicate that the technical grade of cyproconazole is in Toxicity Category III for acute oral, acute dermal and acute inhalation and in Toxicity Category IV for dermal irritation and eye irritation. There was no dermal sensitization.

2. *Subchronic toxicity testing.* i. A 90-day rat study, was conducted in which the levels of cyproconazole (95.7% purity) tested were 0, 20, 80, and 320 ppm (0, 1, 4, and 16 mg/kg/day). Cyproconazole inhibited body weight gain, increased blood sodium, increased liver weights and produced histological changes in the liver at the high dose. Increased blood creatinine and decreased calcium levels were observed at the high and low dose, but not at the mid-dose. Effects were reversed after cessation of dosing and a four week recovery period. Since these changes were not observed after the recovery period, they were considered treatment related. A No Observed Adverse Effects Level (NOAEL) for this study was therefore not attained but the NOAEL would be <1.0 mg/kg/day.

ii. A 13-week feeding study was conducted with dogs treated at 0, 20, 100, and 500 ppm cyproconazole (95.6% purity) in which the NOAEL was 20 ppm (0.8 mg/kg/day) and the Lowest Observed Adverse Effect Level (LOAEL) was 100 ppm (4 mg/kg/day) based on adverse liver effects. At the high dose, treatment related changes included slack muscle tone, depressed body weight gain, and decreases in bilirubin, total cholesterol, HDL-cholesterol, triglycerides, total protein and albumin. There were increases in platelet counts, alkaline phosphatase, gamma glutamyl transferase, absolute and relative liver weights, relative kidney weights, and relative brain weights. Liver toxicity was indicated by hepatomegaly.

iii. A 21-day dermal study was conducted, in which levels of cyproconazole (95.6% purity) tested in New Zealand white rabbits were 50, 250, and 1,250 mg/kg. The NOAEL was 250 mg/kg and the LOAEL was 1,250 mg/kg. Effects included depressed body weight gain and food consumption and increased levels of AST, creatinine and cholesterol.

3. *Chronic toxicity studies.* In a one-year dog study in which dogs were fed a diet containing cyproconazole (95% purity) at levels of 0, 30, 100, or 350 ppm, a NOAEL of 30 ppm (1.0 mg/kg/day) and an LOAEL of 100 ppm (3.2 mg/kg/day) was attained based on liver effects. Several clinical laboratory parameters indicated differences between the control and treated animals which were consistent with liver effects. Laminal eosinophilic intrahepatocytic bodies were observed in all males and two females at the high dose, and in one male at the mid-level dose. These changes were thought to represent adaptive hypertrophy of the endoplasmic reticulum. Relative kidney weights were increased in low and high dose females; cytochrome P450 was significantly increased in males and females at 350 ppm and females at 100 ppm.

4. *Carcinogenicity* i. A mouse carcinogenicity study was conducted in which cyproconazole (95.1% purity) at levels of 0, 5, 15, 100 or 200 ppm added to the diet of mice for 81 weeks (males) and 88 weeks (females) resulted in a NOAEL for systemic toxicity of 15 ppm (1.8 mg/kg for males and 2.6 mg/kg for females). The LOAEL was 100 ppm (13.2 mg/kg for males and 17.7 mg/kg for females) based on a significantly increased incidence of hepatic single cell necrosis and diffuse hepatocytic hypertrophy in both sexes. The effect was more severe in males than females. There was a decreased amount of testicular germinal epithelium in males at the high dose which corresponded to an increased incidence of flaccid testes. There was an increased incidence of liver adenomas and carcinomas in both sexes.

ii. A rat chronic/carcinogenicity study in which cyproconazole (95.6% purity) fed to rats (males for 118 weeks, females for 121 weeks) at 0, 20, 50 or 350 ppm (males: 0, 1.0, 2.2 and 15.6 mg/kg; females: 0, 1.2, 2.7 and 21.8 mg/kg) resulted in slightly decreased body weights in the high dose females and increased incidence of fatty infiltration of the liver in the high dose males. The NOAEL for systemic toxicity was 50 ppm. The LOAEL was 350 ppm. It was determined that the dose levels were inadequate for the assessment of the carcinogenic potential of cyproconazole in the rat. The HED Carcinogenicity Peer Review Committee recommended that this phase of the study be repeated. The committee classified cyproconazole as a quantitated Group B2 carcinogen with a Q1* of 0.30 $(mg/kg/day)^{-1}$ based on the absence of an adequate carcinogenicity study in rats and the structural relationship of cyproconazole to closely related analogues shown to have carcinogenic activity.

5. *Developmental toxicity* i. A rat developmental toxicity study was conducted in which cyproconazole (95.6% purity) was administered as a suspension by gavage to sperm-positive female rats at dose levels of 0, 6, 12, 24, or 48 mg/kg on days 6 through 15 of gestation. The NOAEL for maternal toxicity was 6 mg/kg and the LOAEL was 12 mg/kg based on decreased body weight gain during dosing. The NOAEL for developmental toxicity was 6 mg/kg. The LOAEL was 12 mg/kg based on the increased incidence of supernumerary ribs.

ii. In a rabbit developmental toxicity study, cyproconazole (95.6% purity) was administered by gavage to 16 Chinchilla rabbits on days 6 through 18 of gestation at 0, 2, 10, or 50 mg/kg. The NOAEL for maternal toxicity was 10

mg/kg (equivocal). The LOAEL was 50 mg/kg based on decreased body weight gain during dosing. Developmental effects were also evaluated. Hydrocephalus internus was observed in 1 fetus at each treatment level. Therefore, the NOAEL for developmental toxicity was set at < 2 mg/kg and the LOAEL was 2 mg/kg. The incidence was 0.85, 0.83, and 0.93 for the low, mid, and high dose fetuses and 0.09 for the historical control.

iii. A rabbit developmental toxicity study was conducted in which cyproconazole (94.8% purity) was administered by gavage to 18 inseminated New Zealand White rabbits once daily on days 6 through 18 of gestation at dose levels of 2, 10, or 50 mg/kg. The NOAEL for maternal toxicity was 10 mg/kg and the LOAEL was 50 mg/kg based on decreased body weight gain. There was also evidence of developmental toxicity. The NOAEL for developmental toxicity was 2 mg/kg and the LOAEL was 10 mg/kg based on the increased incidence of malformed fetuses and litters with malformed fetuses.

6. *Reproductive toxicity*. In a rat 2–generation reproduction study, technical cyproconazole (95.6% purity) was administered to 26 male and 26 female F_0 and F_1 rats per group for 10 and 12 weeks, respectively, during the pre-mating period via the diet at 0, 4, 20 or 120 ppm. Treatment of males continued for three weeks after termination of mating and females were treated until necropsy (post-weaning). The systemic NOAEL for parental toxicity was set at 20 ppm (1.7 mg/kg) based on liver effects at 10.6 mg/kg. For reproductive toxicity, the NOAEL was set at 120 ppm (10.6 mg/kg). The increased gestation length in the F_0 dams and decreased F_1 litter sizes were not considered treatment related.

7. *Mutagenicity*. Several mutagenicity studies were conducted. Mutagenicity potential of cyproconazole was tested in several studies considered acceptable by the Agency. Since the results of 2 chromosomal aberration assays indicated that cyproconazole is clastogenic, additional mutagenicity data were requested to address an identified heritable risk concern. For the potential to induce chromosome aberrations in Chinese hampster ovary (CHO) cells, cyproconazole was positive under nonactivated and activated conditions, which supports the evidence that cyproconazole is clastogenic in this test system. Cyproconazole was negative in *Salmonella*, mouse micronucleus, and SHE/cell transformation assays. A dominant lethal assay in rats was submitted which was negative. Based on this evidence, the concern for a possible heritable effect was not pursued.

8. *Metabolism*. In metabolism/pharmacokinetics studies, cyproconazole was shown to be extensively metabolized in the rat. Unchanged cyproconazole and 13 metabolites were isolated and identified and 35 metabolites were detected in the excreta. Excretion was relatively rapid with the majority of the radioactivity appearing in the feces as a result of biliary elimination. Residues were found in renal fat, adrenals, kidney and liver although no significant tissue radioactivity was observed at 168 hours post dose.

9. *Neurotoxicity*. There have been no clinical neurotoxic signs or other types of neurotoxicity observed in any of the evaluated toxicology studies. It was not recommended that a developmental neurotoxicity study be required for cyproconazole.

10. *Other toxicological considerations*. Cyproconazole has a complete data base and no other toxicological concerns have been identified in the evaluated studies.

B. Toxicological Endpoints

1. *Acute toxicity*. The Agency concluded that since developmental toxicity was induced in rats and rabbits by the oral route, the acute risk estimate should be performed using the NOAEL (2 mg/kg/day) for developmental toxicity in the oral rabbit study.

2. *Short - and intermediate - term toxicity*. Registration of cyproconazole for use on coffee is not proposed for the United States and domestic uses on turf and roses will be discontinued so short- and intermediate-exposure assessments are not relevant.

3. *Chronic toxicity*. EPA has established the reference dose (RfD) for cyproconazole at 0.01 milligrams/kilogram/day (mg/kg/day). This RfD is based on the chronic feeding study in dogs with a NOAEL of 1.0 mg/kg/day and an uncertainty factor of 100. The LOAEL was 3.2 mg/kg/day, based on hepatotoxicity and organ weight changes.

4. *Carcinogenicity*. Using its Guidelines for Carcinogen Risk Assessment published September 24, 1986 (51 FR 33992), EPA has classified cyproconazole as a Group B2 Carcinogen (Probable Human Carcinogen). It was recommended that for the purpose of risk characterization, a low-dose extrapolation methodology $Q1^* = 3.0 \times 10^{-1}$ $(mg/kg/day)^{-1}$ be used for the estimation of human risk.

C. Exposures and Risks

1. *From food and feed uses.* A time-limited tolerance was established (40 CFR 180.485) for the residues of cyproconazole, (2RS,3RS)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1*H*-1,2,4-triazole-1-yl)butan-2-ol, in or on coffee beans at 0.1 ppm. The tolerance expired on July 1, 1997. In today's action, a permanent tolerance will be established for residues of cyproconazole in or on coffee, bean, green at 0.1 ppm. Risk assessments were conducted by EPA to assess dietary exposures from cyproconazole as follows:

The RfD used in the dietary exposure analysis was 0.01 mg/kg/day based on a NOAEL of 30.0 ppm (1.00 mg/kg/day) from a 1–year dog feeding study with an uncertainty factor of 100 that demonstrated hepatotoxicity and organ weight changes at 3.2 mg/kg/day. The theoretical maximum residue contribution (TMRC) for the general population is 0.000002 mg/kg/day and for females, 20 years old and older, is 0.000003 mg/kg/day. The anticipated residue contributions (ARC) as percentage of the RfD are 0.018 and 0.028% for the general population and females 20 years old or older, respectively. The chronic analysis for cyproconazole is not a worst case estimate of dietary exposure, with all residues at anticipated levels and 100% of the commodities assumed to be treated with cyproconazole.

The upper bound cancer risk, based on a $Q1^*$ of 0.30 $(mg/kg/day)^{-1}$, was calculated to be 5.3×10^{-7}, contributed through the proposed use of cyproconazole in the production of imported coffee beans. The carcinogenic analysis used proposed anticipated residues without adjustment for percent crop treated information incorporated into the analysis.

Section 408(b)(2)(E) authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance.

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The acute dietary exposure endpoint of concern for cyproconazole is developmental (increased incidence of malformed fetuses and litters with malformed fetuses). For the population subgroup of concern, females 13+ years old, the calculated Margin of Exposure (MOE) value is 33,000. No anticipated residues were used in this assessment.

ii. *Chronic exposure and risk.* In conducting the chronic dietary (food only) risk assessment, anticipated residues were utilized. The proposed cyproconazole tolerance for coffee results in an ARC that is equivalent to <0.1% of the RfD for the U.S. population (48 states) and all other subgroups except non-nursing infants (<1 year old). The percent of RfD for non-nursing infants is 0 since coffee is not consumed by this subgroup.

iii. *Dietary cancer risk.* Cyproconazole is classified as a Group B2 carcinogen with a Q1* of 3.0×10^{-1} $(mg/kg/day)^{-1}$. Based on this figure, the upper bound cancer risk was calculated to be 5.3×10^{-7}, contributed through the use of cyproconazole on imported coffee.

2. *From drinking water.* There will be no exposure of the U.S. population from drinking water. Novartis Crop Protection, Inc. has agreed to suspend importation of cyproconazole and will suspend the sale of cyproconazole for all registered uses (turf and roses) in the United States after the current stock is depleted.

3. *From non-dietary exposure.* Cyproconazole is currently registered for use on the following non-food sites: turf and roses. The registrant of products containing cyproconazole has committed to stop importation of this chemical for these uses at this time. Risk from non-dietary exposure from these uses until current stocks of products are depleted is considered to be minimal since stocks are already low and use is not wide-spread.

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.''

EPA does not have, at this time, available data to determine whether cyproconazole 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, cyproconazole 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 cyproconazole has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

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

1. *Acute risk.* Since there are no drinking water or non-dietary exposures, acute risk is from dietary exposure only. For dietary risk to the population subgroup of concern, females 13+ years old, the calculated MOE is 33,000. EPA has no concerns if the MOE is greater than 100 when the NOAEL used in calculating the MOE is taken from an animal study. Since the MOE value of 33,000 is much greater than 100, there are no acute dietary concerns.

2. *Chronic risk.* Using the ARC exposure assumptions described above, EPA has concluded that aggregate exposure to cyproconazole from food will utilize <0.1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is females (20+ years, not pregnant, not nursing). EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Since there will be no potential for exposure to cyproconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyproconazole 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. No short- or intermediate-term risk is expected since there is no expectation of exposure from the proposed use of cyproconazole on coffee.

4. *Aggregate cancer risk for U.S. population.* The only risk from cancer is from dietary (food) exposure. The upper bound cancer risk was calculated to be 5.3×10^{-7}, contributed through the use of cyproconazole on imported coffee. The Agency does not consider this cancer risk to be of concern. Since there will be no exposure from water or non-dietary exposure, aggregate cancer risk will not exceed the upper bound cancer risk.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to cyproconazole residues.

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

1. *Safety factor for infants and children*— i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of cyproconazole, 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 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 margin of exposure (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 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 NOAEL was 6 mg/kg,

and the LOAEL was 12 mg/kg based on decreased body weight gain during dosing. The developmental NOAEL was 6 mg/kg and the LOAEL was 12 mg/kg based on the increased incidence of supernumerary ribs.

b. *Rabbits*. In the developmental toxicity study in rabbits, the maternal NOAEL was 10 mg/kg/. The LOAEL was 50 mg/kg based on decreased body weight gain during dosing. The NOAEL for developmental toxicity was set at <2 mg/kg and the LOAEL was 2 mg/kg.

c. *Rabbits*. In another rabbit developmental toxicity study, the NOAEL for maternal toxicity was 10 mg/kg and the LOAEL was 50 mg/kg based on decreased body weight gain. The NOAEL for developmental toxicity was 2 mg/kg and the LOAEL was 10 mg/kg based on the increased incidence of malformed fetuses and litters with malformed fetuses.

iii. *Reproductive toxicity study.—Rats*. In the 2–generation reproductive toxicity study in rats, the parental (systemic) NOAEL was 1.7 mg/kg, based on liver effects at 10.6 mg/kg. For reproductive toxicity, the NOAEL was 10.6 mg/kg. The increased gestation length in the F_0 dams and decreased F_1 litter sizes were not considered treatment related.

iv. *Pre- and post-natal sensitivity*. The pre- and post-natal toxicology data base for cyproconazole is complete with respect to current toxicological data requirements. The results of these studies indicate that infants and children are not more sensitive to exposure, based on the results of the oral rat and rabbit developmental toxicity studies and the 2–generation reproductive toxicity study in rats.

v. *Conclusion*. EPA concludes that, although the rabbit data indicate increased sensitivity of the fetus, no increase in sensitivity is implicated for infants and children and therefore, an additional uncertainty factor on the RfD is not required given the fact that the fetal NOAEL of 2, which is less than the maternal NOAEL of 10 (and therefore an additional factor is already considered in the risk assessment process), is twice the NOAEL used for the RfD. There is no indication that an acute MOE of 100 is not adequate. These data taken together suggest minimal concern for developmental or reproductive toxicity and do not indicate any increased pre- or post-natal sensitivity. No additional uncertainty factor for increased sensitivity in infants and children is appropriate. There is a complete toxicity database for cyproconazole and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk*. Since there are no drinking water or non-dietary exposures, acute risk is from dietary exposure only. For dietary risk, the MOE is calculated to be 33,000 for the most highly exposed subgroup , females 13+ years old. Since coffee is not generally consumed by infants and children, the MOE would be even greater for this group.

3. *Chronic risk*. Using the exposure assumptions described above, EPA has concluded that aggregate exposure to cyproconazole from food will utilize 0% (non-nursing infants <1 year old) and <0.1% of the RfD from dietary exposure for children 1–6 years old and for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Since there will be no potential for exposure to cyproconazole in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk*. No short- or intermediate-term risk is expected since there is no expectation of exposure from the proposed use of cyproconazole on coffee.

5. *Cancer risk*. The only risk from cancer is from dietary (food) exposure. The upper bound cancer risk was calculated to be 5.3×10^{-7}, contributed through the use of cyproconazole on imported coffee. The Agency does not consider cancer risk to be of concern for estimates below approximately 1×10^{-6}. Since there will be no exposure from water or non-dietary exposure, aggregate cancer risk will not exceed the upper bound cancer risk.

6. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to cyproconazole residues.

III. Other Considerations

A. Metabolism In Plants and Animals

1. *Plants*. The nature of the residue in coffee is fully understood. Cyproconazole per se was the primary component of the residue and is the only residue of regulatory concern. Similar results were observed in apples, grapes and coffee.

2. *Animals*. Cyproconazole was shown to be extensively metabolized in the rat. Unchanged cyproconazole and 13 metabolites were isolated and identified and 35 metabolites were detected in the excreta. Excretion was relatively rapid with the majority of the radioactivity appearing in the feces as a result of biliary elimination. Residues were found in renal fat, adrenals, kidney and liver although no significant tissue radioactivity was observed at 168 hours after treatment.

B. Analytical Enforcement Methodology

An adequate analytical method is available for enforcement purposes. Residues are quantified by gas chromatography equipped with a nitrogen-phosphorus detector. The limit of quantification is 0.01 ppm. The analytical method, AM–0822–1288–0, is available in the Pesticide Analytical Manual, Vol. II.

C. Magnitude of Residues

The average cyproconazole residue in green coffee beans in submitted studies was 0.026 ppm. The concentration of cyproconazole residues in roasted or instant coffee was not of sufficient magnitude to require separate tolerances for these commodities but concentration factors were used to calculate anticipated residues. The anticipated residues in roasted coffee beans were 0.038 ppm and 0.033 ppm for instant coffee. The residues in coffee will not exceed the proposed tolerance of 0.1 ppm.

D. International Residue Limits

There are no Codex, Canadian or Mexican residue limits established for cyproconazole on coffee. Therefore, no compatibility problems exist for the proposed tolerance on coffee.

E. Rotational Crop Restrictions

Rotational crop studies are not required for uses of pesticides on coffee.

IV. Conclusion

Therefore, the tolerance is established for residues of cyproconazole, (2RS,3RS)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1H-1,2,4-triazole-1-yl)butan-2-ol in coffee, bean, green at 0.1 ppm.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to ''object'' to a tolerance regulation issued by EPA under new section 408(e) and (l)(6) as was provided in the old section 408 and in section 4– . 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 December 7, 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 or a request for a fee waiver as prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

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.

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

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300742. No 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.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of

the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. 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: September 29, 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. Section 180.485 is revised to read as follows:

§ 180.485 Cyproconazole; tolerances for residues.

(a) *General.* A tolerance is established for residues of the fungicide cyproconazole, (2RS,3RS)-2-(4-chlorophenyl)-3-cyclopropyl-1-(1*H*-1,2,4-triazole-1-yl)butan-2-ol in or on the imported agricultural commodity coffee, bean, green at 0.1 ppm. There are no U.S. registrations as of October 7, 1998, for use on coffee beans.

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

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

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

[FR Doc. 98–26904 Filed 10–6–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300727; FRL–6033–7]
RIN 2070–AB78

Avermectin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule extends a time-limited tolerance for residues of the insecticide and miticide avermectin and its metabolites in or on basil at 0.05 parts per million (ppm) for an additional 16 month period, to January 31, 2000. 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 basil. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act (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.

DATES: This regulation becomes effective October 7, 1998. Objections and requests for hearings must be received by EPA, on or before December 7, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300727], 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–300727], 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, Crystal Mall 2 (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. Follow the instructions in Unit II. of this preamble. No Confidential Business Information (CBI) should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Daniel Rosenblatt, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 280, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703) 308–9375; e-mail: rosenblatt.dan@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of October 29, 1997 (62 FR 56082) (FRL–5750–8), which announced that on its own initiative and under section 408(e) of the FFDCA, 21 U.S.C. 346a(e) and (l)(6), it established a time-limited tolerance for the residues of avermectin and its metabolites in or on basil at 0.05 ppm, with an expiration date of September 30, 1998. EPA established the tolerance because 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.

EPA received a request to extend the use of avermectin on basil for this year's growing season due to the damage to the crop in California from the leafminer. Female leafminers feed off and lay eggs within the leaf tissue of basil plants. The developing larvae also feed on the

leafs of the basil plant. Leaves are the marketable portion of the plant. The entire life cycle of the leafminer lasts about three weeks in warm weather. After having reviewed the submission, EPA concurs that emergency conditions exist for this state. EPA has authorized under FIFRA section 18 the use of avermectin on basil for control of leafminer in basil.

EPA assessed the potential risks presented by residues of avermectin in or on basil. In doing so, EPA considered the new safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the new safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule published in the **Federal Register** of October 29, 1997, (62 FR 56082). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 16 month period. Although this tolerance will expire and is revoked on January 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on basil after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. 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.

I. 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) 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 December 7, 1998, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

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

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

Electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Objections and hearing requests will also be accepted on disks in WordPerfect 51/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300727]. No 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.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule extends a time-limited tolerance that was previously extended by EPA 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). 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 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).

Since this extension of an existing time-limited tolerance does 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.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. 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: September 29, 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.

180.449 -- [AMENDED]

§ 180.449 Avermectin; tolerances for residues.

2. In § 180.449, in the table for paragraph (b), the entry for ''Basil'', change the date ''9/30/98'' to read ''1/31/00''.

[FR Doc. 98–26907 Filed 10–6–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300737; FRL 6036–2]

RIN 2070–AB78

Pyridate; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a permanent tolerance for combined residues of pyridate, *O*-(6-chloro-3-phenyl-4-pyridazinyl)-*S*-octyl carbonothioate and its metabolite 6-chloro-3-phenyl-pyridazine-4-ol (known as CL–9673), and conjugates of CL–9673, expressed as pyridate, in or on chickpeas (also known as garbanzo beans). The tolerance was requested by the Interregional Research Project 4 (IR–4) under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective October 7, 1998. Objections and requests for hearings must be received by EPA on or before December 7, 1998.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, OPP–300737, 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–300737, 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, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

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

on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number OPP–300737. 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: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–7610, e-mail: jackson.sidney@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 5, 1998 (63 FR 41835) (FRL 6017–1) EPA, issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) announcing the filing of a pesticide petition (PP) for tolerance by the Interregional Research Project 4 (IR–4). This notice included a summary of the petition prepared by Novartis Crop Protection, Inc. , the registrant.

The petition requested that 40 CFR 180. 462 be amended by establishing a tolerance for combined residues of the fungicide pyridate, *O*-(6-chloro-3-phenyl-4-pyridazinyl)-*S*-octyl carbonothioate and its metabolite 6-chloro-3-phenyl-pyridazine-4-ol (known as CL–9673), and conjugates of CL–9673, expressed as pyridate, in or on chickpeas at 0.1 part per million (ppm).

I. Risk Assessment and Statutory Findings

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

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the Final Rule on Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL 5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of pyridate and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for combined residues of pyridate, *O*-(6-chloro-3-phenyl-4-pyridazinyl)-*S*-octyl carbonothioate and its metabolite 6-chloro-3-phenyl-pyridazine-4-ol (known as CL–9673), and conjugates of CL–9673, expressed as pyridate on chickpeas at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

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

1. *Acute toxicity*. The required battery of acute toxicity studies has been submitted and found adequate. The findings were as follows: oral toxicity shows a lethal dose $(LD)_{50}$, 5,993 milligrams (mg) / kilogram (kg) (males), and LD_{50}, 3,544 mg/kg (females) for a Category III toxicant classification; acute dermal toxicity is a $LD_{50} > 2,000$ mg/kg (Toxicity Category III); acute inhalation toxicity shows a lethal concentration $(LC)_{50} > 4.37$ mg/liter (L) (four hour exposure) (Toxicity Category IV); primary eye irritation is Toxicity. Category IV, non-irritant; Primary Dermal Irritation is slightly irritating to the skin under conditions of test (Toxicity Category III); and dermal sensitization is positive for skin sensitizer.

2. *Genotoxicity*. Test results show pyridate does not elicit a mutagenic response in multiple assays. In Gene Mutation Assay (Ames Test), no appreciable increase in the reversion to histidine protrophy of 4 *S. typhimurium* strains at 1 to 10,000 micrograms (μg)/plate with and without S-9 activation. Gene Mutation Assay in mammalian cells shows pyridate to be nonclastogenic in Chinese Hamster Ovary Cells with and without metabolic activation up to 250 μg/mL.

Structural Chromosomal Aberration Assay *In vivo* cytogenetics did not induce chromosomal aberrations nonclastogenic with and without metabolic activation under the conditions of the study up to 4 grams/kg. Nonclastogenic in chromosomal aberrations in bone marrow cells sampled over the entire mitotic cycle at doses from 0.073 to 0.725 grams/mL resulted in a second such assay.

An Unscheduled DNA Synthesis Assay did not induce an increase in unscheduled DNA synthesis up to toxic dose (0.1–1000 μg/mL tested).

3. *Reproductive and developmental toxicity*—i. In a prenatal developmental toxicity study in Wistar/HAN rats, pyridate in carboxymethyl cellulose was administered at doses of 0, 55, 165, or 400 mg/kg/day by gavage on gestation days 6–15. For maternal toxicity, the No observed adverse effect level (NOAEL) was 165 mg/kg/day and the Lowest observed adverse effect level (LOAEL) was 400 mg/kg/day based on mortality, significant decrease in mean body weight and food consumption as well as clinical signs (ventral body position, dyspnea, sedation, and loss of reaction to external stimuli). The developmental NOAEL was 165 mg/kg/day and the developmental LOAEL was 400 mg/kg/day, based on increased incidences of missing and/or unossified sternebrae and dose-related decrease in mean fetal body weight.

ii. *Developmental toxicity*. Technical 89.5% pyridate was administered in a prenatal developmental toxicity study conducted in pregnant New Zealand white rabbits at doses by gavage of 0, 150, 300 or 600 mg/kg/day on gestation days 7–19. For maternal toxicity, the NOAEL was 300 mg/kg/day and the LOAEL was 600 mg/kg/day, based on decreased body weight and body weight gain, decreased food consumption, increased incidence of dried feces, and increased abortions. For developmental toxicity, the NOAEL ≧ was 600 mg/kg/day, the highest dose tested (HDT); a LOAEL was not established.

iii. *Three-generation reproduction study*. Sprague-Dawley rats received diets containing pyridate at doses of 0,

43, 216 or 1,350 ppm (0, 2.2, 10.8 or 67.5 mg/kg/day, respectively). Each generation of rats was mated to produce two litters. The parental systemic NOAEL was 216 ppm (10.8 mg/kg/day) and the LOAEL was 1,350 ppm (67.5 mg/kg/day) based on depression of maternal body weight gain. The NOAEL for offspring was 216 ppm (10.8 mg/kg/day) and the LOAEL was 1,350 ppm (67.5 mg/kg/day) based on decreased pup weight gains (at postnatal and day 14 and 21 in the first litters for both generations).

The oral rat and rabbit developmental studies and the oral rat reproduction study demonstrated no indication of increased sensitivity of rats or rabbits to *in utero* and postnatal exposure to pyridate.

4. *Subchronic toxicity*—i. Subchronic feeding in rats (13 weeks) resulted in hypoactivity and salivation in both sexes with a NOAEL = 62.5 mg/kg/day and the LOAEL at 177 mg/kg/day.

ii. A subchronic feeding in dogs (13 weeks) showed a NOAEL at 20 mg/kg/day and the LOAEL at 60 mg/kg/day based on emesis and ataxia in both sexes. Severe neurotoxicity and death were observed at 200 mg/kg/day (HDT).

iii. In a 21–day dermal study in rats, the NOAEL for systemic effects was > 1,000 mg/kg/day limit dose. No systemic toxicity was seen at any dose tested. A LOAEL for systemic effects was not established in this study.

5. *Chronic toxicity/carcinogenicity*—i. Technical (91.5%) pyridate material was fed by capsule to 5 dogs/group/dose at levels of 0, 5/30, 20/100, or 60/150 mg/kg/day for one year. A LOAEL of 100 mg/kg/day was based on excessive salivation, ataxia, mydriasis, dyspnea, tremors, increased respiration and prostration. The NOAEL is 20 mg/kg/day.

ii. *Carcinogenicity study in mice*. Technical (90.4%) pyridate test material was given to male and female B6C3F1 mice in diet for 18 months at 0, 400, 800, 1,600 ppm or 7,000 ppm; (0, 47.7, 97.1, 169.5, or 882.6 mg/kg/day for males; 0, 54.5, 114.6, 204.3, or 1,044.6 mg/kg/day for females. No statistically significant increase in tumor incidence relative to controls were observed in either sex at any dose, including the limit dose 7,000 ppm. Neither the NOAEL or the LOAEL could be established due to decreased weight gain in both sexes at all doses.

iii. *Chronic feeding/carcinogenicity study in rats*. Technical (90.3%) pyridate was administered to male and female SPF rats in diet for 24 months at 0, 43, 215 and 1,350 ppm; (0, 2.2, 10.8 or 67.5 mg/kg/day). Decrease in body weight in males at 67.5 mg/kg/day was basis of the LOAEL. NOAEL is 10.8 mg/kg/day.

6. *Metabolism in rats*. Following is a summary of rat metabolism values and categories for pyridate:

i. Rapidly absorbed and excreted. Greater than 95% was eliminated by 24 hrs. Extensively metabolized prior to excretion. Metabolic patterns similar for both sexes.

ii. Completely and rapidly absorbed. Extensively metabolized and rapidly and essentially completely excreted. Elimination of label from single dose of 5.45 mg/rat of C^{14}-pyridate.

iii. Multiple oral doses 5 mg/rat/day for 10, 15, or 20 days result in bioaccumulation in liver, spleen and fat. Clearance from all tissues was slower after repeated exposure. Female rats eliminated radioactivity slower than males.

7. *Neurotoxicity*. Neurotoxicity was observed in the 90 day rat and dog studies and the 1–year dog study. Clinical signs indicative of neurotoxicity characterized as ataxia and emesis were observed within 1–3 hours post-dosing on the first day and persisted for duration of study.

B. Toxicological Endpoints

1. *Acute toxicity*. The acute dietary endpoint selected for risk assessment was the NOAEL of 20 mg/kg/day based on test results where groups of beagle dogs (4/sex/dose) received gelatin capsules containing pyridate at doses of 0, 20, 60 or 200 mg/kg/day for 90 days. The LOAEL was 60 mg/kg/day based on ataxia and emesis observed within 1–3 hours dosing beginning on the first day. All dogs at 200 mg/kg/day exhibited severe emesis and severe ataxia 1 to 3 hours post dosing and signs of opisthotonos, nystagmus and mydriasis also occurred within 3 hours after dosing.

2. *Short - and intermediate - term toxicity.* The short- and intermediate-term endpoints are derived from a 90–day feeding study in dogs. The NOAEL for both short- and intermediate-term exposures is 20 mg/kg/day.

Although a 21–day dermal toxicity study in rats was available and no dermal or systemic toxicity was demonstrated in that study at the Limit-Dose, an oral dose from the 90–day dog study was selected for short- and intermediate-term endpoints because:

i. Dogs were shown to be the sensitive species for pyridate-induced neurotoxic effects.

ii. The effects seen on the first day persisted for the duration of study. Since an oral dose was selected, a dermal absorption rate no more than 20% is used for risk assessments.

For short-and intermediate-term inhalation exposure, pyridate, based on the LC_{50} value of 4.37 mg/L, is placed in Toxicity Category IV. An inhalation risk assessment may not be required. This is supported by the absence of residential uses of pyridate.

Since only an acute inhalation toxicity study was available, EPA used oral NOAELs for the inhalation exposure risk assessments. Because of the low acute inhalation toxicity of pyridate, and minimal volatility (vapor pressure of pyridate is 1.01×10^{-7} mm mercury (Hg), inhalation exposure is considered very low (less than 6%) to occupational workers. For this reason, an inhalation MOE for workers was not calculated.

There are currently no residential uses for pyridate and no residential exposure study was performed. The Agency concludes that no risk assessment for short- and intermediate-term risk is required.

3. *Chronic toxicity*. EPA has established the RfD for pyridate at 0.11 mg/kg/day. This RfD is based on a study where rats (15/sex/dose) were fed diets containing pyridate 0, 2.2, 10.8 or 67.5 mg/kg/day for 104 weeks. The NOAEL was 10.8 mg/kg/day and the LOAEL 67.5 mg/kg/day based on decreased body weight gain in males. For chronic dietary risk assessment, an uncertainty factor (UF) of 100 is adequate for the protection of all subpopulation from exposure to pyridate.

4. *Carcinogenicity*. Pyridate is classified as Category E, a non-carcinogen, based on studies from two acceptable animals studies which showed no significant increase in tumor incidence in male or in female test animals at dose levels up to 7,000 ppm.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.462) for the combined residues of pyridate, *O*-(6-chloro-3-phenyl-4-pyridazinyl)-*S*-octyl carbonothioate and its metabolite 6-chloro-3-phenyl-pyridazine-4-ol (known as CL–9673), and conjugates of CL–9673 expressed as pyridate, in or on a variety of raw agricultural commodities. Permanent tolerances are established for residues of pyridate (40 CFR 180.462) on cabbage, corn (forage, fodder, grain, silage), and peanuts (hulls, nutmeat) at 0.03 ppm. There are no food or feed additive tolerances. No tolerances have been established on animal commodities. Pyridate is not registered for outdoor residential or greenhouse uses. Risk assessments were conducted by EPA to assessed dietary exposures from pyridate as follows:

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.

2. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a one day or single exposure. The endpoint selected by the Agency for assessment of acute dietary risk is 20 mg/kg/day (NOAEL), based on a 90–day feeding study in dogs. This acute dietary (food) risk assessment assumed that all food for which there are tolerances would have residues at the tolerance level. Using the acute endpoint, NOAEL (mg/kg/day) and these exposure assumptions margin of exposure (MOE) for subgroups can be calculated as follows:

MOE = Acute Endpoint (NOAEL, mg/kg/day) / Exposure (TMRC, mg/kg/day)

For the U.S. Population (48 states) subgroup, the MOE is 100,000. For Infants, < 1 year old, the most highly exposed subgroup, the MOE is 40,000. All population subgroups show a MOE well above the critical level, MOE = 100, for which the Agency is concerned. The Agency concludes that there is reasonable certainty that public health will not be harmed by acute exposure and risk from pyridate uses at the proposed tolerance levels. This is due to the conservative assumptions leading to the overestimation of pyridate acute dietary exposure.

3. *Chronic exposure and risk.* The chronic dietary exposure analysis from food sources was conducted using the reference dose (RfD) of 0.11 mg/kg/day. The RfD is based on the NOAEL of 10.8 mg/kg/day in male rats from the chronic toxicity/carcinogenicity study in rats, and an uncertainty factor of 100 applicable to all population subgroups.

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

The existing pyridate tolerances (published, pending, and including the necessary section 18 tolerances) result in exposure that is equivalent to the following percentages of the RfD:

Population Subgroup	%RfD
U.S. Population (48 states) ..	0.014
Nursing Infants < 1 year old	0.009
Non-Nursing Infants	0.028 < 1 year old
Children 1–6 years old	0.033
Children 7–12 years old	0.025
Southern Region	0.016
Western Region	0.015
Hispanics	0.018
Non-Hispanic Others	0.020
Males 13–19 years old	0.015

The subgroups listed above are:

i. The U.S. population (48 states).

ii. Those for infants and children.

iii. The other subgroups for which the percentage of the RfD occupied is greater than that occupied by the subgroup U.S. population (48 states).

4. *From drinking water.* The generic expected environmental concentration (GENEEC) model and the SCI-GROW model were run to produce estimates of pyridate concentrations in surface and ground water respectively. The primary use of these models is to provide a coarse screen for sorting out pesticides for which EPA has a high degree of confidence that the true levels of the pesticide in drinking water will be less than the human health drinking water levels of concern (DWLOCs). A human health DWLOC is the concentration of a pesticide in drinking water which would result in unacceptable aggregate risk, after having already factored in all food exposures and other non-occupational exposures for which EPA has reliable data.

5. *Acute and chronic exposure and risk.* The calculated drinking water levels of concern (DWLOCs) for acute exposure to pyridate in surface and ground water are 7,000 µg/liter(L) for all 3 population subgroups evaluated. For chronic (non-cancer) exposure to pyridate in surface and ground water, the DWLOCs are 3,850 µg/L for males (13 yrs+), 3,300 µg/L for females (13 yrs+) and 1,100 µg/L for children (1–6 yrs). To calculate the DWLOC for acute exposure relative to an acute toxicity endpoint, the acute dietary food exposure (from the dietary risk evaluation system (DRES) analysis) was subtracted from the ratio of the acute NOAEL (used for acute dietary assessments) to the ''acceptable'' for aggregate exposure to obtain the acceptable acute exposure to pyridate in drinking water. To calculate the DWLOC for chronic (non-cancer) exposure relative to a chronic toxicity endpoint, the chronic dietary food exposure from DRES was subtracted from the RfD to obtain the acceptable chronic (non-cancer) exposure to pyridate in drinking water. DWLOCs were then calculated using default body weights and drinking consumption figures.

Estimated Environmental Concentrations (EEC) of pyridate in surface and ground water are 97 and 5 ppb respectively. Estimated average concentrations of pyridate in surface and ground water are 25 (after adjustment) and 5 ppb respectively. The EEC of pyridate in surface and ground water are less than EPA's levels of concern for pyridate in drinking water as a contribution to acute and chronic aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of pyridate 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.

6. *From non-dietary exposure.* Pyridate is not currently registered for use on any the following residential non-food sites. Pyridate is not registered for outdoor residential or greenhouse uses, therefore, no residential exposure study is required. Although it is shown to be a skin sensitizer, all other required acute toxicological studies placed pyridate in either Toxicity Categories III or IV, representing a low level toxicant. Pyridate has a complete toxicological data base and no other concerns regarding acute toxicity have been identified.

Occupational exposure estimates for pyridate did not exceed the Agency's level of concern. However, due to potential for exposure, risk assessments are being required for short- and intermediate-term dermal exposure, as well as, short-, intermediate, and long-term exposure. A long-term risk assessment would be required if a long-term exposure senarios were present.

However, at this time, pyridate is not used in any long-term senarios.

7. *Short- and intermediate-term exposure and risk*. The short and intermediate occupational and residential endpoint selected for risk assessment was the NOAEL of 20 mg/kg/day based on ataxia and emesis at 60 mg/kg/day as determined by a 90–day dog feeding study..

A dermal absorption study was not available for evaluation. Although a 21–day dermal toxicity study in rats was available and no dermal or systemic toxicity was demonstrated in that study at the Limit-Dose (1,000 mg/kg/day), an oral dose from the 90–day dog study was selected because:

i. Dogs were shown to be the sensitive species for pyridate-induced neurotoxic effects.

ii. The effects seen on the first day persisted for the duration of study. The Agency estimated a dermal absorption rate of 20% percent based on the interpretation of data from oral and dermal studies in rats.

8. *Inhalation exposure*. In general, a risk assessment for inhalation route is not necessary for pesticides placed in Toxicity Category IV (i.e., low toxicity concern). Pyridate, based on the LC_{50} value of 4.37 mg/L is placed in Toxicity Category IV. However, because of the potential for exposure via this route, a risk assessment may be required. Since only an acute inhalation toxicity study was available, the Agency relies on the oral NOAELs for the inhalation exposure risk assessments.

Since only an acute inhalation toxicity study was available, the oral NOAELs for the inhalation exposure risk assessments were used. The 90–day dog feeding study was chosen for short- and intermediate-term inhalation exposure. NOAEL = 20 mg/kg/day and the chronic toxicity/carcinogenicity rat feeding study was chosen for long-term inhalation exposure. NOAEL = 10.8 mg/kg/day.

9. *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.''

EPA does not have, at this time, available data to determine whether pyridate has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, pyridate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that pyridate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the Final Rule for Bifenthrin Pesticide Tolerances November 26, 1997 (62 FR 62961) (FRL 5754–7).

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

1. *Acute risk*. From the acute dietary (food only) risk assessment, the following high end exposure estimates were calculated: 0.00018 mg/kg/day for the general U.S population; 0.00012 mg/kg/day for males (13 + yrs); 0.00012 mg/kg/day for females (13 + years); 0.0005 mg/kg/day for infants (< 1 yr); 0.0003 mg/kg/day for children (1–6 yrs). These exposures yield dietary (food only) MOEs ranging from 40,000 to 170,000 for these population subgroups. The maximum estimated concentrations of pyridate in surface and ground water are less than EPA's levels of concern for pyridate in drinking water as a contribution to acute aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of pyridate in drinking water do not contribute significantly to the aggregate acute human health risk at the present time when considering the present uses and the uses proposed by this action. Thus, the aggregate acute risk (food and water) is not expected to exceed the Agency level of concern for acute dietary exposure.

2. *Chronic risk*. Using the TMRC exposure assumptions described above, EPA has concluded that aggregate exposure to pyridate from food will utilize 0.014% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is ''discussed below.'' EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pyridate in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from chronic aggregate exposure to pyridate residues.

3. *Short- and intermediate-term risk*. Pyridate is not currently registered for any residential uses. Therefore, no residential exposure (short- or intermediate-term) is anticipated and a short- and intermediate-term aggregate risk assessment is not required.

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. For the U.S. population, 0.014% of the RfD is occupied by dietary (food) exposure. Because pyridate has no residential uses, no chronic residential exposure is anticipated. The estimated average concentrations of pyridate in surface and ground water are less than EPA's level of concern for pyridate in drinking water as a contribution to chronic aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of pyridate in drinking water do not contribute significantly to the short- and intermediate-term aggregate human health risk at the present time when considering the present uses and uses proposed by this action.

4. Aggregate cancer risk for U.S. population. Pyridate has been classified as a Group E chemical, with no evidence of carcinogenicity for humans in two acceptable animal (mouse and rat) studies. Thus, a cancer risk assessment is not required.

5. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pyridate residues.

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

1. *Safety factor for infants and children —In general*. In assessing the potential for additional sensitivity of infants and children to residues of pyridate, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the r at. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure 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 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.

2. *Pre- and post-natal sensitivity*. The oral perinatal and prenatal data demonstrated no indication of increased sensitivity of rats or rabbits to *in utero* and postnatal exposure to pyridate.

3. *Conclusion*. There is a complete toxicity database for pyridate and exposure data are complete or estimated based on data that reasonably account for potential exposures. EPA concludes that reliable data support removal of the additional tenfold safety factor.

4. *Acute risk*. The acute dietary endpoint selected for risk assessment was the NOAEL of 20 mg/kg/day based on a 90–day feeding study in dogs.

From the acute dietary (food only) risk assessment, risk calculations for infants <1 yr old is 0.0005 mg/kg/day and 0.0003 mg/kg/day for children (1–6 yrs). These exposures yield dietary (food only) MOEs of 40,000 and 70,000, respectively, for these population subgroups.

The maximum estimated concentrations of pyridate in surface and ground water are less than EPA's levels of concern for pyridate in drinking water as a contribution to acute aggregate exposure. Therefore, EPA concludes with reasonable certainty that residues of pyridate in drinking water do not contribute significantly to the aggregate acute human health risk at the present time when considering the present uses and the uses proposed by this action.

EPA's bases this determination on a comparison of estimated concentrations of pyridate in surface and ground water to levels of concern for pyridate in drinking water. The estimates of pyridate in surface and ground water are derived from water quality models that use conservative assumptions 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 the 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 impact of pyridate in drinking water as part of the aggregate acute risk assessment process.

5. *Chronic risk*. Using the exposure assumptions described above, EPA has concluded that aggregate exposure to pyridate from food will utilize 0.033% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to pyridate in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the chronic aggregate exposure to exceed 100% of the RfD.

6. *Short- or intermediate-term risk*. Pyridate is not registered for residential use. No residential exposure or short- or intermediate-term risk is therefore expected. A short- and intermediate-term risk assessment is not required.

7. *Determination of safety*. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pyridate residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The metabolism of pyridate in plants is well understood based on studies with broccoli, corn, and peanuts. Pyridate is rapidly broken down by hydrolysis and further conjugated to glucoside and degraded. Adequate acceptable metabolism studies have also been conducted in lactating goats, cows and laying hens.

Based on those studies, the nature of the residue in plants and ruminants is considered to be adequately understood. The total toxic residue consists of pyridate, its metabolite 6-chloro-3-phenyl-pyridazine-4-ol CL-9673, and conjugates of that metabolite, all expressed as pyridate.

B. Analytical Enforcement Methodology

The residue analytical method used is a total residue procedure. Pyridate, CL–9673, and conjugated CL–9673 are hydrolyzed to CL–9673 and measured as such by UV-HPLC. The limit of determination is 0.03 ppm. The method has undergone validation in EPA laboratories and is suitable to gather residue data and to enforce tolerances. It was sent to FDA for inclusion in PAM II. The multi residue recovery data have been sent for inclusion in PAM I.

C. Magnitude of Residues

Results from field studies show that the maximum residue pyridate, CL–9673, and hydrolyzable CL–9673 in sum, expressed as CL–9673 recovered in any bean sample from garbanzo plants treated twice at the proposed label rate of 0.9 lbs ai/A was 0.057 ppm. The maximum pyridate residue recovered in bean plus hull samples from garbanzo plants treated twice at the proposed label rate of 0.9 lbs ai/A was < 0.030 ppm.

The maximum residue (pyridate, CL–9673, and hydrolyzable CL–9673 in sum, expressed as CL–9673) recovered in any bean sample from garbanzo plants treated twice at the proposed label rate of 1.8 lbs ai/A was < 0.030 ppm. The maximum pyridate residue recovered in bean plus hull samples from garbanzo plants treated twice at the proposed label rate of 1.8 lbs ai/A was < 0.030 ppm. Therefore, the combined residues of pyridate *O*-(6-chloro-3-phenyl-4-pyridazinyl)-*S*-octyl-carbonothioate, the metabolite 6-chloro-3-phenyl-pyridazine-4-ol and conjugates of 6-chloro-3-phenyl-pyridazine-4-ol, expressed as pyridate resulting from the proposed use will not exceed 0.1 ppm in chickpeas.

Pyridate is not registered of direct use on potable water, aquatic food and feed crops, or for use in food handling establishments. Moreover, there are no processed commodities and no animal feed items associated with chickpeas.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican tolerances for pyridate residues on chickpeas.

E. Rotational Crop Restrictions

A confined accumulation in rotational crops study with pyridate has previously been submitted to the Agency. Confined rotational crop data using ^{14}C-pyridate at an application rate of 1.8 kg/ha showed no detectable uptake (<0.01 ppm) of residues of pyridate by lettuce, carrots, or barley after a rotational interval of 1 and 2 months. These findings were supported by data showing the rapid metabolism in soil of pyridate residues.

IV. Conclusion

Therefore, the tolerance is established for combined residues of pyridate, *O*-(6-chloro-3-phenyl-4-pyridazinyl)-*S*-octyl carbonothioate and its metabolite 6-chloro-3-phenyl-pyridazine-4-ol (known as CL–9673), and conjugates of CL–9673, expressed as pyridate, in or on chickpeas at 0.1 ppm.

V. Objections and Hearing Requests

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

Any person may, by December 7, 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 or a request for a fee waiver as specified by 40 CFR 180.33. If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as Confidential Business Information (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this rulemaking under docket control number OPP–300737 (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 Hwy., Arlington, VA.

Electronic comments may be sent directly to EPA at:

opp-docket@epamail.epa.gov.

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

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

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

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

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

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule

does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. 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: September 29, 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. §180.462, is amended by adding alphabetically ''chickpeas'' to the table in paragraph (a), and by removing and reserving paragraph (b) to read as follows:

§180.462 Pyridate; tolerances for residues.

(a) *General.* * * *

Commodity	Parts per million
* * * *	* * *
Chickpeas	0.1
* * * *	* * *

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

* * * * *

[FR Doc. 98–26908 Filed 10–6–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 264 and 265

[FRL–6173–2]

Project XL Site-Specific Rulemaking for OSi Specialties, Inc., Sistersville, WV

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: The EPA is 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''). The terms of the XL project are defined in a Final Project Agreement (''FPA''). Following public review and comment, the FPA was signed by delegates from the EPA, the West Virginia Division of Environmental Protection (''WVDEP''), and Witco Corporation on October 17, 1997. The EPA published a final rule, applicable only to the Sistersville Plant, on September 15, 1998 (See 63 FR 49384). That action was a site-specific regulatory deferral from the Resource Conservation and Recovery Act (''RCRA'') organic air emission standards, commonly known as RCRA Subpart CC. The EPA expects this XL project to result in superior environmental performance at the Sistersville Plant, while deferring significant capital expenditures, and thus providing cost savings for the Sistersville Plant.

Since publication of the final rule on September 15, 1998, it has come to the EPA's attention that the **Federal Register** notice contained a typographical error in the regulatory language that could result in some confusion regarding the time allowed for an owner or operator to conduct a performance test. Today's action makes the technical corrections to that published regulatory text.

EFFECTIVE DATE: This technical correction to the final rule is effective on October 7, 1998.

ADDRESSES: Docket. Three dockets contain supporting information used in developing the September 15, 1998 published final rule, and are 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. Refer to RCRA docket numbers F–98–MCCP–FFFFF, F–98–MCCF–FFFFF, and F–98–MCCA–FFFFF.

A duplicate copy of each 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 a duplicate docket at the Philadelphia location are encouraged to contact Mr. Tad Radzinski in advance, by telephoning (215) 814–2394.

FOR FURTHER INFORMATION CONTACT: Mr. Tad Radzinski, U.S. Environmental Protection Agency, Region 3 (3WC11), Waste and Chemicals Management Division, 1650 Arch Street, Philadelphia, PA, 19103–2029, (215) 814–2394.

SUPPLEMENTARY INFORMATION:

Outline

The information presented in this preamble is organized as follows:

I. Authority

This regulation is being published under the authority of sections 1006, 2002, 3001–3007, 3010, and 7004 of the Solid Waste Disposal Act of 1970, as amended by the Resource Conservation and Recovery Act, as amended (42 U.S.C. 6905, 6912, 6921–6927, 6930, and 6974).

II. Background

A. Overview of Project XL

The site-specific regulation published on September 15, 1998, implements a project developed under Project XL, an EPA initiative to allow regulated entities to achieve better environmental results at less cost. Project XL—''excellence and Leadership''—was announced on March 16, 1995, as a central part of the National Performance Review and the EPA's effort to reinvent environmental protection (See 60 FR 27282, May 23, 1995). Project XL provides a limited number of private and public regulated entities an opportunity to develop their own pilot projects to provide regulatory flexibility that will result in environmental protection that is superior to what would be achieved through compliance with current and reasonably anticipated future regulations.

B. Overview of the OSi Sistersville Plant XL Project

The EPA is 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''). The terms of the XL project are defined in a Final Project Agreement (''FPA''). Following public review and comment, the FPA was signed by delegates from the EPA, the West Virginia Division of Environmental Protection (''WVDEP'') and Witco Corporation on October 17, 1997. The EPA published a final rule, applicable only to the Sistersville Plant, on September 15, 1998 (See 63 FR 49384). That action was a site-specific regulatory deferral from the Resource Conservation and Recovery Act (''RCRA'') organic air emission standards, commonly known as RCRA Subpart CC. The air emission and waste management requirements are set forth in the September 15, 1998 final rule, which was intended to provide site-specific regulatory changes to implement this XL project. The EPA expects this XL project to result in superior environmental performance at the Sistersville Plant, while deferring significant capital expenditures, and thus providing cost savings for the Sistersville Plant.

Following publication of the final rule on September 15, 1998, it came to the EPA's attention that the **Federal Register** notice contained a typographical error in the regulatory language that could result in some confusion regarding the time allowed for an owner or operator to conduct a performance test. Paragraphs (f)(2)(ii)(B)(*1*) of the subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers, in both 40 CFR part 264 and 265, contained a typographical error as published on September 15, 1998 at 63 FR 49392 and 63 FR 49400. As published in the **Federal Register**, paragraph (f)(2)(ii)(B)(*1*) stated that ''Within sixty (120) days after thermal incinerator initial start-up, the Sisterville Plant shall conduct a performance test . . .'' In compiling the regulatory language for the September 15 final rule, both numbers were inadvertently included; one in text and the other numerically. It was the EPA's intent that the plant have 120 days to perform the test rather than sixty (60) days. This intent is indicated in the September 15, 1998 final rule preamble at 63 FR 49387, where EPA explains that the proposed initial performance test deadline of 60 days is being extended by 60 days. Today's action makes the necessary technical corrections to the regulatory text in both parts 264 and 265 in order to correct the regulatory text and clarify that 120 days are allowed for the performance test.

III. Administrative Requirements

A. Docket

Three RCRA dockets contain supporting information pertaining to today's action and the September 15, 1998 published rulemaking: (1) RCRA docket number F–98–MCCP–FFFFF; (2) RCRA docket number F–98–MCCF–FFFFF, and (3) RCRA docket number F–98–MCCA–FFFFF. The public may review all materials in these dockets at the EPA RCRA Docket Office located at Crystal Gateway, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia. Hand delivery of items and review of docket materials are made at the Virginia address. The public must have an appointment to review docket materials. Appointments can be scheduled by calling the Docket Office at (703) 603–9230. The mailing address for the RCRA Docket Office is RCRA Information Center (5305W), 401 M Street SW, Washington, DC 20460. The Docket Office is open from 9 a.m. to 4 p.m., Monday through Friday, except for Federal holidays.

A duplicate copy of each 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 a duplicate docket at the Philadelphia location are encouraged to contact Mr. Tad Radzinski in advance, by telephoning (215) 814–2394.

B. Paperwork Reduction Act

This technical correction action applies only to one company, and requires no information collection activities subject to the Paperwork Reduction Act; therefore, no information collection request (ICR) will be submitted to OMB for review in compliance with the Paperwork Reduction Act, 44 U.S.C. 3501, et seq.

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the proposed regulatory action is ''significant'' and, therefore, subject to the Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to lead to a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety in State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Executive Order 12866 does not cover rules of particular applicability. As a result, this action does not fall within the scope of the Executive Order.

D. Regulatory Flexibility

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), as amended, Publication No. L. 104–121, 110 Stat. 847, the EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because it only affects one facility, the OSi Sistersville Plant, located near Sistersville, West Virginia. The Sistersville Plant is not a small entity, and therefore no initial regulatory flexibility analysis under section 604(a) of the Act is required.

E. Unfunded Mandates Reform Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 (''Unfunded Mandates Act''), Public Law 104–4, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate, or to the private sector, of $100 million or more. Under section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

As noted previously, the rule is applicable only to the Sistersville Plant, located near Sistersville, West Virginia. The EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. The EPA has also determined that the rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any one year. Thus, today's technical correction notice is not subject to the requirements of sections 202 and 205 of the UMRA.

F. Executive Order 13045

Executive Order 13045 applies to any rule that EPA determines (1) economically significant as defined under E.O. 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This technical correction notice 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 it is not an economically significant regulatory action as defined by E.O. 12866 and does not involve decisions based on environmental health or safety risks.

G. National Technology Transfer and Advancement Act

Under § 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus standard bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the OMB, an explanation of the reasons for not using such standards. Today's notice does not put forth any technical standards as part of the clarifying amendments; therefore, consideration of voluntary consensus standards was not required.

H. Enhancing the Intergovernmental Partnership Under Executive Order 12875

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's technical correction notice does not create a mandate on State, local or tribal governments. The notice does not impose any new or additional enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this action.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statue, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's document does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this action.

J. 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 prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. The EPA is not required to submit a rule report regarding today's document under Section 801 because this is a notice of particular applicability.

K. Pollution Prevention Act

The Pollution Prevention Act of 1990 states that pollution should be prevented or reduced at the source whenever feasible. Today's technical correction notice in no way affects the pollution prevention alternatives and measures previously incorporated into the final subpart CC rules.

L. Immediate Effective Date

The EPA has determined to make today's notice effective immediately. The EPA believes that the corrections being made in today's notice are corrections of obvious errors in the published rules (i.e., typographical errors). Comment on such changes is unnecessary, within the meaning of 5 USC 553(b)(3)(B).

List of Subjects in 40 CFR Parts 264 and 265

Environmental protection, Air pollution control, Control device, Hazardous waste, Monitoring, Reporting and recordkeeping requirements, Surface impoundment, TSDF, Waste determination.

Dated: September 29, 1998.

Jay Benforado,

Acting Associate Administrator, Office of Reinvention.

For the reasons set forth in the preamble, parts 264 and 265 of chapter I of title 40 of the Code of Federal Regulations are amended as follows:

PART 264—STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

1. The authority citation for part 264 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, and 6925.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers

2. Section 264.1080 is amended by revising paragraph (f)(2)(ii)(B)(*1*) to read as follows:

§ 264.1080 Applicability.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(B) * * *

(*1*) Within 120 days after thermal incinerator initial start-up, the Sistersville Plant shall conduct a performance test to determine the minimum temperature at which compliance with the emission reduction requirement specified in paragraph (f)(4) of this section is achieved. This determination shall be made by measuring TOC minus methane and ethane, according to the procedures specified in paragraph (f)(2)(ii)(B) of this section.

* * * * *

PART 265—INTERIM STATUS STANDARDS FOR OWNERS AND OPERATORS OF HAZARDOUS WASTE TREATMENT, STORAGE, AND DISPOSAL FACILITIES

3. The authority citation for part 265 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6924, 6925, and 6935.

Subpart CC—Air Emission Standards for Tanks, Surface Impoundments, and Containers.

4. Section 265.1080 is amended by revising paragraph (f)(2)(ii)(B)(*1*) to read as follows:

§ 265.1080 Applicability.

* * * * *

(f) * * *

(2) * * *

(ii) * * *

(B) * * *

(*1*) Within 120 days after thermal incinerator initial start-up, the Sistersville Plant shall conduct a performance test to determine the minimum temperature at which compliance with the emission reduction requirement specified in paragraph (f)(4) of this section is achieved. This determination shall be made by measuring TOC minus methane and ethane, according to the procedures specified in paragraph (f)(2)(ii)(B) of this section.

* * * * *

[FR Doc. 98–26885 Filed 10–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6172–2]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion for the Naval Security Group Activity Superfund Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the United States Navy, Naval Security Group Activity Superfund Site (Site) located in Sabana Seca, in the Municipality of Toa Baja, Puerto Rico, from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the Puerto Rico Environmental Quality Board have determined that the Site poses no significant threat to public health or the environment and, therefore, no further response actions pursuant to CERCLA are appropriate.

EFFECTIVE DATE: October 7, 1998.

FOR FURTHER INFORMATION CONTACT: Paul G. Ingrisano, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 290 Broadway—18th Floor, New York, NY 10007–1866, (212) 637–4337.

SUPPLEMENTARY INFORMATION: The Site to be deleted from the NPL is: the United States Navy, Naval Security Group Activity Superfund Site, Sabana Seca, Puerto Rico.

A Notice of Intent to Delete for this Site was published on July 30, 1998 (63 FR 40687). The closing date for comments on the Notice of Intent to Delete was August 31, 1998. EPA received no comments.

EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. As described in § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for remedial actions in the unlikely event that conditions at the site warrant such action in the future. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous waste, Hazardous substances, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 17, 1998.

William J. Muszynski,

Deputy Regional Administrator, Region II.

For the reasons set out in the preamble, 40 CFR Part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR 1991 Comp., p.351; E.O. 12580, 52 FR 2923; 3 CFR, 1987 Comp., p. 193.

Appendix B [Amended]

2. Table 2 of Appendix B to Part 300 is amended by removing the site, ''Naval Security Group Activity, Sabana Seca, Puerto Rico.''

[FR Doc. 98–26631 Filed 10–6–98; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6173–7]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of deletion of the Coshocton Landfill Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency announces the deletion of the Coshocton Landfill Superfund Site in Ohio from the National Priorities List (NPL). The NPL is Appendix B of 40 CFR part 300 which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Ohio, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Ohio have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: October 7, 1998.

FOR FURTHER INFORMATION CONTACT: Anthony Rutter at (312) 886–8961 (SR–6J), Remedial Project Manager or Gladys Beard at (312) 886–7253, Associate Remedial Project Manager, Superfund Division, U.S. EPA—Region V, 77 West Jackson Blvd., Chicago, IL 60604. Information on the site is available at the local information repository located at: Coshocton Public Library, 655 Main Street, Coshocton, Ohio 43182. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The contact for the Regional Docket Office is Jan Pfundheller (H–7J), U.S. EPA, Region V, 77 W. Jackson Blvd., Chicago, IL 60604, (312) 353–5821.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is: Coshocton Landfill located in Coshocton, Ohio. A Notice of Intent to Delete for this site was published August 28, 1998 (63 FR 45781). The closing date for comments on the Notice of Intent to Delete was September 28, 1998. EPA received no comments and therefore no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of Hazardous Substance Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL in the unlikely event that conditions at the site warrant such action. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous Waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Dated: September 29, 1998.

David Ullrich,

Acting Regional Administrator, Region V.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for Part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B [Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site ''Coshocton Landfill, Coshocton, Ohio.''

[FR Doc. 98–26886 Filed 10–6–98; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571 and 572

[Docket No. NHTSA–98–4503]

RIN 2127–AG39

Anthropomorphic Test Dummy; Occupant Crash Protection

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

ACTION: Final Rule.

SUMMARY: This document modifies the Hybrid III test dummy, which is specified by the agency for use in compliance testing under Standard No. 208, *Occupant crash protection.* The agency is making minor modifications to the test dummy's clothing and shoes, and to the hole diameter in the femur flange in the pelvis bone flesh. The changes will facilitate compliance testing, while having no significant effect on Standard No. 208 test results.

DATES: This regulation is effective November 6, 1998. The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of November 6, 1998. Petitions for Reconsideration must be received by November 23, 1998.

ADDRESSES: Petitions should refer to the docket and notice number of this notice and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 7th Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues: Mr. Stanley Backaitis, Office of Crashworthiness Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590. Telephone: (202) 366–4912. Fax: (202) 366–4329.

For legal issues: Ms. Nicole H. Fradette, NCC–20, Rulemaking Division, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, D.C. 20590 (202–366–2992).

SUPPLEMENTARY INFORMATION:

I. Summary

In an August 7, 1997 Notice of Proposed Rulemaking (NPRM), NHTSA proposed two modifications to the Hybrid III test dummy, which is specified by the agency for use in compliance testing under Standard No. 208, *Occupant crash protection.*[1] First, the agency proposed to amend the specifications for the Hybrid III dummy's clothing and shoes to make the requirements consistent with compliance testing practices and to facilitate procurement of the dummy's shoes and clothing. Second, the agency proposed to specify a hole diameter in the pelvis bone flesh to facilitate femur flange (shank portion) insertion during its attachment to the pelvis bone. The NPRM also addressed a petition from General Motors (GM) to amend 49 CFR Part 572 to allow the use of an available lower lumbar spine load cell assembly in place of the standard Hybrid III lumbar adapter. The agency explained that an amendment was unnecessary because manufacturers could already use the lumbar spine load cell assembly at their discretion.

First Technology Safety Systems (FTSS), Mercedes-Benz, Chrysler, Mitsubishi, Ford, and General Motors (GM) submitted comments in response to the NPRM. Chrysler, Ford, and GM supported the proposed changes to the clothing specifications for the Hybrid III dummy; the other three commenters did not address the issue. All six commenters supported specifying a hole diameter in the pelvis flesh to facilitate femur flange insertion during its attachment to the pelvis bone, although they differed in a minor way over the specific dimension of the hole's diameter. With respect to GM's question of using a lower lumbar spine load cell in lieu of a lumbar adapter, Chrysler supported the agency's position that the use of a lower lumbar spine load cell assembly does not need agency approval.

After reviewing and analyzing the comments, NHTSA has concluded that the Hybrid III dummy specifications should be changed to incorporate the minor modifications proposed in the NPRM. The agency believes that the modifications will facilitate testing and will provide additional information from which a more realistic assessment of the effectiveness of occupant protection systems can be made, without affecting the dummy impact responses for either Standard No. 208 or New Car Assessment Program (NCAP) testing. A summary of the NPRM and the agency's response to the comments follows.

II. Summary of NPRM

A. Garments and Shoes

Both First Technology Safety Systems and the Motor Industry Research Association (MIRA of United Kingdom) contacted NHTSA about what they viewed as a conflict between the Hybrid III's specifications and the length of stretch pants actually used on the Hybrid III dummy in Standard No. 208 compliance testing. Although paragraph S8.1.8.1 and S8.1.8.2 specify the use of mid-calf length pants, all compliance testing laboratories and most development laboratories use above-the-knee length pants.[2]

In compliance tests, the pants are either cut off above the dummy knees or rolled up above the knees for two reasons. First, S10.5 of Standard No. 208 requires the legs to be positioned with a specified distance between the ''outboard knee clevis flange surfaces.'' The pants must be rolled up above the knees for dummy positioning to measure this distance. Second, the dummy knees are often marked with chalk to determine where knee contact with the vehicle interior occurs during the test.[3] Since the pants often ride up the dummy's legs during the crash event, chalking the dummy pants does not work well.

MIRA also informed NHTSA that the pants, undershirt, and shoes are no longer available from the supply sources referenced in the drawings of those items and that users were having difficulty finding such articles of clothing on the open market. MIRA asked NHTSA to clarify where such articles could be obtained and what specifications should be used to ensure that the correct items were procured. Other dummy users indicated similar procurement difficulties and expressed a preference to procure shoes and garments for the dummy on the open market under general product description guidelines rather than from one specific source.

NHTSA tentatively agreed with these observations, stating that many commercially available articles would serve the intended purposes. The agency, therefore, proposed amending Standard No. 208 to allow users to equip the Hybrid III dummies with commercially available shoes and cotton stretch light weight above-the-knee length pants and undershirt that fit general description guidelines rather than requiring them to obtain these items from a designated supplier. The agency noted, in the NPRM, that the proposed changes reflected what had become common procurement and use practice among manufacturers and NHTSA contractors who perform compliance tests.

B. Access Hole Diameter in the Pelvis Flesh

In response to a June 30, 1995 notice of proposed rulemaking (NPRM) (60 FR 34213, Docket 74–14, Notice 96), the American Automobile Manufacturers Association (AAMA) stated that the access holes in the pelvis flesh should be enlarged to facilitate the insertion of the femur flange (shank portion) for their attachment to the pelvis bone. The AAMA stated that although the holes are shown on the dummy drawing, the diameter of the holes had not been specified. The AAMA stated that the pelvis flesh could be damaged during insertion of the femur flange through the existing two inch diameter holes (as scaled from the drawing). The organization recommended enlarging the holes' diameter to 2$\frac{5}{16}$ inches, a change that it believed would accommodate insertion of the femur flange without tearing the flesh material. AAMA stated that such a change would not significantly affect dummy kinematics or instrumentation readings.

In response to AAMA's comments, NHTSA proposed specifying the diameter of the hole in the pelvis flesh as 2$\frac{5}{16}$ inches. The agency noted that the proposed change was consistent with a Society of Automotive Engineers (SAE) Task Force recommendation. The agency explained that the larger size would facilitate testing by making insertion of the femur shaft less cumbersome. By permitting easier slip-through of the section of the femur shaft containing the rubber bumper, the larger hole could prevent an occasional hang

[1] NHTSA decided to specify exclusive use of the Hybrid III dummy in a final rule published on November 8, 1993. (58 FR 59189) The specifications for the Hybrid III dummy appear in subpart E of 49 CFR part 572.

NHTSA also uses the Hybrid III dummy in its New Car Assessment Program (NCAP). This program involves testing new passenger cars and trucks by crashing them into a fixed collision barrier at 35 mph. That crash is five mph faster and 36 percent more severe than the crash test specified in Standard No. 208.

[2] The use of mid-calf pants was a carry-over from the General Motors original specifications for the Hybrid III dummy.

[3] This information, while not required by Standard No. 208, is helpful.

up of the urethane bumper's edge against the inner edge of the hole in the pelvis flesh. As a result, the flesh with the enlarged hole would be less susceptible to damage during the femur flange insertion process. The agency explained that it believed that the loads on the femur shaft would be the same irrespective of whether the hole was 2 inches in diameter or 2 5/16 inches in diameter because of a looser fit within as it compresses the pelvis flesh.

III. Agency Decision and Response to Comments

A. Garments and Shoes

Chrysler, Ford, and GM all supported the proposed changes to the Hybrid III dummy's clothing; the other three commenters did not address the issue. Commenters stated that specifying the use of cotton stretch light weight above the knee pants recognizes the common testing practice of the vehicle manufacturers and NHTSA contractors who perform compliance tests. Further, exposing the dummy's knees will allow chalk to be applied to the dummy's knees so that knee contact with the impacted vehicle surface can be determined. In addition, commenters stated that the proposed changes would facilitate procurement of appropriate dummy clothing and shoes. NHTSA is, therefore, amending Standard No. 208 to allow the users to equip the Hybrid III dummies with commercially available shoes and cotton stretch light weight above-the-knee length pants and undershirt that fit general description guidelines. Accordingly, NHTSA is removing drawings related to shoes and garments from the Hybrid III drawing set (78051–292, –293, –294, and –295) and incorporating appropriately worded modifications in § 571.208 S8.1.8.1 and S8.1.8.2 which describe the shoes and garments to be used on the Hybrid III dummy. NHTSA believes that this change will not affect the stringency of Standard No. 208's requirements or result in any cost differences for manufacturers.

B. Access Hole Diameter in the Pelvis Flesh

All six commenters supported specifying a larger hole diameter in the pelvis flesh. The commenters differed, however, with respect to the specific dimensions of the hole's diameter. Chrysler, Mercedes Benz and Mitsubishi supported the proposed 2 5/16 inch diameter hole stating that it would facilitate the insertion of the femur flange for its attachment to the pelvis bone and minimize the possibility of tearing the pelvis flesh. Ford and FTSS suggested enlarging the holes' diameter to 2 7/16 inches. In support of its comment, FTSS noted that pelvis flesh has been manufactured with diameter holes of 2 7/16 inches (2.44+/−.06) for many years. Consequently, FTSS stated that specifying a diameter of 2 7/16 inches would not require any retooling. GM recommended increasing the access hole to 2½ inches in diameter so that it was consistent with the hole diameter of currently manufactured dummies. GM and Chrysler both stated that increasing the hole's diameter would not affect the dummy's performance.

The dimensional tolerance for the 2 7/16 inch diameter hole (2.44+/−0.06) covers the 2½ inch nominal specification proposed by GM. The agency concludes, therefore, that there is virtually no difference between GM's recommendation for a 2½ inch diameter hole and the Ford and FTSS recommendations for a 2 7/16 inch diameter hole. The agency believes that GM's recommendation merely reflects the upper dimensional limit of the hole's diameter. The agency believes that enlarging the access hole diameter to 2 7/16 inches (2.44+/−0.6) will greatly facilitate the test dummy's assembly and reduce the chances of tearing the pelvis flesh during insertion of the 3 inch diameter femur flange. Further, NHTSA does not believe that the commenters who supported enlarging the hole's diameter to 2 5/16 inches would object to a hole of a slightly larger diameter. The larger hole will ease dummy assembly and reduce the risk of tearing the pelvis flesh. In addition, it will not affect the dummy's impact performance. NHTSA is, therefore, specifying a diameter of 2 7/16 (2.44+/−0.06) inches for the pelvis flesh hole of the Hybrid III dummy.

The agency notes that Mitsubishi requested that manufacturers and others be allowed to continue using test dummies that contain the current 2 inch diameter holes. The agency sees no need for dummy users to procure new pelvis assemblies with larger access holes if they are satisfied with the dummies they are using. Accordingly, the specification for larger size holes in the pelvis flesh applies to newly manufactured parts only and does not apply to those parts already in existence.

III. Effective Dates

The amendments are effective 30 days after publication of today's final rule. The agency is specifying such an early effective date because the modifications resulting from this final rule will only affect the drawings related to the dummy and will not affect compliance testing or certification.

IV. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under E.O. 12866, ''Regulatory Planning and Review.'' NHTSA has analyzed this rule and determined that it is not ''significant'' within the meaning of the Department of Transportation's regulatory policies and procedures. The amendments do not require any vehicle design changes but instead only specify minor modifications in the test dummies used to evaluate a vehicle's compliance with Standard No. 208. The agency believes that the clothing and pelvis modifications will not affect the cost of new dummies. Therefore, the impacts of the amendments are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*). I hereby certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification (5 U.S.C. § 605(b)). The final rule primarily affects passenger car, light truck, and multipurpose passenger vehicle and dummy manufacturers. The Small Business Administration's size standards (13 CFR Part 121) are organized according to Standard Industrial Classification Codes (SIC). SIC Code 3711 ''Motor Vehicles and Passenger Car Bodies'' has a small business size standard of 1,000 employees or fewer. Dummy manufacturers are classified as small businesses with less than 500 employees.

This final rule applies to the previously described vehicle and dummy manufacturers regardless of size. NHTSA has stated that this final rule does not require any vehicle design changes. The final rule specifies minor changes in the test dummies used to evaluate a vehicle's compliance with Standard No. 208. The changes will not affect the cost of new dummies.

Paperwork Reduction Act

NHTSA has analyzed this rule under the Paperwork Reduction Act of 1995 (P.L. 104–13) and determined that it will not impose any information collection requirements as that term is

defined by the Office of Management and Budget (OMB) in 5 CFR part 1320.

The National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will have no significant impact on the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually. However, the incremental manufacturer costs for this final rule are estimated to be zero.

Executive Order 12612 (Federalism)

The agency has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 12612. NHTSA has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule has no retroactive effect. NHTSA is not aware of any state law that would be preempted by this rule. This rule does not repeal any existing Federal law or regulation. It modifies existing law only to the extent that it amends the agency's specification for the shoes, clothing, and pelvis flesh hole diameter of the Hybrid III test dummy. This rule does not require submission of a petition for reconsideration or the initiation of other administrative proceedings before a party may file suit in court.

List of Subjects

49 CFR Part 571

Motor vehicle safety, Reporting and recordkeeping requirements, tires.

49 CFR Part 572

Motor vehicle safety, Incorporation by reference.

In consideration of the foregoing, 49 CFR Parts 571 and 572 are amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. Section 571.208 is amended by revising S8.1.8.2 to read as follows:

§ 571.208 Standard No. 208, Occupant crash protection.

* * * * *

S8.1.8.2 Each test dummy is clothed in a form fitting cotton stretch short sleeve shirt with above-the-elbow sleeves and above-the-knee length pants. The weight of the shirt or pants shall not exceed 0.25 pounds each. Each foot of the test dummy is equipped with a size 11XW shoe which meets the configuration size, sole, and heel thickness specifications of MIL–S 13192 change ''P'' and whose weight is 1.25±0.2 pounds.

* * * * *

PART 572—[AMENDED]

3. The authority citation for Part 572 of Title 49 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

Subpart E—Hybrid III Test Dummy

4. Section 572.31 is amended by revising paragraphs (a)(1), (a)(3) and its table, and (a)(4), and by removing and reserving paragraph (b) to read as follows:

§ 572.31 General description.

(a) * * *

(1) The Anthropomorphic Test Dummy Parts List, dated June 26, 1998, and containing 16 pages, and a Parts List Index, dated June 26, 1998, containing 8 pages.

* * * * *

(3) A General Motors Drawing Package identified by GM Drawing No. 78051–218, revision U, titled ''Hybrid III Anthropomorphic Test Dummy,'' dated August 30, 1998, the following component assemblies, and subordinate drawings:

Drawing No.	Revision
78051–61X head assembly-complete, (May 20, 1978)	(T)
78051–90 neck assembly-complete, dated May 20, 1978	(A)
78051–89 upper torso assembly-complete, dated May 20, 1978	(K)
78051–70 lower torso assembly-complete, dated June 30, 1998, except for drawing No. 78051–55, ''Instrumentation Assembly-Pelvic Accelerometer,'' dated August 2, 1979.	(F)
86–5001–001 leg assembly-complete (LH), dated March 26, 1996	(A)
86–5001–002 leg assembly-complete (RH), dated March 26, 1996	(A)
78051–123 arm assembly-complete (LH), dated May 20, 1996	(D)
78051–124 arm assembly-complete (RH), dated May 20, 1978	(D)
78051–59 pelvic assembly-complete, dated June 30, 1998	(G)
78051–60 pelvic structure-molded, dated June 30, 1998	(E)

(4) Disassembly, Inspection, Assembly and Limbs Adjustment Procedures for the Hybrid III dummy, dated June 1998.

* * * * *

(b) [Reserved]

* * * * *

5. Section 572.34 is amended by revising paragraph (b) to read as follows:

§ 572.34 Thorax.

* * * * *

(b) When impacted by a test probe conforming to § 572.36(a) at 22 fps +/− 0.40 fps in accordance with paragraph (c) of this section, the thorax of a complete dummy assembly (78051–218, revision U, without shoes, shall resist with a force of 1242.5 pounds +/− 82.5 pounds measured by the test probe and shall have a sternum displacement measured relative to spine of 2.68 inches +/− 0.18 inches. The internal hysteresis in each impact shall be more than 69% but less than 85%. The force measured is the product of pendulum mass and deceleration.

* * * * *

Issued on October 1, 1998.

Ricardo Martinez,

Administrator.

[FR Doc. 98–26795 Filed 10–6–98; 8:45 am]

BILLING CODE 4910–59–P

Proposed Rules

Federal Register
Vol. 63, No. 194
Wednesday, October 7, 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 AGRICULTURE

Office of the Secretary

7 CFR Part 1

RIN 0560–AF55

Fee Schedule; Aerial Photographic Reproductions

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture proposes to revise the fees charged for some aerial photographic reproductions in order to reflect changes in the costs for some reproductions and to discontinue some reproductions due to low demand. However, these revisions do not affect accessibility under the Freedom of Information Act.

DATES: Comments must be submitted by November 6, 1998 to assure consideration.

ADDRESSES: Submit written comments to Linda McDonald, United States Department of Agriculture, Farm Service Agency, Aerial Photography Field Office, 2222 West 2300 South, Salt Lake City, Utah 84119–2020. All comments received will be available for public inspection at the above address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Linda McDonald, United States Department of Agriculture, Farm Service Agency, Aerial Photography Field Office, 2222 West 2300 South, Salt Lake City, Utah 84119–2020; telephone (801) 975–3500, Ext. 235.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is an administrative action not subject to Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

USDA certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

Executive Order 12988

The proposed rule has been reviewed in accordance with Executive order 12988, Civil Justice Reform.

The provisions of this rule are not retroactive and preempt State laws to the extent such laws are inconsistent with the provisions of this rule and does not require administrative proceedings before parties may file in court challenging this rule.

Paperwork Reduction Act

The authority of the United States Department of Agriculture (USDA) FSA Aerial Photography Field Office to coordinate aerial photography and remote sensing programs and for aerial photography is Section 387 of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1387).

Reproductions of photographs are available at cost to any customer. All receipts from the sale of aerial photography reproductions and services are deposited and sent to the U.S. Treasury.

Background

A pricing study of all products and services provided by the Aerial Photography Field Office was conducted. The study determined that due to increased costs of photographic reproduction, it would be necessary to increase fees charged for some reproductions. Fees would be reduced or left unchanged for some reproductions. Some reproductions would be discontinued, due to the small number of reproductions ordered. Accordingly, USDA proposes to revise the fees charged for some reproductions, to discontinue others and to make minor administrative changes regarding Agency names and other clarifications to amend the appendix to part 1, subpart A.

List of Subjects in 7 CFR Part 1

Appeals, Fees, Public Access and Records.

For the reasons set out in the preamble, USDA proposes to amend 7 CFR part 1 subpart A, Appendix A as follows:

PART 1—ADMINISTRATIVE REGULATIONS

Subpart A—Official Records

Appendix A to Subpart A—Fee Schedule

1. The authority citation for subpart A is revised to read as follows:

Authority: 5 U.S.C. 301, 552; 7 U.S.C. 312a; 31 U.S.C. 9701; 7 U.S.C. 1387; and 7 CFR 2.28 (b)(7)(viii).

2. Section 12 of Appendix A to subpart A is revised to read as follows:

Appendix A to Subpart A—Fee Schedule

* * * * *

Section 12. Agencies Which Furnish Photographic Reproductions

(a) Aerial photographic reproductions. The following agency of the Department furnishes aerial photographic reproductions:

Farm Service Agency (FSA), Aerial Photography Field Office (APFO), USDA, 2222 West 2300 South, Salt Lake City, Utah 84119–2020.

(b) Other photographic reproductions. Other types of reproductions may be obtained from the following agency of the Department:

National Agricultural Library, Agricultural Research Service, USDA, Office of the Deputy Director, Technical Information Systems, Room 200, NAL Building, Beltsville, MD 20705.

3. Section 17 paragraph (b) is removed and paragraphs (c), (d) and (e) are revised to read as follows:

* * * * *

Section 17. Reproduction Prices

* * * * *

(c) General aerial photographic reproductions.

The prices for various types of aerial photographic reproductions are set forth in this paragraph. Size measurements refer to the approximate size in inches of the paper required to produce the reproduction.

BLACK AND WHITE REPRODUCTIONS

Size	Price
10x10 Paper	$5.00
10x10 Film Positive	10.00
10x10 Film Positive AT	10.00
10x10 Film Positive Scan	15.00
10x10 Film Duplicate Negative	3.00
10x10 Film Internegative	4.50
12x12 Paper	12.00
17x17 Paper	13.00

BLACK AND WHITE REPRODUCTIONS—Continued

Size	Price
17x17 Film Positive	25.00
24x24 Paper	16.00
24x24 Film Positive	40.00
38x38 Paper	50.00
20x24 Paper Photo Index	20.00
Paper Line Index	15.00
Mylar Line Index	35.00
Microfilm (Photo Indexes): Aperture Cards	10.00
Microfilm (Photo Indexes): Microfiche	10.00

COLOR NEGATIVE REPRODUCTIONS

Size	Price
10×10 Paper Quantities:	
1–50	$ 7.00
51–1000	5.00
1001 & Over	2.50
10×10 Film Positive	33.00
20×20 Paper	40.00
24×24 Paper	55.00
38×38 Paper	70.00

COLOR INFRARED POSITIVE REPRODUCTIONS

Size	Price
10×10 Paper	$12.00
10×10 Film Positive	15.00
10×10 Film Positive AT	15.00
10×10 Film Positive Scan	20.00
20×20 Paper	32.00
24×24 Paper	40.00
38×38 Paper	70.00

For special needs not covered in paragraph (c) of this section, persons desiring aerial photographic reproductions should contact the agency listed in section 12(a) or the Departmental Aerial Photography Coordinator, Aerial Photography Field Office, USDA–FSA, 2222 West 2300 South, Salt Lake City, Utah 84119–2020.

For reproductions of audio-videotapes, requesters must supply their own recording tape, and will be assessed a fee of $25 an hour for copying work requested. There is a 1-hour minimum charge. Payment is required at the time video or audiotapes are accepted by the requester.

Signed at Washington, D.C., on September 29, 1998.

Dan Glickman,

Secretary.

[FR Doc. 98–26823 Filed 10–6–98; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4, 153, 157 and 375

[Docket No. RM98–16–000]

Collaborative Procedures for Energy Facility Applications; Notice of Proposed Rulemaking

September 30, 1998.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to expand its procedural regulations governing the authorization of natural gas facilities and services, and is considering revising its procedural regulations governing applications for licenses for hydroelectric projects. The proposed regulations are intended to offer prospective applicants seeking to construct, operate or abandon natural gas facilities or services the option, in appropriate circumstances and prior to filing an application, of using a collaborative process to resolve significant issues. In addition, a significant portion of the environmental review process could be completed as part of the pre-filing collaborative process. This pre-filing collaborative process is comparable to the process the Commission recently adopted with respect to applications for hydroelectric licenses, amendments and exemptions and, like those regulations, is optional and is designed to be adaptable to the facts and circumstances of the particular case. The proposed regulations would not delete or replace any existing regulations. Finally, the Commission is inviting comment on whether the existing collaborative process for hydroelectric license and exemption applications, as well as the proposed collaborative process for natural gas facilities and services, should be made mandatory.

DATES: Comments on the Notice of Proposed Rulemaking are due December 7, 1998 and January 5, 1999 for reply comments. Comments should be filed with the Office of the Secretary and should refer to Docket No. RM98–16–000.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Richard Hoffmann, Office of Pipeline Regulation, 888 First Street, N.E. Washington, D.C. 20426, (202) 208–0066

Lon Crow, Office of Hydropower Licensing, 888 First Street, N.E., Washington, D.C. 20426, (202) 219–2651

Gordon Wagner, Office of the General Counsel, 888 First Street, N.E., Washington, DC 20426, (202) 219–0122

Merrill Hathaway, Office of the General Counsel, 888 First Street, N.E., Washington, DC 20426, (202) 208–0825

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the public reference room, Room 2A, 888 First Street, N.E., Washington D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (http://www.ferc.fed.us) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202–208–1397, if dialing locally, or 1–800–856–3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202–208–2474 or by E-mail to CipsMaster@FERC.fed.us.

This document is also available through the Commission's Records and Information Management System (RIMS), an electronic storage and retrieval system of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed. RIMS is available in the Public Reference Room or remotely via Internet through FERC's Homepage using the RIMS link or the Energy Information Online icon. User assistance is available at 202–208–2222, or by E-mail to RimsMaster@FERC.fed.us.

Finally, the complete text on diskette in WordPerfect format may be purchased from the Commission's copy contractor, RVJ International, Inc. RVJ International, Inc., is located in the Public Reference Room at 888 First Street, N.E., Washington, D.C. 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is proposing to expand its procedural regulations governing the authorization of natural gas facilities and services, and is considering revising its procedural regulations governing applications for licenses, amendments and exemptions for hydroelectric projects. The proposed regulations are intended to offer prospective applicants seeking to construct, operate or abandon natural gas facilities or services the option, in appropriate circumstances and prior to filing an application, of using a collaborative process to resolve significant issues. In addition, a significant portion of the environmental review process could be completed as part of the collaborative process. This pre-filing collaborative process is comparable to the process the Commission recently adopted with respect to preparing applications for hydroelectric licenses, amendments and exemptions and, like those regulations, is optional and is designed to be adaptable to the facts and circumstances of the particular case. The proposed regulations would not delete or replace any existing regulations. Finally, the Commission is inviting comment on whether the existing collaborative process for hydroelectric license and exemption applications, as well as the proposed collaborative process for natural gas facilities and services, should be made mandatory.

II. Background

As part of a comprehensive examination of its regulatory processes, the Commission's staff reviewed and compared how applications for energy facilities are currently processed in the Office of Pipeline Regulation and the Office of Hydropower Licensing.[1] The staff specifically reexamined how it does its work and interacts with applicants and participants. Although there are statutory and technical differences between gas facilities and hydropower projects, the staff found some common elements with respect to review under the National Environmental Policy Act (NEPA).[2] The staff also noted the growing level of controversy associated with siting gas facilities and relicensing hydropower projects in dynamic and competitive energy markets and industries.

The Commission believes that its major challenge in this area is to ensure the development of hydropower projects and natural gas pipeline and storage projects that are sustainable, *i.e.*, that are economically viable and protect the environment. Indeed, the Commission believes that increasing awareness of environmental concerns translates into the need for greater collaboration between the Commission and all those concerned including federal and state agencies, local governments, citizens' groups, landowners, Indian tribes, and the general public.

In October 1997, the Commission adopted a rule authorizing use of a new process in the hydropower program that embodies cooperation and consensual approaches to promote solutions to issues before they become the subject of an adversarial administrative proceeding. These new regulatory approaches, contained in Order No. 596,[3] now known as the alternative procedures, provide an alternative pre-filing consultation process to prospective hydropower applicants and participants. The alternative process is not mandatory. While the alternative process is a substitute for the standard pre-filing consultation process required for hydropower applicants,[4] and allows for expanded staff involvement, early initiation of the NEPA process, and the discussion of issues presented by the prospective applicant's proposal, the Commission did not curtail the rights of parties to intervene and participate in the hearing on the hydropower application after it has been filed. The decision to request use of this alternative approach is left to the prospective applicant, who must demonstrate that a consensus supporting the use of the alternative procedure exists among those interested in the proposed project.

Approximately 20 hydropower license applicants (involving approximately 32 hydropower projects) are currently using the alternative procedure. Because of the procedure's inherent adaptability and potential to address a wide range of issues, including its flexibility to function properly in very diverse circumstances, the Commission is proposing to make the benefits of this approach available to applicants for authorization for natural gas facilities and services.

The staff has had contacts with a cross-section of the gas industry and other interested parties to determine the level of interest in procedures for gas applicants analogous to those promulgated for hydropower applicants. Some indicated an interest in adapting the alternative hydropower procedure to the gas authorization process, while others questioned whether such a process would produce benefits, such as lower costs and shorter processing times, vis-a-vis the standard gas application process. The Commission does not know the answers to these questions, but, based on the experience with the alternative hydropower procedures, it believes that providing gas applicants and participants with options is preferable to maintaining the ''one size fits all'' process.

III. Discussion

Order No. 596 offered applicants for hydroelectric licenses, amendments and exemptions the option to combine the required pre-filing consultation process with the required environmental review process, which is customarily begun only after the filing of an application. This alternative pre-filing process was intended to encourage communication among participants, identify, clarify, and resolve contentious issues, and diminish the time required for Commission action on an application. The regulations proposed herein would offer applicants for gas certificate authorizations and abandonment approvals a similar option, whereby applicants could elect to combine a new pre-filing consultation process with an environmental review as a means to simplify and expedite the application procedure. While, unlike the hydroelectric licensing process, there is now no mandatory pre-filing consultation for gas applications, we believe that allowing for a more robust pre-filing process patterned on the alternative hydroelectric process for consultation and environmental review may provide significant benefits to all concerned.

Accordingly, we are proposing a voluntary pre-filing consultative process for applicants seeking to construct and operate natural gas facilities under sections 3 or 7(c) of the Natural Gas Act (NGA),[5] or to abandon certificated facilities or services under section 7(b) of the NGA.[6]/ This optional process would cover all jurisdictional natural gas facilities, including pipelines, compressors, meters and regulators, liquefied natural gas terminals, and replacement facilities where an environmental review is required.

This proposal would establish an optional pre-filing consultation process for potential applicants that would

[1] This comprehensive review is called ''FERC First!''.

[2] 42 U.S.C. 4321–4307a.

[3] Final Rule, Regulations for the Licensing of Hydroelectric Projects (October 29, 1997), Docket No. RM95–16–000, 81 FERC ¶ 61,103, 62 FR 59802 (November 5, 1997). *See* 18 CFR 4.34(i).

[4] *See* 18 CFR 4.38, 16.8.

[5] 15 U.S.C. §§ 717b and 717f(c).

[6] 15 U.S.C. 717f(b).

combine efforts to address NGA issues with the NEPA review process in a single pre-filing collaborative process that could also include the administrative processes associated with the Clean Water Act, the National Historic Preservation Act, the Endangered Species Act, and other relevant statutes. We believe that such an option could foster constructive dialog in a collaborative group consisting of, among others, the potential applicant and its potential customers, resource and other regulatory agencies, Indian tribes, local governments, land owners, citizens' groups, the general public and the Commission's staff.

We are not proposing to delete or replace any existing regulations; instead we intend to supplement the existing regulations by offering potential applicants an opportunity to use the proposed pre-filing collaborative procedures. Entering into a pre-filing collaboration will not bar an applicant from interrupting pre-filing efforts by exercising its existing option to file an application.

Potential applicants seeking to use this voluntary pre-filing collaborative process would not be required to obtain express consent of all potential participants in order to submit an initial request to use this proposed process. However, in order to employ the proposed process, an applicant would have to demonstrate that it has made a reasonable effort to contact all potentially interested entities and that the weight of opinions expressed by the participating entities makes it reasonable to conclude that under the circumstances the use of the collaborative process will be productive. The prospective applicant's consent to the use of this process is obviously required, but agreement of everyone interested is not.

With its request, the prospective applicant must also submit a communications protocol governing how the applicant and participants, including the Commission's staff, could communicate with each other during the pre-filing process, and designating how such communications would be documented and made available to the participants and the public. Staff involvement during the pre-filing process could aid in identifying contentious issues, facilitate resolution of disputes among the participants and advise them whether a proposed action appeared to be consistent with Commission policy and practice.

The Commission would give public notice in the **Federal Register** and the prospective applicant would inform potentially interested entities of a request to use the collaborative pre-filing process. Interested entities could comment upon the request and the Commission would consider such comments in deciding whether to grant or deny the prospective applicant's request. Authority to grant or deny an applicant's request to use the pre-filing collaborative process would be delegated to the Director of the Office of Pipeline Regulation, comparable to the authority that has already been delegated to the Director of the Office of Hydropower Licensing. Consistent with the existing regulations providing for alternative procedures for applicants for hydropower facilities,[7] the decision of the Director of the Office of Pipeline Regulation on the request would be final and not subject to interlocutory rehearing or appeal.

We propose that all aspects of an application for construction or abandonment authorization could be considered in this pre-filing collaborative process. For example, the issues addressed by the collaborative group could include the need for the proposed project, competing projects, capacity allocation, the terms and conditions of service, the rates to be charged for such service, and the effect of abandonments on existing customers, in addition to the environmental impact of the proposal. A prospective applicant authorized to use the pre-filing process would, as appropriate, either prepare a preliminary draft environmental assessment (EA) or pay a contractor or consultant selected and supervised by the Commission to prepare a preliminary draft environmental impact statement (EIS).[8]

We believe that combining the proposed pre-filing consultation and environmental review into a single pre-filing process could simplify and expedite the authorization of new gas facilities and services. The proposed pre-filing process is intended to promote cooperative efforts between the prospective applicant and other participants. We hope that an application filed after the proposed collaborative process would be accompanied by a settlement agreement or offer of settlement. We would expect that applications made following pre-filing consultation and environmental review will raise fewer contested issues, will clearly identify remaining contested issues, and will not require the applicant to complete extensive additional environmental studies. We believe that the resulting improvement in the quality and completeness of applications would permit the Commission to expeditiously resolve issues in a manner that is supported by affected entities, result in fewer issues raised on rehearing before the Commission, and reduce the range of issues that may be subject to litigation in judicial review.

We recognize that in spite of collaborative efforts, some issues may remain unresolved. Considering that there are sometimes contentious non-environmental issues that may undermine successful collaboration, we seek comment on whether the proposed process should only address the environmental issues associated with a potential application.

With respect to both natural gas authorizations and hydroelectric licensing, the Commission invites comment on whether it would be appropriate to extend the collaborative pre-filing process beyond the stage of preparing a preliminary draft EIS (18 CFR Part 4). For instance, would it be appropriate in this process for the Commission staff to issue a draft EIS and for the participants in the process to review the comments on the draft EIS and prepare either a final EIS or a preliminary draft of a final EIS? Should the Commission staff be permitted to issue the draft EIS (or issue a preliminary draft of the final EIS) and invite comment on it prior to the filing of the application, without first issuing a notice inviting interested persons to intervene as parties to a formal proceeding?[9]

The Commission also invites comment on whether any limitations of time should be placed on the collaborative process. If so, what limitations might be appropriate? We invite comment on how best to ensure that all of the participants in the process have a full and fair opportunity to participate in a manner that facilitates cooperative progress within a reasonable time frame.

Finally, the Commission seeks comment on whether the voluntary pre-filing collaborative process proposed herein with respect to applications for authorizations for gas facilities and services, as well as the voluntary alternative pre-filing process currently in effect with respect to applicants for the licensing of hydroelectric projects

[7] 18 CFR 4.34(i)(5).

[8] *See* 40 CFR 1506.5 (Council on Environmental Quality's regulations describing agency responsibility with respect to the preparation of an environmental assessment and environmental impact statement).

[9] The collaboratively-prepared EIS would be filed with the Commission as part of the application package. The ultimate hydropower licensing or gas authorization decision would be made by the Commission.

pursuant to Order No. 596, should be made mandatory for all applicants for such gas and/or hydroelectric authority. We invite the commenters to describe the advantages and disadvantages they perceive in requiring that an applicant for authorization for energy facilities and services first complete a combined consultation and environmental review process before filing an application. If the Commission were to adopt such a requirement, how would it work, especially in cases where no consensus exists among the participants that investing in a collaborative process would be a wise use of limited resources? If compelling an applicant to successfully complete a pre-filing collaboration is considered impractical, should the Commission instead mandate that all applicants make good faith efforts to undertake a pre-filing collaboration? Should the Commission then reject applications that do not document adequate good faith efforts to engage in the pre-filing process or do not justify the failure of the applicant's efforts?

While the proposed collaborative procedures may not be appropriate for every applicant or project, the Commission wants to extend the availability of this option to proposed gas facilities and services in light of the projected number of future gas certificate filings. The Commission understands that growing demand in New England, the Mid-Atlantic, and the Midwest will continue to lead to applications for major pipeline extensions and new pipelines to serve these regions. The Commission also expects to receive applications for storage development and liquefied natural gas facilities to be used for peaking capability and supply flexibility. As the national pipeline grid ages, the Commission anticipates a significant number of applications for replacement facilities.

In short, potential applicants for authorizations for gas facilities and services who are given permission to use collaborative pre-filing procedures would, with the support and assistance of those participating, conduct necessary and appropriate scientific studies and prepare a preliminary draft environmental assessment or preliminary draft environmental impact statement, before filing the application. Optimally, this procedure could result in the applicant and participants agreeing on a partial or complete offer of settlement, a joint stipulation of contested issues, or documentation of all issues (both resolved and unresolved). On the other hand, applicants for NGA authorizations could proceed under the standard process, where the NEPA review and staff involvement in settlement efforts would begin only after the application has been filed with the Commission.

IV. Environmental Analysis

Commission regulations describe the circumstances where preparation of an environmental assessment or an environmental impact statement will be required.[10] The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.[11] No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended.[12]

This proposed rule is procedural in nature. It proposes an optional pre-filing collaborative process that a prospective applicant for a natural gas authorization may wish to use. Thus, no environmental assessment or environmental impact statement is necessary for the requirements proposed in the rule.

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[13] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities.

The procedures proposed herein are purely voluntary in nature, and are designed to reduce burdens on small entities (as well as large entities) rather than to increase them. The pre-filing collaborative process proposed herein would be optional, would not alter or replace the procedures currently prescribed in our regulations, and would not be available unless it is the consensus of the persons interested in the proceeding, as discussed herein, to use that process. Under this approach, each small entity would be able to evaluate for itself whether the pre-filing process would be beneficial or burdensome, and could oppose its adoption if the proposed process appeared to be more burdensome than beneficial. Under these circumstances, the economic impact of the proposed rule would be either neutral or beneficial to the small entities affected by it.

VI. Information Collection Statement

The regulations proposed in this Notice would impose reporting burdens only on those applicants that voluntarily choose to use the pre-filing collaborative process, and would only require minor additional filing requirements, as most of the reporting burdens associated with preparing and filing an application for natural gas facilities or services are imposed by existing regulations. The other additional burdens of the proposed process do not involve filings with the Commission, but would consist of various outreach efforts of the potential applicant and related interactions with entities interested in its proposal. An applicant would presumably only incur such additional burdens if it believed that, in the long run, it would save on litigation and other costs incurred to pursue its application using only the standard procedures.

The Commission invites comments on the need for and utility of this information, the accuracy of the projected burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected, and suggestions for minimizing the respondents' burden.

The Commission has made approximate estimates of the additional time that may be required of an applicant to comply with the pre-filing collaborative process. It is difficult to be precise about such estimates, because the time required for one applicant could vary considerably from the time required for other applicants, depending upon the circumstances involved, including the complexity of the issues raised, the total number of participants in the pre-filing process, and how cooperatively those participants worked together. If the pre-filing collaborative process were successful and resulted, for example, in the filing of an agreement or an offer of settlement with the Commission, the applicant might be able to save substantially more time by avoiding litigation than was invested in the use of that process. If an applicant requested and was allowed to use the pre-filing collaborative process for an average project requiring a significant EA or an EIS, the main additional burden areas, with the estimated hours to comply with each, are:

[10] Regulations Implementing National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), codified at 18 CFR Part 380.

[11] 18 CFR 380.4(a)(2)(ii).

[12] 18 CFR 380.4.

[13] 5 U.S.C. §§ 601–612.

Process	Burden (hours of effort)
(1) Contact interested entities	80
(2) Prepare and submit request, including communications protocol	80
(3) Prepare and distribute scoping and hold related meetings	32
(4) Develop agenda and other documents, including minutes, for all meetings and prepare and distribute them (only additional time as compared to presently required meetings).	802
(5) Prepare and publish public notices	88
(6) Prepare and submit progress reports and make other required Commission filings	84
(7) Maintain a complete record of the pre-filing consultation proceedings that would be open to the public	208
Total	1374

It is estimated that to prepare and distribute the preliminary draft environmental review document would not take any more time than to prepare an environmental report under the standard process. Therefore, the estimated additional burden of the tasks required of an applicant if it voluntarily undertakes the alternative process totals 1374 hours.

Office of Management and Budget (OMB) [14] approval is required for certain information collection requirements imposed by agency rules. Accordingly, pursuant to OMB regulations, the Commission is providing notice of its proposed information collections to OMB for review under Section 3507(d) of the Paperwork Reduction Act of 1995.[15]. The Commission identifies the information provided under Parts 153 and 157 of its regulations as FERC–539 and FERC–537, respectively.

Title: FERC–537, Gas Pipeline Certificates: Construction, Acquisition, and Abandonment, and, FERC–539, Gas Pipeline Certificate: Import/Export.

Action: Proposed Data Collection.

OMB Control No.: 1902–0060 and 1902–0062.

An applicant shall not be penalized for failure to respond to this collection of information unless the collection of information displays a valid OMB control number.

Respondents: Businesses or other for profit, including small businesses.

Frequency of Responses: On occasion.

Necessity of Information: The proposed rule will revise the Commission's regulations contained in 18 CFR parts 153 and 157. Implementation of the proposed rule will offer prospective applicants seeking to construct, operate, or abandon natural gas facilities or services the option, in appropriate circumstances and prior to filing an application, of using a collaborative process.

Internal Review: The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The Commission's Office of Pipeline Regulation (OPR) will use the data included in applications to determine whether proposed facilities, services, or abandonments are in the public interest as well as for general industry oversight. This determination involves, among other things, an examination of adequacy of design, costs, reliability, redundancy, safety, and environmental acceptability of the proposal. These requirements conform to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 273–0873, E-mail: michael.miller@ferc.fed.us].

For submitting comments concerning the collection of information and the associated burden estimates, please send comments to the contact listed above and to the Office of Management and Budget, Office of Information and Regulatory Affairs, [Attention: Desk Officer for Federal Energy Regulatory Commission, phone (202) 395–3087, fax: (202) 395–7285].

VII. Comment Procedure and Technical Conferences

The Commission invites interested persons to submit written comments on the matters proposed in this notice. An original and 14 copies of the written comments must be filed with the Commission no later than December 7, 1998 for comments and January 5, 1999 for reply comments. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, and should refer to Docket No. RM98–16–000. Commenters also can submit comments on computer diskette in WordPerfect 6.1 or lower format or in ASCII format, with the name of the filer and Docket No. RM98–16–000 on the outside of the diskette. All comments will be placed in the public files of the Commission and will be available for inspection at the Commission's Public Reference Room, at 888 First Street, N.E., Washington, D.C. 20426, during regular business hours.

In order to provide some measure of interaction and dialogue in the comment process, for the benefit of both the commenters and the Commission, the Commission intends for its staff to hold technical conferences on the proposed regulations, in Washington, D.C., Houston, Texas, and Chicago, Illinois, approximately 30 days from the date of publication of this Notice in the **Federal Register**.

List of Subjects

18 CFR Part 4

Administrative practice and procedure, Electric power, Reporting and recordkeeping requirements.

18 CFR Part 153

Exports, Imports, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

[14] 5 CFR 1320.11.

[15] 44 U.S.C. 3507(d).

By direction of the Commission.

David P. Boergers,

Secretary.

In addition to comments invited on possible changes affecting 18 CFR part 4 in the Supplementary Information section, the Commission proposes to amend Parts 153, 157 and 375 of Chapter I, Title 18, *Code of Federal Regulations,* as set forth below.

PART 153—APPLICATIONS FOR AUTHORIZATION TO CONSTRUCT, OPERATE OR MODIFY FACILITIES USED FOR THE EXPORT OR IMPORT OF NATURAL GAS

1. The authority citation for Part 153 continues to read as follows:

Authority: 15 U.S.C. 717b, 717o; E.O. 10485, 3 CFR, 1949–1953 Comp., p. 970, as amended by E.O. 12038, 3 CFR, 1978 Comp., p. 136, DOE Delegation Order No. 0204–112, 49 FR 6684 (February 22, 1984).

2. Section 153.12 is added to subpart B, to read as follows:

§ 153.12 Collaborative procedures for applications for authorization to site, construct, maintain, connect, or modify facilities to be used for the export or import of natural gas.

The pre-filing collaborative procedures for certificate applications in § 157.22 of this Chapter are applicable to applications under section 3 of the Natural Gas Act filed pursuant to subpart B of this part.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

3. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w; 3301–3432; 42 U.S.C. 7101–7352.

4. Section 157.22 is added, to read as follows:

§ 157.22 Collaborative procedures for applications for certificates of public convenience and necessity and for orders permitting and approving abandonment.

(a) A potential applicant may submit to the Commission a request to approve the use of collaborative procedures for pre-filing consultation and the filing and processing of an application for certificate or abandonment authorization that is subject to part 157 of this chapter.

(b) The goals of the pre-filing collaborative procedures are to:

(1) Combine into a single pre-filing collaborative process, the environmental review processes under the National Environmental Policy Act, and the administrative processes associated with the Clean Water Act, the National Historic Preservation Act, the Endangered Species Act, the Coastal Zone Management Act, and other statutes;

(2) Facilitate greater participation by, and improve communication among, the prospective applicant, resource agencies, Indian tribes, affected landowners, customers, the public, and Commission staff in a flexible pre-filing collaborative process tailored to the circumstances of each case;

(3) Allow for the preparation of a preliminary draft environmental assessment by an applicant or its contractor or consultant, or of a preliminary draft environmental impact statement by a contractor or consultant selected and supervised by the Commission and funded by the applicant;

(4) Promote cooperative efforts by the potential applicant and interested entities and encourage them to share information about resource impacts and mitigation and enhancement proposals and to narrow any areas of disagreement and reach agreement or settlement of the issues raised by the certificate or abandonment application; and

(5) Facilitate an orderly and expeditious review by the Commission of an agreement or offer of settlement regarding a certificate or abandonment proposal.

(c) A potential applicant requesting to use the pre-filing collaborative procedures must provide a list of potentially interested entities invited to participate in a pre-filing collaborative process and:

(1) Demonstrate that a reasonable effort has been made to contact all resource agencies, Indian tribes, citizens' groups, landowners, customers, and others affected by the applicant's proposal and that a consensus exists that the use of the collaborative process is appropriate under the circumstances;

(2) Submit a communications protocol, supported by interested entities, governing how the applicant and other participants in the pre-filing collaborative process, including the Commission staff, may communicate with each other regarding the merits of the applicant's proposal and recommendations of interested entities; and

(3) Submit a request to use the pre-filing collaborative process and the day thereafter send a copy of the request, along with the docket number of the request and instructions on how to submit comments to the Commission, to all affected resource agencies, Indian tribes, citizens' groups, landowners, customers, and other entities.

(d) As appropriate under the circumstances of the case, the request to use the pre-filing collaborative procedures must include provisions for:

(1) Distribution of a description of the proposed project (including its intended purpose, location and scope, and the estimated dates of its construction), and scheduling of an initial information meeting (or meetings, if more than one such meeting is appropriate) open to the public;

(2) The cooperative scoping of environmental issues (including necessary scientific studies), the analysis of completed studies and any further scoping; and

(3) The preparation of a preliminary draft environmental assessment or preliminary draft environmental impact statement and related application.

(e) The Commission will give public notice in the **Federal Register** and the prospective applicant will inform potentially interested entities of a request to use the pre-filing collaborative procedures and will invite comments on the request. The Commission will consider the submitted comments in determining whether to grant or deny the applicant's request to use the pre-filing collaborative procedures. Such a decision will not be subject to interlocutory rehearing or appeal.

(f) If the Commission accepts the use of a pre-filing collaborative process, the following provisions will apply:

(1) To the extent feasible under the circumstances of the process, the Commission will give notice in the **Federal Register**, and the applicant will give notice in a local newspaper of general circulation in the county or counties in which the facility is proposed to be located, of the initial information meeting or meetings and the scoping of environmental issues. The applicant shall also send notice of these events to a mailing list approved by the Commission. The mailing list must contain the names and addresses of landowners affected by the project.

(2) Every two months, the applicant shall file with the Commission a report summarizing the progress made in the pre-filing collaborative process, referencing the public file maintained by the applicant as provided in § 157.22(f)(5) where additional information on that process can be obtained. Summaries or minutes of meetings held as part of the collaborative process may be used to satisfy this filing requirement.

(3) The applicant must also file with the Commission a copy of the initial description of its proposed project, each scoping document, and the preliminary draft environmental review document.

(4) All filings with the Commission under this section shall be made in the manner prescribed in §§ 157.6(a), 157.14(a) and 385.2011 of this chapter. The applicant shall send a copy of these filings to each participant that requests a copy.

(5) At a suitable location (or at more than one location if appropriate), the applicant will maintain a public file of all relevant documents, including scientific studies, correspondence, and minutes or summaries of meetings, compiled during the pre-filing collaborative process. The Commission will maintain a public file of the applicant's initial description of its proposed project, scoping documents, periodic reports on the pre-filing collaborative process, and the preliminary draft environmental review document.

(6) An applicant authorized to use the pre-filing collaborative procedures may substitute a preliminary draft environmental review document and additional material specified by the Commission instead of an environmental report with its application as required by § 380.3 of this chapter and need not supply additional documentation of the pre-filing collaborative process with its application. The applicant will file with the Commission the results of any studies conducted or other documentation as directed by the Commission, either on its own motion or in response to a motion by a party to the proceeding.

(7) Pursuant to the procedures approved, the participants will set reasonable deadlines requiring all resource agencies, Indian tribes, citizens' groups, and interested entities to submit to the applicant requests for scientific studies or alternative route analyses during the pre-filing collaborative process. Additional requests for studies may be made to the Commission after the filing of the application only for good cause shown.

(8) During the pre-filing collaborative process the Commission may require deadlines for the filing of preliminary resource agency recommendations, conditions, and comments, to be submitted in final form after the filing of the application.

(9) Any potential applicant, resource agency, Indian tribe, citizens' group, or other entity participating in the pre-filing collaborative process may file a request with the Commission to resolve a dispute concerning the process (including a dispute over required studies), but only after reasonable efforts have been made to resolve the dispute with other participants in the process. No such request will be accepted for filing unless the entity submitting it certifies that the request has been served on all other participants. The request must document what efforts have been made to resolve the dispute.

(g) If the potential applicant or any resource agency, Indian tribe, citizens' group, or other entity participating in the pre-filing collaborative process can show that it has cooperated in the process but that a consensus supporting the use of the pre-filing collaborative process no longer exists and that continued use of that process would not be productive, the participant may petition the Commission for an order directing the use by the potential applicant of appropriate procedures to complete its application. No such request will be accepted for filing unless the participant submitting it certifies that the request has been served on all other participants. The request must recommend specific procedures that are appropriate under the circumstances.

(h) The Commission staff may participate in the pre-filing collaborative process (and in discussions contemplating initiating a collaboration) and assist in the integration of this process and the environmental review process in any case. Commission staff positions are not binding on the Commission.

PART 375—THE COMMISSION

3. The authority citation for Part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–825r, 2601–2645; 42 U.S.C. 7101–7352.

4. In § 375.307, a new paragraph (h) is added, to read as follows:

§ 375.307 Delegations to the Director of the Office of Pipeline Regulation.

* * * * *

(h) Approve, on a case-specific basis, and make such decisions as may be necessary in connection with the use of pre-filing collaborative procedures, for the development of an application for certificate or abandonment authorization under section 7 of the Natural Gas Act, or the development of an application for facilities under section 3 of the Natural Gas Act, and assist in the pre-filing collaborative and related processes.

[FR Doc. 98–26720 Filed 10–6–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 98N–0753]

Dental Products Devices; Reclassification of Endosseous Dental Implant Accessories

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify manually powered drill bits, screwdrivers, countertorque devices, placement and removal tools, laboratory pieces used for fabrication of dental prosthetics, trial abutments, and other manually powered endosseous dental implant accessories from class III to class I. These devices are intended to aid in the placement or removal of endosseous implants and abutments, prepare the site for placement of endosseous dental implants or abutments, aid in the fitting of endosseous implants or abutments, aid in the fabrication of dental prosthetics, and be used as an accessory with endosseous dental implants when tissue contact will last less than 1 hour. FDA also proposes to exempt these devices from premarket notification requirements. This reclassification is being proposed on the Secretary of Health and Human Services' own initiative based on new information. This action is being taken under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit written comments by January 5, 1999. FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

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

FOR FURTHER INFORMATION CONTACT: Angela E. Blackwell, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8879.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory authorities)

The act, as amended by the 1976 amendments (Pub. L. 94–295), the SMDA (Pub. L. 101–629), and FDAMA (Pub. L. 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or class II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(I) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and part 807 (21 CFR part 807) of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon ''new information.'' The reclassification can be initiated by FDA or by the petition of an interested person. The term ''new information,'' as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366 F.2d at 181; *Ethicon, Inc.* v. *FDA*, 762 F. Supp. 382, 389–391 (D.D.C. 1991)), or in light of changes in ''medical science.'' (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) Regardless of whether data before the agency are past or new data, the ''new information'' upon which reclassification under section 513(e) of the act is based must consist of ''valid scientific evidence,'' as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). (See, e.g., *General Medical Co.* v. *FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Association* v. *FDA*, 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985).) FDA relies upon ''valid scientific evidence'' in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., the contents of a pending PMA. (See section 520(c) of the act (21 U.S.C. 360j(c)).) FDAMA added a new section 510(l) to the act. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury, hereafter these are referred to as ''reserved criteria.'' FDA has considered endosseous dental implant accessories in accordance with the reserved criteria and determined that the devices do not require premarket notification. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA.

II. Regulatory History of the Device

In the **Federal Register** of August 12, 1987 (52 FR 30082), FDA published a final rule (21 CFR 872.3640) classifying endosseous implants into class III. Endosseous dental implant accessories (drill bits, screwdrivers, countertorque devices, etc.), as accessories to endosseous implants, were also classified into class III (see section 201(h) of the act (21 U.S.C. 321(h)). The preamble to the proposal to classify the endosseous implants (45 FR 85962, December 30, 1980) identified certain risks the Dental Products Panel (the Panel) believed were presented by the implants. These risks included tissue degeneration, pain, bone perforation, and infection. On December 12, 1989, the Dental Implant Manufacturers Association (DIMA) submitted a petition requesting a change in the classification of certain endosseous implants from class III to class II. Subsequent to review of the petition and during a panel meeting (October 24, 1991), the Panel further identified paresthesia, perforation of the maxillary sinus, and the labia and lingual palates, and exfoliation as risks and voted to recommend denial of DIMA's petition. Additionally, FDA identified local and systemic infection and implant failure as significant risks associated with endosseous implants. However, none of these risks were directly related to the accessories.

During subsequent panel meetings on November 4, 1997, and January 13, 1998, the Panel, after reviewing safety and effectiveness data submitted by manufacturers at FDA's request, considered the reclassification of dental implants and abutments. The Panel recommended the reclassification of root form implants from class III to class II with special controls that include education, a precautionary statement regarding use in growing individuals (labeling), standards, guidance documents, and clinical trials. The Panel further recommended that blade implants remain in class III. Regarding abutments, the Panel recommended that premanufactured prosthetic components (abutments) which are connected directly to an implant be reclassified from class III to class II and codified separately. FDA intends to address the classification of dental implants and

premanufactured prosthetic components in a separate rulemaking.

In accordance with section 513(e) of the act and 21 CFR 860.130(a)(1), based on new information with respect to these devices, FDA, on its own initiative, is proposing to reclassify endosseous dental implant accessories from class III to class I when intended to aid in the placement or removal of endosseous dental implants and abutments, prepare the site for placement of endosseous dental implants and abutments, aid in the fitting of endosseous dental implants or abutments, aid in the fabrication of dental prosthetics, and be used as an accessory with endosseous dental implant when tissue contact will last less than 1 hour.

III. Device Description

Endosseous dental implant accessories are manually powered devices intended to aid in the placement or removal of endosseous implants and abutments, prepare the site for placement of endosseous dental implants or abutments, aid in the fitting of endosseous dental implants or abutments, aid in the fabrication of dental prosthetics, and be used as an accessory with endosseous dental implants when tissue contact will last less than 1 hour. These devices include drill bits, screwdrivers, countertorque devices, placement and removal tools, and laboratory pieces used for fabrication of dental prosthetics and trial abutments. These devices are made from materials currently in use in endosseous implant dentistry.

Some accessory devices that may be associated with endosseous dental implants may be classified under a different regulation. For example, drill bits for uses other than with implants are classified as dental burs (21 CFR 872.3240). Some other devices, when used for dental procedures other than with implants are considered dental hand instruments (21 CFR 872.4565). These burs and hand held instruments are currently class I devices and are exempt from the 510(k) procedures. When these dental burs and hand held instruments are used as accessories for endosseous dental implants, they now would be classified under proposed 21 CFR 872.3980. Under the proposal, these accessory devices would also be class I and exempt from the 510(k) procedures.

IV. Proposed Reclassification

FDA is proposing that endosseous dental implants accessories intended to aid in the placement or removal of endosseous dental implants and abutments, prepare the site for placement of endosseous implants and abutments, aid in the fitting of endosseous dental implants or abutments, aid in the fabrication of dental prosthetics, and be used as an accessory with endosseous dental implants when tissue contact will last less than 1 hour should be reclassified from class III to class I. FDA believes that class I would provide reasonable assurance of safety and effectiveness. FDA also proposes that the devices be exempt from premarket notification requirements.

V. Risks to Health

When endosseous implants were classified into class III (52 FR 30082), the Panel and FDA identified several risks (tissue degeneration, pain, bone perforation, and infection) associated with them. Subsequent to the classification, additional data and information became available. Based on a review of the new data and information, other risks were identified. These ''other'' risks included local soft tissue degeneration and bone resorption, paresthesia, nerve impingement, perforation of the maxillary sinus, perforation of the labia and lingual palates, exfoliation, local and systemic infection, and implant failure. FDA believes that these risks associated with endosseous implants are not attributable in any significant way to the accessories used by the clinician to implant the device. FDA, therefore, believes there are minimal risks to health posed by the reclassification of these accessories.

VI. Summary of Reasons for the Reclassification

FDA believes that endosseous dental implant accessories should be classified into class I because general controls would provide reasonable assurance of safety and effectiveness. Furthermore, FDA believes these accessories are exempt from 510(k) requirements under the act. FDAMA added a new section 510(l) to the act. New section 510(l) of the act provides that a class I device is exempt from the premarket notification requirements under section 510(k) of the act, unless the device is intended for a use which is of substantial importance in preventing impairment of human health or it presents a potential unreasonable risk of illness or injury, hereafter referred to as ''reserved criteria.'' Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting a premarket notification to FDA.

FDA has considered the endosseous dental implant accessories in accordance with the reserved criteria and determined that the devices do not require premarket notification. These devices are designed for use in dental implant surgery and by clinicians trained in their use. These devices do not have a history of risks associated with them. FDA further believes that manufacturers' adherence to current good manufacturing practices (CGMP's) in the quality system regulation will provide reasonable assurance of the safety and effectiveness of these devices.

VII. Summary of Data Upon Which the Reclassification is Based

When endosseous implants were classified, endosseous dental implant accessories were considered in conjunction with the implants and were not independently addressed. As a result, the classification of the endosseous implants included the accessories. Since that time, FDA has reevaluated endosseous implants and endosseous dental implant accessories and now believes the risks associated with the implants listed in section V of this document under ''Risks to Health'' are not significantly attributable to the accessories. The risks identified previously relate to the skill of the clinician inserting the implant and the individual patient's ability to tolerate and maintain such implantation. Tissue degeneration, e.g., is caused by pressure from the implant transferring to the soft tissue and causing soft tissue resorption. Pain is caused by implant placement or nerve impingement. Bone perforation is due primarily to individual patient physiology and inadequate monitoring of patient selection for such procedures; the implant may perforate the ridge of the mandible or maxilla because the ridge is too thin. Infection is cause by microbial contamination of dental tissue compromised by degeneration or bone perforation. Paresthesia is caused by disturbing the neurovascular bundle during implant placement. Perforation of the maxillary sinus and perforation of the bony structures occur when the implant does not integrate. A fibrous pocket around an implant can cause mobility and implant loss. As stated previously, these risks are associated with the endosseous dental implant and not the accessories.

The accessory devices that are the subject of this rule are intended for use by trained clinicians. Trauma to a patient's oral cavity from use of one of the devices is essentially controlled by the skills of the clinician using it. The device itself would rarely be responsible for the trauma. FDA believes that a minimal risk to health would result if these accessories were to have an

improper design. FDA believes that manufacturers' adherence to the requirements of the CGMP's would provide reasonable assurance of safety and effectiveness. In light of the new information, FDA believes that the general controls of class I would provide reasonable assurance of safety and effectiveness of the endosseous dental implant accessories for their intended use.

VIII. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IX. Analysis of Impacts

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

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III to class I will relieve all manufacturers of the device of the cost of complying with the premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory costs with respect to these devices, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this proposed rule, if issued, will not have a significant ecomomic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

X. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

XI. Submission of Comments

Interested persons may, on or before January 5, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. 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. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 872 in subpart D be amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

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

2. Section 872.3980 is added to subpart D to read as follows:

§ 872.3980 Endosseous dental implant accessories.

(a) *Identification*. Endosseous dental implant accessories are manually powered devices intended to aid in the placement or removal of endosseous implants and abutments, prepare the site for placement of endosseous dental implants or abutments, aid in the fitting of endosseous dental implants or abutments, aid in the fabrication of dental prosthetics, and be used as an accessory with endosseous dental implants when tissue contact will last less than 1 hour. These devices include drill bits, screwdrivers, countertorque devices, placement and removal tools, laboratory pieces used for fabrication of dental prosthetics and trial abutments. These devices are made from materials currently in use in endosseous implant dentistry.

(b) *Classification*. Class I (general controls). The device is exempt from premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 872.9.

Dated: September 26, 1998.

D.B. Burlington,

Director, Center for Devices and Radiological Health.

[FR Doc. 98–26816 Filed 10–6–98; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 53

[REG–246256–94]

RIN 1545–AV60

Failure by Certain Charitable Organizations to Meet Certain Qualification Requirements; Taxes on Excess Benefit Transactions

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to REG–245256–94, which was published in the **Federal Register** on Tuesday, August 4, 1998 (63 FR 41486), relating to the excise taxes on excess benefit transactions.

FOR FURTHER INFORMATION CONTACT: Phyllis D. Haney, (202) 622–4290 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This notice of proposed rulemaking that is the subject of this correction is under section 4958 of the Internal Revenue Code.

Need for Correction

As published, REG–246256–96 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–246256–96), which is the subject of FR Doc. 98–20419, is corrected as follows:

§ 53.4958–4 [Corrected]

On page 41502, column 1, § 53.4958–4(b)(3)(iii), *Example 2*, ninth line from the bottom of the paragraph, the language ''determination of whether N's compensation'' is corrected to read

''determination of whether K's compensation''.

Cynthia E. Grigsby,

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

[FR Doc. 98–26920 Filed 10–6–98; 8:45 am]

BILLING CODE 4830–01–M

Notices

Federal Register
Vol. 63, No. 194
Wednesday, October 7, 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

Submission for OMB Review; Comment Request

October 2, 1998.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1994, Pub. L. 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Office of the Chief Financial Officer

Title: Debt Collection.

OMB Control Number: 0505–0007.

Summary of Collection: The Debt Collection Act of 1982 requires that any monies that are payable or may become payable from the United States under contracts and other written agreements to any person or legal entity not an agency or subdivision of a State or local government may be subject to administrative offset for the collection of a delinquent debt the person or a legal entity owes to the United States. Section 10 requires that debtors be provided due process prior to the collection of any claims through administrative offset. Delinquent debtors wishing to appeal must provide relevant information. USDA agencies will collect information using a letter of intent from the creditor agencies to delinquent debtors.

Need And Use of the Information: USDA agencies will collect information on delinquent debtors targeted for administrative offset who want additional information; wish to enter into repayment agreements; or wish to request a review of agencies' determination to offset. The data collected by the creditor agencies are used by agencies to respond to and/or to take appropriate action. The creditor agencies will not be able to comply with the due process provision of the Debt Collection Act or the Debt Collection Improvement Act if relevant information is not collected.

Description of Respondents: Individuals or households; Business or other for-profit; Farms.

Number of Respondents: 2,073.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,146.

Rural Business—Cooperative Service

Title: 7 CFR Part 1980–E Business and Industry Loan Program.

OMB Control Number: 0570–0014.

Summary of Collection: The Business and Industry (B&I) program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act. The purpose of the program is to improve, develop, or finance businesses, industries, and employment and improve the economic and environmental climate in rural communities, including pollution abatement and control. This purpose is achieved through bolstering the existing private credit structure either through the guaranteeing of quality loans made by lending institutions or making direct loans, thereby providing lasting community benefits. Rural Development (RD) will collect information to use as a basis for issuing guaranteed and direct loans to businesses and communities.

Need And Use of the Information: RD will collect information from the applicant to determine program eligibility, current financial condition, and Statement of Personal History.

Description of Respondents: Individuals or households; State, Local or Tribal Government.

Number of Respondents: 200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,545.

Rural Utilities Service

Title: Report of Compliance and Participation.

OMB Control Number: 0572–0047.

Summary of Collection: The Rural Utilities Service (RUS) Form 268 is designed for use by RUS electric and telephone borrowers in complying with the reporting requirements outlined in RUS Bulletin 20–19: 320–19, ''Nondiscrimination Among Beneficiaries of RUS Programs.'' RUS is required to implement regulations of the Department of Justice and the Department of Agriculture and to provide for the collection of civil rights data and information from applicants for and recipients of Federal assistance sufficient to permit effective enforcement of Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 (Acts). RUS will collect information using RUS form 268.

Need And Use of the Information: RUS will collect information to determine the extent to which the borrowers are in compliance with requirements of the Acts, to identify potential problem compliance areas, and to determine a borrower's eligibility for advance of loan funds.

Description of Respondents: Not-for-profit institutions; Business or other for-profit.

Number of Respondents: 1,840.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,233.

Rural Housing Service

Title: 7 CFR 1940–G, Environmental Program.

OMB Control Number: 0575–0094.

Summary of Collection: The National Environmental Policy Act (NEPA) requires Federal agencies, prior to the approval of proposed actions, to consider the potential environmental impacts of these actions. Consequently, for the Agencies to comply with NEPA, it is necessary that Rural Development (RD) have information on the types of environmental resources on site or in the vicinity that might be impacted by the proposed action, as well as information on the nature of the project selected by the applicant (the activities to be carried out at the site; any air liquid and solid wastes produced by these activities, etc.). RD will collect environmental data using Form RD 1940–20.

Need and Use of the Information: RD will collect information on the proposed project site and the activities to be conducted there. This will enable the Agency official to determine the magnitude of the potential environmental impacts and whether the project is controversial for environmental reasons.

Description of Respondents: Farms; Individuals or households; Business or other for-profit; Non-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 4,720.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 40,320.

Rural Utilities Service

Title: RUS Electric Loan Application and Related Reporting Burdens.

OMB Control Number: 0572–0032.

Summary of Collection: The Rural Utilities Service (RUS) was established in 1994 by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 108 Stat. 3178, 7 U.S.C. 6941 et seq.) as successor to the Rural Electrification Administration (REA) with respect to certain programs, including the electric loan and loan guarantee program authorized under the Rural Electrification Act (RE Act) of 1936. The RE Act authorizes and empowers the Administrator of RUS to make and guarantee loans to furnish and improve electric service in rural areas. These loans are amortized over a period of up to 35 years and secured by the borrower's electric assets. RUS will collect information including studies and reports to support borrower loan applications.

Need and Use of the Information: RUS will collect information to determine the eligibility of applicants for loans and loan guarantees under the RE Act; monitor the compliance of borrowers with debt covenants and regulatory requirements in order to protect loan security; ensure that borrowers use loan funds for purposes consistent with the statutory goals of the RE Act; and obtain information on the progress of rural electrification and evaluate the success of RUS program activities.

Description of Respondents: Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 754.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 16,834.

Foreign Agricultural Service

Title: CCC/Supplier Credit Guarantee Program (7 CFR 1493, Subpart D).

OMB Control Number: 0551–0037.

Summary of Collection: The Supplier Credit Guarantee Program (SCGP) offers credit guarantees to exporters in order to maintain and increase overseas importer's ability to purchase U.S. agricultural goods. The SCGP is designed to assist exporters of U.S. agricultural commodities who wish to provide relatively short term (up to 180 days) credit to their importers evidenced by promissory notes executed by such importers. Under 7 CFR Part 1493, exporters are required to submit the following: (1) Information about the exporter for program participation, (2) export sales information in connection with applying for a payment guarantee, (3) information regarding the actual export of the commodity, (evidence of export report), (4) notice of default and claims for loss, and (5) other documents, if applicable, including notice assignment of the right to receive proceeds under the export credit guarantee. The Foreign Agricultural Service (FAS) will collect information using the guarantee application, export report and assignment notice from the participants by mail, fax, e-mail, and telephone.

Need and Use of the Information: FAS will collect information to manage, plan, evaluate and account for government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Description of Respondents: Business or other for-profit.

Number of Respondents: 50.

Frequency of Responses: Reporting: Other (When program is utilized).

Total Burden Hours: 399.

Agricultural Marketing Service

Title: Reporting Requirements Under the Regulations Governing Inspection and Certification of Processed Fruits and Vegetable and Related Products.

OMB Control Number: 0581–0123.

Summary of Collection: The Agricultural Marketing Act of 1946 (7 U.S.C. 1622(h) requires and directs the Department of Agriculture to promulgate rules and regulations to carry out voluntary inspection and grading services of processed fruits and vegetables on a fee for service basis. The Regulations Governing Inspection and Certification of processed Fruit and Vegetables and Related Products (7 CFR 52) authorizes the collection of information to assure that the products sampled, inspected, graded and certified are actually the products requested to be sampled and inspected.

Need and Use of the Information: The data collected is used by the Agricultural Marketing Service (AMS) for grading and certification purposes and for hiring licensed samplers. The following forms are used by AMS for information collection: FV–159, ''Application for Inspection of Unofficially Submitted Samples of Food Products''—the information collected is used to determine the purpose for which the inspection is desired for unofficially submitted samples. FV–356, ''Application for Inspection and Certificate of Sampling''—the information is used to fill in the respondent's name and address, and to describe the containers, the location, code marks and the number of containers in the lot. FV–468, ''Application for License to Sample Processed Foods''—the information collected is used to hire prospective employees desiring to become licensed to sample processed foods and to certify as to the identification, location, kinds and condition of containers of processed products that are sampled. The information collected from the forms is used to provide a service and is not requested for use in conducting a survey.

Description of Respondents: Business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,698.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,126.

Rural Development

Title: Agricultural Cooperative Service Questionnaire: (New

Cooperative Volume and Structure) Producer Survey.

OMB Control Number: 0570–0008.

Summary of Collection: Rural Business-Cooperative Services (RBS) is authorized by the Cooperative Marketing Act of 1926: 7 U.S.C. 451–455, and the Agricultural Marketing Act of 1946: 7 U.S.C. 1621–1627, to formulate, develop, and administer research and technical assistance programs on financial, organization, management, legal, social, and economic aspects of cooperatives. 7 U.S.C. 453(b)(4) authorizes RBS ''To confer and advise with committees or groups of producers, if deemed advisable, that may be desirous of forming a cooperative association and to make an economic survey and analysis of the facts surrounding the production and marketing of the agricultural product or products which the association, if formed, would handle or market.'' RBS will survey potential buyers of proposed cooperatives' products at the request of producer groups to assist them in determining the feasibility of new cooperative marketing ventures.

Need and Use of the Information: RBS will collect information from a survey to determine producer characteristics, volume of production and potential production, and producer's interest in forming or expanding a cooperative. Together with analysis of the general market situation, the survey information will be used by RBS/Cooperative Development Division (CDD) staff to prepare a site-specific business plan for each requesting group, that includes facility and equipment needs and costs, management and labor requirements, operating costs, equity base and loan fund package, debt service schedules, cash flow projections, and pro forma financial statements.

Description of Respondents: Farm; Business or other for-profit.

Number of Respondents: 35.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 245.

Rural Housing Service

Tital: 7 CFR 1944–D, Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations.

OMB Control Number: 0575–0045.

Summary of Collection: Under the authority of Sections 514 and 516 Title V of the Housing Act of 1949 (Public Law 104–193, August 22, 1996) (Personal Responsibility and Work Opportunity Reconciliation Act of 1996), the Secretary of Agriculture is authorized to make loans and/or grants to public, private nonprofit and farm worker organizations for developing farm labor housing. The Secretary is authorized to make only loans to farm owners, family farm corporations, and partnerships and associations of farmers. The objective of the program is to provide decent, safe, and sanitary housing and related facilities for domestic farm labor and migrant labor to be located in areas where a need exists. Labor housing grants are provided where there is a pressing need for such facilities in the area and the housing cannot be provided at affordable rents without grant assistance in development of the project. The Rural Housing Service (RHS) has been charged with the responsibility for protecting the interest of the taxpayer's funds and to assure that the objectives of the loan and grant program are carried out as intended. RHS will collect information using several forms to make the determination of applicable eligibility for a loan and/or grant.

Need and Use of the Information: RHS will collect information on the need for the proposed housing in the area, and the appropriateness, feasibility and economies of the proposed housing and related facilities. Through the collection of this information, RHS will be able to assure Congress and the general public that all projects financed with housing funds will be operated as economically as possible, used for the purposes for which they are intended, and provided benefits to those they are mandated to serve.

Description of Respondents: Farm; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 95.

Frequency of Responses: Recordkeeping Reporting: On occasion.

Total Burden Hours: 8,610.

Food and Nutrition Service

Title: WIC Annual Closeout Report with Addendum.

OMB Control Number: 0584–0427.

Summary of Collection: The Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) is authorized by section 17 of the Child Nutrition Act (CNA) of 1996 (42 U.S.C. 1786), as amended. The Food and Nutrition Service (FNS) of USDA administers the WIC Program by awarding cash grants to State agencies (generally State health departments). The State agencies award subgrants to local agencies (generally local health departments and nonprofit organizations) to deliver program benefits and services to eligible participants. Nonentitlement programs such as the WIC Program are required to undergo an annual closeout and reconciliation of grants. Departmental regulations at CFR 3016.23(b), states that a State agency must liquidate all obligations under a grant not later than 90 days after the end of the funding period to coincide with the submission of the annual Financial Status Report (SF–269). WIC Program Regulations at 7 CFR 246.17(b)(2) instruct State agencies to ''submit to FNS, within 150 days after the end of the fiscal year, final fiscal year closeout reports.'' FNS will collect information using forms FNS 227 and FNS 227A.

Need and Use of the Information: FNS will collect information to determine if the State has met the 97 percent performance standard for food and 15 percent performance standard for NSA and also to determine whether the statutory NSA nutrition education and breastfeeding promotion and support expenditure requirements are met and to monitor other NSA costs.

Description of Respondents: State, Local, or Tribal Government.

Number of Respondents: 88.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 502.

Food and Nutrition Service

Title: WIC Local Agency Directory Report.

OMB Control Number: 0584–0431.

Summary of Collection: The Supplemental Nutrition Program for Women, Infants, and Children (WIC) is authorized by section 17 of the Child Nutrition Act (CNA) of 1966 (42 U.S.C. 1786), as amended. The Food and Nutrition Service (FNS) of USDA administers the WIC Program by awarding cash grants to State agencies (generally State health departments). The State agencies award subgrants to local agencies (generally local health departments and nonprofit organizations) to deliver program benefits and services to eligible participants. Local agencies authorized to furnish WIC participants with supplemental foods, nutrition education, breastfeeding promotion and support activities and referral to related health services are subject to change. New local agencies may be selected to operate the WIC Program and local agencies already in operation may be disqualified for continued operation. FNS will collect information using form FNS–648 to report additions and deletions of local agencies operating the WIC program and local agency address changes, when such changes occur.

Need and Use of the Information: FNS will collect information to maintain a local agency directory which lists the names and addresses of all WIC local

agencies. The WIC local agency directory serves as the primary source of data on the number and location of local agencies and is published annually. It is used to refer individuals to the nearest source of WIC Program services and to maintain continuity of program services to migrant and other transient participants.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 88.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 15.

National Agricultural Statistics Service

Title: Equine Survey.

OMB Control Number: 0535–0227.

Summary of Collection: The National Agricultural Statistics Service's (NASS) primary function is to prepare and issue state and national estimates of crop and livestock production. Services such as statistical consultation, data collection, summary tabulation, and analysis are performed for other Federal and state agencies on a reimbursable basis as the need arises. In 1997, an Equine Survey was conducted for the New Jersey State Department of Agriculture. The results are being used to provide an assessment of the equine industry's contribution to the state's economy in terms of infrastructure and value. NASS will collect information using a survey on equine.

Need and Use of the Information: NASS will collect information on the equine inventories, by category; equine revenue, by activity; and equine related expenditures, by purpose. The survey will provide NASS with names and addresses of equine operations that can be used for Census of Agriculture enumeration and for the NASS program that seeks to cover 99 percent of U.S. agricultural cash receipts.

Description of Respondents: Farms; Business or other for-profit.

Number of Respondents: 43,800.

Frequency of Responses: Reporting: Other (One time only).

Total Burden Hours: 21,900.

Food and Nutrition Service

Title: Federal Collection Methods for Food Stamp Program Recipient Claims.

OMB Control Number: 0584–0446.

Summary of Collection: Currently there is approximately $1 billion in established recipient claims for overissued Food Stamp Program (FSP) benefits, a substantial portion of which State agencies are being unsuccessful in collecting. The Debt Collection Improvement (DCIA), Food Stamp (FSA) and Privacy Acts require that State agencies advise debtors of the intended Federal Claims Collection Methods (FCCM), offer debtors an opportunity to repay the claim, and offer debtors an opportunity to request a review of the validity of the collection action. Under DCIA, food stamp recipient claims administered by State agencies which are delinquent for 180 days are required to be referred to Treasury for Treasury Offset Program (TOP) collection actions. In the case of Federal Income Tax Refund Offset Program (FTROP), the claims are then referred to the Internal Revenue Service (IRS) for collection from individual Federal income tax refunds. Claims to be collected via Salary Offset are referred to Federal employers for wage garnishment. In all instances, the debtor is notified and given the opportunity to request a hearing and make arrangements to repay the claim prior to FCCM referral. The Food and Nutrition Service (FNS) will collect information using various methods as the FTROP, TOP, FCCM, to collect debts from delinquent recipients.

Need and Use of the Information: FNS will collect information to collect outstanding claim balances by using the recipient Federal income tax refunds, Salary Offset for wage garnishment, various Federal payments including, but not limited to, social security benefits and vendor payments.

Description of Respondents: Individuals or households; Federal Government; State, Local, or Tribal Government.

Number of Respondents: 380,053.

Frequency of Responses: Recordkeeping; Reporting: On occasion; Weekly; Quarterly; Annually.

Total Burden Hours: 71,803.

Nancy Sternberg,

Departmental Information Clearance Officer.

[FR Doc. 98–26824 Filed 10–6–98; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to ATD, LLC of New Orleans, Louisiana, an exclusive license to U.S. Patent No. 5,094,946 issued on March 10, 1992, and U.S. Patent No. 5,271,912 issued on December 21, 1993, both entitled ''Enzymatic Processing of Materials Containing Chromium and Protein.'' Notice of Availability for U.S. Patent No. 5,094,946 was published in the **Federal Register** on July 23, 1990, and Notice of Availability U.S. Patent No. 5,271,912 was published in the **Federal Register** on June 25, 1992.

DATES: (**Federal Register**) Comments must be received on or before December 7, 1998.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, Room 415, Building 005, BARC-West, Beltsville, Maryland 20705–2350.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as ATD, LLC submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,

Assistant Administrator.

[FR Doc. 98–26869 Filed 10–6–98; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

[Docket No. 98–054N]

HACCP Implementation for Small Plants; Public Meetings

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a series of public meetings from October through December 1998 to discuss ways to help owners and managers of small plants prepare for the HACCP implementation date of January 25, 1999. The meetings will give all stakeholders an opportunity to hear what is currently being done to help small plants and to discuss additional ways of ensuring that small plants

receive the assistance they need to make the timely transition to HACCP.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for the location of the meetings.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, contact Ms. Sheila Johnson of the FSIS Planning Staff at (202) 501–7138 or by FAX at (202) 501–7642. If a sign language interpreter or other special accommodation is required, please contact Ms. Johnson as soon as possible in advance of the meeting.

SUPPLEMENTARY INFORMATION:

On June 25, 1996, FSIS published a final rule, ''Pathogen Reduction: Hazard Analysis and Critical Control Point (HACCP) Systems,'' (61 FR 38806). The rule established a HACCP implementation schedule for establishments based on their size. Large plants began implementing HACCP on January 26, 1998. Small plants have a scheduled implementation date of January 25, 1999, and very small plants are required to implement HACCP by January 25, 2000.

Since publication of its final HACCP rule, FSIS has held a series of public meetings to facilitate implementation of HACCP plans, especially by small and very small plants. The Agency also has provided extensive information and technical assistance that would be helpful to plant managers in development of HACCP plans. FSIS also has developed and distributed generic HACCP models and guidance materials specifically to aid small plant managers.

The upcoming meetings will discuss small plant initiatives, including contacts and a coordinators assistance network, small plant demonstration projects, plant sponsorship, and land grant university workshops. A panel will address the key elements of implementation, and there will be an opportunity to ask questions and seek additional information. All of the meetings will be held from 9:00 a.m. to 1:00 p.m. The following is a list of locations and dates for each of the meetings scheduled from October to December 1998.[1]

Meeting location	Date
Chicago, IL; Four Point Hotel by Sheraton-Chicago O'Hare Airport, 102249 W. Irving Park Rd., Schiller, Park, IL; telephone (847) 671–6000.	October 3, 1998.
Columbus, OH; Holiday Inn East, 4560 Hilton Corporate Dr., Columbus, OH; telephone (614) 868–1380	October 3, 1998.
Philadelphia, PA; Holiday Inn-Independence Hall, 400 Arch St., Philadelphia, PA; telephone (215) 923–8660	October 10, 1998.
Olympia, WA; Department of Labor & Industries Headquarters Building, Auditorium, Room ST121, 7273 Linderson Way, SW, Tumwater, WA; telephone (360) 902–6288.	October 10, 1998.
Denver, CO; Double Tree Hotel, 13696 E. Iliff Pl., Aurora, CO; telephone (303) 337–2800	October 17, 1998.
Kansas City, MO; Wyndham Garden Hotel, One East 45th St.; telephone (816) 753–7400	October 17, 1998.
Des Moines, IA; West Des Moines Marriott, 1250 74th St.; telephone (515) 267–1500	October 24, 1998.
Jackson, MS; Mississippi Agriculture and Forestry Museum, 1150 Lakeland Drive, I–55 Exit 98–B; telephone (601) 354–6113.	October 24, 1998.
San Juan, PR; San Juan Marriott Resort; 1309 Ashford Avenue; telephone (787) 289–6027	October 31, 1998.
Madison, WI; Radisson Inn Madison, 516 Grand Canyon Dr.; telephone (608) 833–0100	November 7, 1998.
Albany, NY: Omni Hotel, State and Lodge St.; telephone (510) 462–6611	November 7, 1998.
Atlanta, GA; Terrace Garden Hotel Buckhead, 3405 Lenox Rd., NE; telephone (404) 261–9520	November 14, 1998.
Boston, MA; Swissotel, One Avenue deLafayette; telephone (617) 422–5531	November 14, 1998.
Fayetteville, AR; Hilton Hotel, 70 North East Avenue; telephone (501) 442–5555	November 21, 1998.
St. Paul, MN; Earl Brown Center, 1890 Buford Avenue	November 21, 1998.
Sacramento, CA; California Department of Food and Agriculture Auditorium, 1220 N. Street	December 5, 1998.
Dallas, TX; Holiday Inn Select Dallas, 10650 N. Central Expressway; telephone (214) 373–6000	December 5, 1998.
Honolulu, HI; Ala Moana Hotel, 410 Atkinson Dr.; telephone (808) 955–4811	December 8, 1998.

Done at Washington, DC, on September 28, 1998.

Thomas J. Billy,

Administrator.

[FR Doc. 98–26543 Filed 10–6–98; 8:45 am]

BILLING CODE 3410–DM–M

COMMISSION ON CIVIL RIGHTS

SUNSHINE ACT MEETING

AGENCY: U.S. Commission on Civil Rights.

DATE AND TIME: Friday, October 16, 1998, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda

II. Approval of Minutes of September 18, 1998 Meeting

III. Announcements

IV. Staff Director's Report

V. State Advisory Committee Appointments for Mississippi and Wyoming

VI. Future Agenda Items

10:30 a.m.—Briefing on International Human Rights

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 98–27023 Filed 10–5–98; 2:18 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons.

Form Number(s): BE–47.

Agency Approval Number: 0608–0015.

Type of Request: Revision of a currently approved collection .

Burden: 700 hours.

[1] When no telephone number is available at the meeting site, please call the FSIS contact person at the numbers listed in **FOR FURTHER INFORMATION CONTACT.**

Number of Respondents: 155.

Avg Hours Per Response: 4.5 hours.

Needs and Uses: The Government requires data from the BE–47, Annual Survey of Construction, Engineering, Architectural, and Mining Services Provided by U.S. Firms to Unaffiliated Foreign Persons, to obtain accurate and up-to-date information on U.S. sales to unaffiliated foreign persons of construction, engineering, architectural, and mining services. It will use the data collected in monitoring U.S. exports of construction, engineering, architectural, and mining services, analyzing their impact on the U.S. and foreign economies, supporting U.S. international trade policy on such services, compiling the balance of payments, national income and product, and input-output accounts of the United States, assessing U.S. competitiveness in international trade in services, and improving the ability of U.S. businesses to identify and evaluate market opportunities. For example, the Uruguay round of multilateral trade negotiations produced an agreement, the General Agreement on Trade in Services (GATS), that will liberalize market access rules and promote more equal treatment of U.S. construction and engineering firms. The BE–47 data will help measure gains, by individual foreign country, obtained in construction and related services under the GATS. Similar needs arise with respect to the North American Free Trade Agreement among the United States, Canada, and Mexico. Finally, the Government needs the data to help gauge the effects of foreign economic developments, such as the recent Asian financial crisis, on U.S. business interests abroad.

Affected Public: U.S. business or other for-profit institutions providing construction, engineering, architectural, and mining services to unaffiliated foreign persons.

Frequency: Annual.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 1, 1998.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 98–26845 Filed 10–6–98; 8:45am]

BILLING CODE: 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons.

Form Number(s): BE–82.

Agency Approval Number: 0608–0063.

Type of Request: Extension of a currently approved collection without any change in the substance or in the method of collection.

Burden: 3,200.

Number of Respondents: 425.

Avg Hours Per Response: 7.5 hours.

Needs and Uses: The Government requires data from the BE–82, Annual Survey of Financial Services Transactions Between U.S. Financial Services Providers and Unaffiliated Foreign Persons, to obtain accurate and up-to-date information on U.S. financial services transactions with unaffiliated foreign persons. It will use the data collected in monitoring U.S. exports and imports of financial services, analyzing their impact on the U.S. and foreign economies, compiling the balance of payments, national income and product, and input-output accounts of the United States, supporting U.S. international trade policy on financial services, assessing U.S. competitiveness in international trade in services, and improving the ability of U.S. businesses to identify and evaluate market opportunities. For example, the Uruguay round of multilateral trade negotiations produced an agreement, the General Agreement on Trade in Services (GATS), that will liberalize market access rules and promote more equal treatment of U.S. financial firms. More recently, additional negotiations were completed pertaining specifically to financial services, resulting in the World Trade Organization Financial Services Agreement. The BE–82 data will help measure gains, by individual foreign country, obtained in financial services under these agreements. Similar needs arise with respect to the North American Free Trade Agreement among the United States, Canada, and Mexico. Finally, the Government needs the data to help gauge the effects of foreign economic developments, such as the recent Asian financial crisis, on U.S. business interests abroad.

Affected Public: U.S. businesses or other for-profit institutions engaging in international financial services transactions with unaffiliated foreign persons.

Frequency: Annual.

Respondent's Obligation: Mandatory.

Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.

OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 1, 1998.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 98–26846 Filed 10–6–98; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Economic Analysis.

Title: Annual Survey of Reinsurance and Other Insurance Transactions by U.S. Insurance Companies With Foreign Persons.

Form Number(s): BE–48.

Agency Approval Number: 0608–0016.

Type of Request: Extension of a currently approved collection without any change in the substance or in the method of collection.

Burden: 1,600 hours.
Number of Respondents: 400.
Avg Hours Per Response: 4 hours.
Needs and Uses: The Government requires data from the BE–48, Annual Survey of Reinsurance and Other Insurance Transactions by U.S. Insurance Companies With Foreign Persons, to obtain accurate and up-to-date information on insurance transactions between U.S. insurance companies or groups and foreign persons. It will use the data collected in monitoring U.S. exports and imports of insurance services, analyzing their impact on the U.S. and foreign economies, compiling the balance of payments, national income and product, and input-output accounts of the United States, supporting U.S. international trade policy on insurance services, assessing U.S. competitiveness in international trade in services, and improving the ability of U.S. businesses to identify and evaluate market opportunities. For example, the Uruguay round of multilateral trade negotiations produced an agreement, the General Agreement on Trade in Services (GATS), that will liberalize market access rules and promote more equal treatment of U.S. insurance firms. More recently, additional negotiations were completed pertaining specifically to financial services (including insurance services), resulting in the World Trade Organization Financial Services Agreement. The BE–48 data will help measure gains, by individual foreign country, obtained in insurance services under the GATS. Similar needs arise with respect to the North American Free Trade Agreement among the United States, Canada, and Mexico. Finally, the Government needs the data to help gauge the effects of foreign economic developments, such as the recent Asian financial crisis, on U.S. business interests abroad.

Affected Public: U.S. insurance companies or groups engaging in reinsurance or other insurance transactions with foreign persons.
Frequency: Annual.
Respondent's Obligation: Mandatory.
Legal Authority: Title 22 U.S.C., Sections 3101–3108, as amended.
OMB Desk Officer: Paul Bugg, (202) 395–3093.

You may obtain copies of the above information collection proposal by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5327, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Send comments on the proposed information collection within 30 days of publication of this notice to Paul Bugg, OMB Desk Officer, Room 10201, New Executive Office Building, Washington, DC 20503.

Dated: October 1, 1998.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 98–26847 Filed 10–6–98; 8:45 am]
BILLING CODE 3510–06–P

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket Number: 980929249–8249–01]

RIN 0690–XX05

Fastener Quality Act; Statutorily Required Study

AGENCY: United States Department of Commerce.

ACTION: Notice of inquiry; request for comments.

SUMMARY: On August 14, 1998, President Clinton signed Public Law 105–234. This law amended the Fastener Quality Act (FQA) by creating an exemption for certain aircraft fasteners. The new law also requires the Secretary of Commerce to submit to Congress a report on: (1) Changes in fastener manufacturing processes that have occurred since the enactment of the Fastener Quality Act; (2) a comparison of the Fastener Quality Act to other regulatory programs that regulate the various categories of fasteners, and an analysis of any duplication that exists among programs; and (3) any changes in that Act that may be warranted because of the changes reported under paragraphs (1) and (2). This notice solicits public comments on the issues raised by the Secretary's reporting requirement.

DATES: Comments must be received no later than November 6, 1998.

ADDRESSES: Comments must be submitted to: Dr. James E. Hill; Chief, Building Environment Division; Building and Fire Research Laboratory; National Institute of Standards and Technology; Building 226, Room B–306; Gaithersburg, MD 20899. Comments may also be submitted by e-mail to: fqastudy@nist.gov.

FOR FURTHER INFORMATION CONTACT: Dr. James Hill; Telephone: 301–975–5851; E-mail: james.hill@nist.gov. The Fastener Quality Act and the existing implementing regulations can be viewed at NIST's FQA website: http://www.nist.gov/fqa/fqa.htm.

SUPPLEMENTARY INFORMATION:

Background

The Fastener Quality Act, 15 U.S.C. 5401 *et seq.*, (the Act) strives to protect public safety by: (1) Requiring that certain fasteners which are sold in commerce conform to the specifications to which they are represented to be manufactured; (2) providing for accreditation of laboratories engaged in fastener testing; and (3) requiring inspection, testing and certification, in accordance with standardized methods, of fasteners covered by the Act.

The Secretary of Commerce, acting through the Director of NIST, published final regulations implementing the Act on September 26, 1996, See 15 CFR 280. Those regulations established procedures under which: (1) Laboratories in compliance with the Act may be listed; (2) laboratories may apply to NIST for accreditation; (3) private laboratory accreditation entities (bodies) may apply to NIST for approval to accredit laboratories; and (4) foreign laboratories accredited by their governments or by organizations recognized by the NIST Director can be deemed to satisfy the laboratory accreditation requirements of the Act. The regulation also established, within the Patent and Trademark Office (PTO), a recordation system to identify the manufacturers or distributors of covered fasteners to ensure that the fasteners may be traced to their manufacturers or private label distributors. In addition, the regulations contained provisions on testing and certification of fasteners, sale of fasteners subsequent to manufacture, recordkeeping, applicability of the Act, enforcement, civil penalties, and hearing and appeal procedures. Those regulations became effective on November 25, 1996, and were to apply to fasteners manufactured on or after May 27, 1997, the ''implementation date''.

On April 18, 1997, NIST announced a one year extension of the implementation date of the regulations because there were an insufficient number of accredited laboratories to conduct the volume of inspection and testing required by the Act. During the one year extension, NIST proposed amendments, received public comments, and published amendments to the September 1996 rule that became effective as a final rule on May 14, 1998. This final rule established the procedures for registration of in-process inspection activities of qualifying manufacturing facilities that use Quality Assurance Systems (QAS), revised definitions and related sections for clarity, and corrected editorial errors. In addition, it extended the

implementation date by sixty days, to July 26, 1998.

On June 30, 1998, NIST announced that an insufficient number of laboratories would be accredited by July 26, 1998 to perform the volume of inspection and testing required by the Act and extended the implementation date to October 25, 1998.

On August 14, 1998, President Clinton signed Public Law 105–234. This law amends the Fastener Quality Act by creating an exemption for certain aircraft fasteners. The law also delays the effect of the regulations until the later of June 1, 1999 or 120 days after the Secretary of Commerce submits to Congress a report on: (1) changes in fastener manufacturing processes that have occurred since the enactment of the fastener Quality Act; (2) a comparison of the Fastener Quality Act to other regulatory programs that regulate the various categories of fasteners, and an analysis of any duplication that exists among programs; and (3) any changes in that Act that may be warranted because of the changes reported under paragraphs (1) and (2). The law requires the Secretary to submit this report by February 1, 1999.

To provide Congress a comprehensive report on these issues, the Secretary seeks comments from impacted industries including, but not limited to, the auto industry fastener manufacturers, and federal agencies involved in the investigations that led to the passage of the Act in 1990, and from any other interested parties.

Request for Public Comment

The Secretary requests information on how fastener manufacturing processes have changed since the enactment of the Fastener Quality Act and on other regulatory programs that regulate the various categories of fasteners. The Secretary has identified the following topics on which he particularly requests public comments:

1. Basis of the Act.

When the Act was passed in 1990, the Congress based it on the following findings:

- The American economy uses billions of fasteners each year,
- Millions of mismarked, substandard, counterfeit, and other nonconforming fasteners have been sold in commerce to end-users in the United States, and their use has dramatically increased the risk of equipment and infrastructure failures,
- Both the military and civilian sectors of the economy have encountered unnecessary, unwarranted, and dangerous equipment and construction failures, as well as extraordinary expenses, as a result of the use of nonconforming fasteners,
- The purchase and use of nonconforming fasteners stem from material misrepresentations about such fasteners made by certain manufacturers, importers, and distributors engaged in commerce,
- Current fastener standards of measurement evaluate bolts and other fasteners according to multiple criteria, including strength, hardness and composition, and provide grade identification markings on fasteners to make the characteristics of individual fasteners clear to purchasers and users,
- Current tests required by consensus standards, designed to ensure that fasteners are of standard measure, are adequate and appropriate for use as standards in a program of high strength fastener testing.
- The lack of traceability of fasteners sold in commerce is a serious impediment to effective quality control efforts, and
- The Health and safety of Americans is threatened by the widespread sale in commerce of mismarked, substandard, and counterfeit fasteners, a practice which also harms American manufacturers, importers and distributors of safe and conformaing fasteners, and workers in the American fastener industry.

Are these findings still valid? If not, how have they changed and why?

2. Coverage of the Act

The Act defines the fasteners to be covered in Section 3.(5); a screw, nut, bolt, or stud having internal or external treads or a load-indicating washer; with a nominal diameter of 5 millimeters (¼ inch) or greater; and which contains any quantity of metal; and which is held out to meet a standard or specification which requires through-hardening; or which bears as ASTMA 307 Grade A or produced in accordance with ASTMF 432 are exempt.

Based on changes in fastener manufacturing processes that have occurred since 1990 and other existing regulatory programs covering various categories of fasteners, is this definition appropriate? If not, what changes in coverage are appropriate for the Act and why?

3. Testing and Certification

The Act requires samples of specific size, selection, and integrity to be inspected and tested by an accredited laboratory. The laboratory must issue a report to the manufacturer at the conclusion of the tests. The report must bear the original signature of a laboratory employee responsible for the accuracy of the report.

Are there aspects of current manufacturing technology where sampling, testing, and issuing a laboratory report with an original signature is not feasible? If so, why? What alternate methods are more appropriate for testing, sampling, and reporting compliance to standards and specifications?

4. Sale of Fasteners

The Act requires fasteners of foreign origin to be accompanied by a manufacturers' certificate and an original laboratory report when purchased and imported.

Is this process appropriate? If not, please provide a description and explanation of an appropriate process for handling fasteners of foreign origin?

5. Record Keeping

The Act requires laboratories to retain all records concerning inspection, testing, and certification for 5 years.

Are the Act's recordkeeping and reporting requirements appropriate? If not, what information should be required to be maintained in order to assess compliance? For what period of time should any reporting or recordkeeping requirement be maintained?

Persons interested in commenting on the issues outlined above, or any other topics related to the FQA, should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying at the Department of Commerce Central Reference and Records Inspection facility, room 6228, Hoover Building, Washington, DC 20230.

Authority: Pub. L. No. 105–234.

Dated: October 1, 1998.

Andrew J. Pincus,

General Counsel.

[FR Doc. 98–26834 Filed 10–6–98; 8:45 am]

BILLING CODE 3510–BW–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors and Instrumentation Technical Advisory Committee; Notice of Partially Closed Meeting

The Department of Commerce will hold a meeting of the Sensors and Instrumentation Technical Advisory Committee on October 20, 1998, 9:00 a.m., in the Herbert C. Hoover Building, Room 1617M–2, 14th Street between

Constitution and Pennsylvania Avenues, NW., Washington, DC. The Committee advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to sensors and instrumentation equipment and technology.

Agenda

General Session

1. Opening remarks by the current Chairman.
2. Election of Committee Chairman.
3. Presentation of papers or comments by the public.
4. Update on Wassenaar Arrangement List review.
5. Update on India Entities.

Executive Session

6. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements 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 date to the following address: Ms. Lee Ann Carpenter, CLO MS: 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 3, 1997, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(A)(1) and 10(a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: October 1, 1998.

Lee Ann Carpenter,

Director, Technical Advisory Committee Unit.

[FR Doc. 98–26870 Filed 10–6–98; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–808]

Chrome-Plated Lug Nuts From The People's Republic of China; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce

ACTION: Notice of Final Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China.

SUMMARY: On June 10, 1998, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping order on chrome-plated lug nuts (lug nuts) from the People's Republic of China (PRC). The review covers one exporter of the subject merchandise and the period September 1, 1996 through August 31, 1997.

We gave interested parties an opportunity to comment on our preliminary results. We received comments from Jiangsu Rudong Grease Gun Factory (Rudong). We did not receive rebuttal comments. After considering these comments, we have changed the final results from those presented in the preliminary results of review and have determined that sales have been made below normal value (NV), as explained below.

EFFECTIVE DATE: October 7, 1998.

FOR FURTHER INFORMATION CONTACT: Eric Scheier, Thomas Gilgunn, or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–4052, (202) 482–0648 and (202) 482–3020 respectively .

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 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 351.

Background

On June 10, 1998, the Department published the preliminary results of review (63 FR 31719). The Department has now completed this administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by the order and this review are one-piece and two-piece chrome-plated and nickel-plated lug nuts from the PRC. The subject merchandise includes chrome-plated and nickel-plated lug nuts, finished or unfinished, which are more than 1 1/16 inches (17.45 millimeters) in height and which have a hexagonal (hx) size of at least 3/4 inches (19.05 millimeters) but not over one inch (25.4 millimeters), plus or minus 1/16 of an inch (1.59 millimeters). The term ''unfinished'' refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Excluded from the order are zinc-plated lug nuts, finished or unfinished, stainless steel capped lug nuts, and chrome-plated lock nuts.

The merchandise under review is currently classifiable under item 7318.16.00 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers the period September 1, 1996 through August 31, 1997.

Interested Party Comments

We gave interested parties an opportunity to comment on the preliminary results of review. We received comments from Rudong. We did not receive rebuttal comments from any party.

Comment 1. Rudong argues that the October 1996 Indian import statistics used to value steel wire rod are aberrational. For the preliminary results, the Department used the then available Indian import statistics for September, October, November, and December 1996. Rudong states that Indian imports of steel wire rod as valued by the October 1996 data are 3.5 times greater than the value of steel wire rod in the September, November, and December

Indian import statistics, and that the values for imports into India from Germany and Japan in the October Indian import statistics are ten and four times greater, respectively, than the value of steel wire rod in the September, November, and December Indian import statistics. Rudong argues that October 1996 Indian import statistics, or, at a minimum, values for imports from Germany and Japan in the October 1996 statistics, should be removed from the calculation of surrogate value for steel wire rod. Rudong further argues that because the HTSUS classification used by the Department to value steel wire rod is a basket category of bars and rods, there is a significant possibility that the imports from Germany and Japan were of more expensive, higher specification merchandise than steel used in the production of lug nuts. Rudong also notes the possibility of a clerical error in the October 1996 statistics.

Rudong further argues that the September, November, and December Indian import statistics are accurate when compared to the now available import values of steel wire rod to India for January through May 1997, and the values of steel wire rod derived from import statistics for Indonesia, Canada, and the United States.

Lastly, Rudong argues that the Department has in the past rejected aberrational values. Rudong cites to *Certain Helical Spring Lock Washers from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 62 FR 61794 (November 19, 1997), in which the Department rejected aberrational values for hydrochloric acid, and to *Chrome-Plated Lug Nuts from the People's Republic of China; Final Results of Antidumping Duty Administrative Review,* 61 FR 58514 (November 15, 1996) (*Lug Nuts 1995–1996*), in which the Department rejected certain aberrational Indian import data for steel wire rod.

Department's Position. We agree that the value for Indian imports of German steel in October 1996, 168.9 rupees per kilogram, is aberrational, based on a comparison of this value with other Indian import values during the September 1996 through May 1997 period (the portion of the period of review for which data is now available). The value of these other imports ranged for 12.72 to 66.00 rupees per kilogram, with a weighted average of 17.64 rupees per kilogram. Accordingly, for the purposes of these final results, we have excluded October 1996 Indian imports of German steel from our calculation of surrogate value because their value is many times higher than the value of other Indian imports of steel. *See* ''Analysis for the Final Results of the 1996–1997 Administrative Review of Chrome-plated Lug Nuts from the Peoples Republic of China—Jiangsu Rudong Grease Gun Factory'' (''Final Analysis Memo for PRC Lug Nuts 1996–1997''). We also note that the data for October 1996 Indian imports of German steel are aberrational when compared to the value of similar steel imports into other market economies such as Canada, Indonesia, and the United States. In *Lug Nuts 1994–1995,* the Department discarded certain surrogate Indian steel values because they were found to be aberrational when compared to the steel values of these three market economies.

Additionally, for these final results we have included in the calculation of the surrogate value for steel Indian import data from January 1997 through May 1997. This information was unavailable to the Department for the preliminary results, and has since become available. See memorandum to the file dated September 30, 1998 ''Final Analysis Memo for PRC Lug Nuts 1996–1997.''

Comment 2. Rudong argues that the Department erred in using, as a surrogate for marine insurance, a per-kilogram surrogate value derived from actual insurance payments from the investigation of sulphur dyes from India, rather than a surrogate rate representing a percentage of the insurable value of the merchandise at issue. Rudong states that, in practice, marine insurance is not paid on a per-weight basis but as a percentage of value. Therefore, Rudong claims, it is this percentage, not the actual payment for a shipment of different merchandise (in this case sulphur dyes), that the Department should use to calculate surrogate marine insurance. Rudong suggests that the Department use the surrogate rate of 2.2 percent from Pakistan used in *Final Determination of Sales at Less Than Fair Value: Chrome-Plated Lug Nuts From the People's Republic of China,* 56 FR 46153 (September 10, 1991).

Department's Position. We agree with Rudong. Because marine insurance is incurred as a percentage of value (see Page 5 of Rudong's questionnaire response dated July 10, 1998), it is appropriate to apply a surrogate rate on a value basis.

In *Peer Bearing Company* v. *United States,* No. 98–70, slip op., (CIT May 27, 1998), the Department was instructed to recalculate the per-kilogram surrogate value for marine insurance—the same value used in the preliminary results for this segment of the proceeding—based on value rather than weight. The Department, for those remand results, recalculated a surrogate rate of 0.241 percent of value, based on data used in the investigation of sulphur dyes from India, and applied this rate to gross unit price to recalculate a surrogate value for marine insurance. *See* memorandum to the file dated July 21, 1998: ''Recalculation of Marine Insurance Expense Pursuant to Remand on Tapered Roller Bearings from the People's Republic of China,'' placed on the record of this review by the Department on September 21, 1998.

For these final results, we are using the rate of 0.241 percent rather than the 2.2 percent rate suggested by Rudong because the former is a figure from the primary surrogate country in this segment of the proceeding, India, while the latter is from Pakistan.

Comment 3. Rudong argues that the Department miscalculated the surrogate rate for ocean freight incurred for shipment by a non-market economy carrier. Rudong asserts that the Department apparently intended to calculate the ocean freight rate for one non-market economy carrier by applying a weighted average of the prices charged by the market-economy carriers. In so doing, Rudong contends, the Department erred by attempting to recalculate ocean freight on a weight basis. Rudong asserts that the Department's calculation does not work, as shown by the fact that the calculated amount is twice as high as any of the market-economy invoices. Rudong argues that the Department's calculations are unnecessary and that the Department should use the data provided for the invoices shipped on market-economy carriers to calculate a per-value surrogate rate for any invoices shipped on non-market-economy carriers.

Department's Position. We agree, in part, with Rudong and have recalculated ocean freight accordingly. Because ocean freight is incurred on a container, and therefore weight, basis, the preferred methodology to value ocean freight is on a weight basis. However, there is no way to allocate the total freight cost to subject and non-subject merchandise listed on Rudong's invoice by weight. Consequently, we have no way to derive a weight-based ocean freight value from the documentation provided by Rudong. Therefore, we have calculated an alternative rate for the ocean freight incurred on Rudong's non-market-economy forwarder based on a weighted-average per-value rate for the shipments made on market-economy carriers.

Comment 4. Rudong argues that the Department based foreign inland freight

on the midpoint for the range of weights specified for subject merchandise in the CONNUM rather than the actual net weight of the individual products analyzed. Rudong states that the Department estimated the weight of each product by using a midpoint of the weight range reported to create CONNUMs for matching purposes rather than using a net weight equaling gross weight minus scrap, as done in prior segments of this proceeding.

Department's Position. We agree with Rudong and have recalculated inland freight on the basis of net weight and distance. For the calculation of freight, we prefer to use actual weight instead of estimated weight based on the range of weights within each CONNUM. We calculated actual weight by subtracting scrap from the gross weight of steel wire rod. This was the methodology used in the prior review of this order. *See* the public version of ''Analysis for the Preliminary Results of the Fourth Administrative Review of Chrome-plated Lug Nuts from the People's Republic of China covering the period September 1, 1994 through August 31, 1995—Jiangsu Rudong Grease Gun Company.''

Comment 5. Rudong argues that the Department incorrectly calculated the tax-exclusive price for chemicals by setting the tax-exclusive price equal to the tax-inclusive price divided by the sum of one plus excise tax rate plus sales tax rate. Rudong states that the correct equation is: tax-exclusive price=tax-inclusive price/[(1+excise tax rate)*(1+sales tax rate)]. Rudong notes that their proposed formula was used consistently in past cases.

Department's Position. We agree with Rudong. According to *Indian Customs Tariffs*, as presented on the Department's Trade Information Center web page, Indian excise and sales taxes are assessed sequentially. *See* Attachment 4 of the ''Final Analysis Memo for PRC Lug Nuts 1996–1997.'' Therefore, the correct equation is: tax-exclusive price=tax-inclusive price/[(1+excise tax rate)*(1+sales tax rate)].

Comment 6. Rudong argues that the Department applied an incorrect formula in the calculation of factory overhead. Rudong states that the Department calculated overhead by multiplying the overhead rate by the sum of materials, labor and energy, and then dividing that product by the difference of one minus the overhead rate. Rudong argues that because the surrogate overhead rate was originally calculated as a percentage of materials, labor and energy, the factor for overhead in this segment of the proceeding should be calculated by multiplying the overhead rate by the sum of Rudong's materials, labor, and energy.

Department's Position. We disagree with Rudong. In the calculation of the surrogate overhead rate, the Department used the same methodology as used in previous reviews of chrome-plated lug nuts. *See* ''Analysis for the Preliminary Results of the Fourth Administrative Review of Chrome-plated Lug Nuts from the People's Republic of China covering the Period September 1, 1994 through August 31, 1995—Jiangsu Rudong Grease Gun Factory.'' This methodology is based on an industry income statement published in the April 1995 *Reserve Bank of India Bulletin; see* Attachment eight of the memorandum to the file dated June 2, 1998: ''Factor Values Used for the Preliminary Results of the 1996–97 Administrative Review of Chrome-Plated Lug Nuts from the PRC.'' The Department divided total overhead, less power and fuel, by a cost of manufacturing (COM) amount that already included total factory overhead as a component. Thus, in calculating Rudong's surrogate overhead cost we had to allow for the inclusion of total factory overhead as a part of the overhead rate equation's denominator. We did this by deducting that overhead percentage from a factor of one in the calculation of Rudong's surrogate overhead cost.

Final Results of Review

We determine that the following dumping margins exist:

Manufacturer/exporter	Time period	Margin (percent)
Jiangsu Rudong Grease Gun Factory	9/1/96–8/31/97	1.29
PRC-Wide rate ..	9/1/96–8/31/97	44.99

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between export price and NV may vary from the percentage stated above for Rudong. We have calculated importer-specific duty assessment rates for lug nuts by dividing 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. We will direct Customs to assess the resulting per-unit dollar amount against each unit of merchandise in each of the importer's/customer's entries during the review period. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit rates will be effective upon publication of this notice of final results of review for all shipments of lug nuts from the PRC 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) for Rudong, which was found to merit a separate rate for the final results of this review, the cash deposit rate will be 1.29 percent; (2) for all other PRC exporters, the cash deposit rate will be the PRC-wide rate; and (3) for non-PRC exporters of subject merchandise from the PRC, the cash deposit rate will be the rate applicable to a PRC supplier of that exporter.

These deposit rates, 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 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 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 351.306. *See* 63 FR 24391, 24403 (May 4, 1998). Timely written notification of the 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 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 351.221.

Dated: September 30, 1998.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 98–26917 Filed 10–6–98; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–810]

Chrome-Plated Lug Nuts From Taiwan; Preliminary Results of Antidumping Duty Administrative Review and Termination in Part

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 petitioner, the Department of Commerce is conducting an administrative review of the antidumping duty order on chrome-plated lug nuts from Taiwan. The review covers 18 manufacturers/exporters of the subject merchandise to the United States for the period September 1, 1996, through August 31, 1997. The review indicates the existence of margins for all firms.

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 U.S. Customs to assess antidumping duties equal to the difference between export price and the NV.

Interested parties are invited to comment on these preliminary results. Parties who submit comments are requested to submit with each comment (1) a statement of the issue and (2) a brief summary of their comment.

EFFECTIVE DATES: October 7, 1998.

FOR FURTHER INFORMATION CONTACT: Todd Peterson or Thomas Futtner (AD/CVD Enforcement, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4195 or 482–3814, respectively.

SUPPLEMENTARY INFORMATION:

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 of Commerce's (''the Department's'') regulations refer to the regulations codified at 19 CFR part 351 (62 FR 27296, May 19, 1997).

Background

On September 20, 1991, the Department published the antidumping duty order on chrome-plated lug nuts from Taiwan (56 FR 47736). On September 26, 1997, the petitioner, Consolidated International Automotive, Inc. (''Consolidated''), requested that we conduct an administrative review for the period September 1, 1996, through August 31, 1997. We published a notice of ''Initiation of Antidumping and Countervailing Duty Administrative Review'' on October 30, 1997 (62 FR 58703), and sent questionnaire to the following firms: Anmax Industrial Co., Ltd. (''Anmax''), Buxton International Corporation (''Buxton''), Chu Fong Metallic Electric Co. (''Chu Fong''), Everspring Plastic Corp. (''Everspring''), Gingen Metal Corp. (''Gingen''), Goldwinate Associate, Inc. (''Goldwinate''), Gourmet Equipment (''Taiwan'') Corporation (Gourmet''), Hwan Hsin Enterprises Co., Ltd. (''Hwan''), Kwan How Enterprises Co., Ltd. (''Kwan How''), Kwan Ta Enterprises Co. Ltd (''Kwan Ta''), Kuang Hong Industries, Ltd. (''Kuang''), Multigrand Industries Inc. (''Multigrand''), San Chien Electric Industrial Works, Ltd. (''San Chien''), San Shing Hardware Works Co., Ltd. (''San Shing''), Transcend International Co. (''Transcend''), Trade Union International Inc./Top Line (''Trade Union''), Uniauto, Inc. (''Uniauto'') and Wing Tang Electrical Manufacturing Company, Inc (''Wing''). Gourmet, Anmax and Trade Union responded to the questionnaire.

Questionnaire and were sent to Transcend, Kwan How, Kwan Ta, Everspring, Gingen, Goldwanate, and Kuang were returned as undeliverable. These firms will receive the ''all others'' rate established in the less-than-fair-value (LTFV) investigation, which was 6.93 percent.

Scope of the Review

Imports covered by the this review are shipments of one-piece and two-piece chrome-plated lug nuts, finished or unfinished, more than $1\frac{1}{16}$ inches (17.45 millimeters) in height and which have a hexagonal (hex) size of at least $\frac{3}{4}$ inches (19.04 millimeters) but not more than one inch (25.4 mm), plus or minus $\frac{1}{16}$ of an inch (1.59 mm). The term ''unfinish'' refers to unplated and/or unassembled chrome-plated lug nuts. The subject merchandise is used for securing wheels to cars, vans, trucks, utility vehicles, and trailers. Zinc-plated lug nuts, finished, or unfinished, and stainless-steel capped lug nuts are not in the scope of this review. Chrome-plated lock nuts are also not in the scope of this review.

During the period of review (POR), chrome-plated lug nuts were classified under Harmonized Tariff Schedule (HTS) subheading 7318.16.00.00. Although the HTS subheading is provided for convience and Customs purposes, our written description of the scope of this review is dispositive.

Use of Facts Otherwise Available

Because the following firms did not respond to the Department's antidumping questionnaire, we preliminarily determine that in accordance with section 776(a) of the Act, the use of facts available is appropriate for Buxton, Chu Fong, Multigrand, Uniauto, Hwen, San Chien, San Shing, and Wing. In addition, while Trade Union and Anmax provided some information in response to the Departments questionnaire, the Department determined that their submissions were substantially deficient. Pursuant to section 782(d) of the Act, the Department sent supplemental questionnaires to Trade Union and Anmax so that they would cure the deficiencies. However, the Department received no responses from these companies within the designated deadline. Thus, we preliminarily determine that the use of facts available is also warranted with respect to these companies. The Department finds that, in not responding to its questionnaire or to its supplemental questionnaire, the aforementioned firms have failed to cooperate by not acting to the best of their ability to comply with requests for information from the Department. Because necessary information is not available on the record with regard to sales by these firms as a result of their withholding the requested information, we must make our preliminary determination based on facts otherwise available pursuant to section 776(a) of the Act.

Where the Department must base the entire dumping margin for a respondent in an administrative review on the facts available because that respondent failed to cooperate, section 776(b) authorizes the Department to use an inference adverse to the interests of the respondent in choosing the facts available. Section 776(b) also authorizes the Department to use as adverse facts available information derived from such secondary information as the petition, the final determination, a previous administrative review, or other information placed on the record. In this case, we have used the highest rate from any prior segment of the proceeding, which is 10.67 percent. This rate was

calculated in the *Amendment to the Final Determination of Sales at Less Than Fair Value* (56 FR 47737 September 20, 1991), covering the period May 1, 1990 through October 31, 1990.

The Department also sent questionnaires and supplemental to Gourmet, which provided timely responses. However, as in previous reviews, the Department has again determined that, due to the nature of Gourmet's accounting system, it is not able to reconcile the data Gourmet submitted in its responses to our questionnaires with its financial statements. Reliance on the accounting system used for the preparation of the financial statements is a key and vital part of the Department's determination that a company's sales and constructed value data are credible. Section 776(a)(2)(D) states that the Department ''shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title'' if an interested party or any other person provides information but the information can not be verified. Although Gourmet is well aware of the Department's requirements for verifiable submissions, it has provided information which the Department could not verify. Because its submission is not reconcilable, it is not verifiable, and we have determined in accordance with section 776(b) that Gourmet has failed to cooperate by not acting to the best of its ability. Thus we are applying adverse facts available to Gourmet. *See* Memorandum from Thomas Futtner to Holly Kuga, dated August 20, 1998, Therefore, as adverse facts available, we have determined to use 10.67 percent, which is the highest calculated rate for any firm in any segment of the proceeding.

Because information from prior reviews constitutes secondary information, section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. That 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. H.R. Doc. No. 316, Vol. 1, 103d Cong., 2nd 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. The only source for margins is administrative determinations. Thus, in an administrative review, if the Department chooses as 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 not relevant. Where circumstances indicate that the selected margin is not appropriate as 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 63822 December 2, 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. No such circumstances exist in this case which would cause the Department to disregard a prior margin.

Preliminary Results of Review

As a result of this review, we preliminary determine that the following margins exist for the period September 1, 1996, through August 31, 1997:

Manufacturer/exporter	Percent margin
Gourmet Equipment (Taiwan) Corporation	10.67
Buxton International/Uniauto	10.67
Chu Fong Metallic Electric Co.	10.67
Transcend International	6.93
San Chien Industrial Works, Ltd	10.67
Anmax Industrial Co., Ltd	10.67
Everspring Plastic Corp.	6.93
Gingen Metal Corp.	6.93
Goldwinate Associates, Inc.	6.93
Hwen Hsin Enterprises Co., Ltd.	10.67
Kwan How Enterprises Co., Ltd.	6.93
Kwan Ta Enterprises Co. Ltd.	6.93
Kuang Hong Industries , Ltd.	6.93
Multigrand Industries Inc.	10.67
San Shin Hardware Works Co., Ltd.	10.67
Trade Union International Inc./Top Line	10.67
Uniauto, Inc.	10.67
Wing Tang Electrical Manufacturing Company	10.67

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 ten days of publication. If requested, a hearing will be held as early as convenient for the parties but not later than 30 days after the date of publication or the first work day thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication of this notice. 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, based on the above rates, antidumping duties on all appropriate entries. The rate will be assessed uniformly on all entries supplied by that particular company during the POR. Upon completion of this review, the Department will issue appraisement instructions on each manufacturer/exporter directly to the U.S. Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of chrome plated lug nuts from Taiwan entered, or withdrawn from warehouses, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rates established in the final results of this administrative review (except no cash deposit will be required where the weighted-average margin is *de minimis, i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original LTFV investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original 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) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original investigation, the cash deposit rate will be 6.93 percent, the ''all others'' rate established in the LTFV investigation.

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 administrative review and notice are in accordance with section 751(a)(1) and 777(i)(1) of the Act.

Dated: September 30, 1998.

Robert S. LaRussa,

Assistant Secretary; Import Administration.

[FR Doc. 98–26918 Filed 10–06–98; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 082098D]

Marine Mammals; File No. 782–1355

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

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the National Marine Fisheries Service, Alaska Fisheries Science Center, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, WA 98115, has been issued an amendment to scientific research Permit No. 782–1355.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221);

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION: On July 17, 1998, notice was published in the **Federal Register** (63 FR 38557) that an amendment of Permit No. 782–1355 issued July 15, 1997 (62 FR 39826), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*) and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The Permit was amended to: (1) change PI to DeMaster and replace CI with John Bengtson and David Withrow; (2) increase the number of seals equipped with TDRs from 20 to 50 over the duration of the permit (10 per year); (3) increase the number of biopsies taken from 50 to 250 (50 per year); and (4) increase the number of seals harassed more than once from 500 over the course of the permit to 500 annually.

Dated: August 27, 1998.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 98–26890 Filed 10–6–98; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Burma (Myanmar)

September 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Burma (Myanmar) and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the availability of the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textile products in the following categories, produced or manufactured in Bu rma (Myanmar) and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	98,769 dozen.
342/642	26,678 dozen.
347/348	138,375 dozen.
351/651	41,928 dozen.
448	2,434 dozen.
647/648/847	25,803 dozen.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 6, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–26807 Filed 10–6–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Kenya

September 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Kenya and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the limits for the 1999 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Kenya and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
340/640	536,481 dozen.
360	3,874,586 numbers.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated November 24, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–26805 Filed 10–6–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of an Import Restraint Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Laos

September 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of September 15, 1994, as amended and extended, between the Governments of the United States and the Lao People's Democratic Republic, establishes a limit for Categories 340/640 for the period January 1, 1999 through December 31, 1999.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limit for Categories 340/640.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999

CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of September 15, 1994, as amended and extended, between the Governments of the United States and the Lao People's Democratic Republic, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in Categories 340/640, produced or manufactured in Laos and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of 167,513 dozen.

The limit set forth above is subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Lao People's Democratic Republic.

Products in the above categories exported during 1998 shall be charged to the applicable category limit for that year (see directive dated January 29, 1998) to the extent of any unfilled balance. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

This limit may be revised if Laos becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Laos.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–26806 Filed 10–6–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Limits for Certain Wool Textile Products Produced or Manufactured in the Former Yugoslav Republic of Macedonia

September 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Bilateral Textile Agreement of November 7, 1997 between the Governments of the United States and the Former Yugoslav Republic of Macedonia establishes limits for certain wool textile products, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period January 1, 1999 through December 31, 1999.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits. The limit for Category 443 has been reduced for carryforward applied in 1998.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Bilateral Textile Agreement of November 7, 1997 between the Governments of the United States and the Former Yugoslav Republic of Macedonia, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Former Yugoslav Republic of Macedonia and exported during the period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month limit
433	20,808 dozen.
434	10,404 dozen.
435	27,857 dozen.
443	161,568 numbers.
448	62,424 dozen.

The limits set forth above are subject to adjustment pursuant to the current bilateral agreement between the Governments of the United States and the Former Yugoslav Republic of Macedonia.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 1, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

These limits may be revised if the Former Yugoslav Republic of Macedonia becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to the Former Yugoslav Republic of Macedonia.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–26803 Filed 10–6–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the United Mexican States

September 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing levels under the North America Free Trade Agreement.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

In order to implement Annex 300–B of the North American Free Trade Agreement (NAFTA), restrictions and consultation levels for certain cotton, wool and man-made fiber textile products from Mexico are being established for the period beginning on January 1, 1999 and extending through December 31, 1999.

These restrictions and consultation levels do not apply to NAFTA originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to implement levels for the 1999 period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1998.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the North American Free Trade Agreement (NAFTA), between the Governments of the United States, the United Mexican States and Canada, you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Mexico and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels:

Category	Twelve-month limit
219	9,438,000 square meters.
313	16,854,000 square meters.
314	6,966,904 square meters.
315	6,966,904 square meters.
317	8,427,000 square meters.
338/339/638/639	650,000 dozen.
340/640	174,137 dozen.
347/348/647/648	650,000 dozen.
410	397,160 square meters.
433	11,000 dozen.
443	182,498 numbers.
611	1,267,710 square meters.
633	10,000 dozen.
643	155,556 numbers.

The levels set forth above are subject to adjustment pursuant to the provisions of Annex 300–B of the NAFTA.

Products in the above categories exported during 1998 shall be charged to the applicable category levels for that year (see directive dated December 22, 1997) to the extent of any unfilled balances. In the event the levels established for that period have been exhausted by previous entries, such products shall be charged to the levels set forth in this directive.

The foregoing levels do not apply to NAFTA originating goods, as defined in Annex 300–B, Chapter 4 and Annex 401 of the agreement. In addition, restrictions and consultation levels do not apply to textile and apparel goods that are assembled in Mexico from fabrics wholly formed and cut in the United States and exported from and re-imported into the United States under U.S. tariff item 9802.00.90.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–26804 Filed 10–6–98; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Sri Lanka

September 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The import restraint limits for textile products, produced or manufactured in Sri Lanka and exported during the period January 1, 1999 through December 31, 1999 are based on limits notified to the Textiles Monitoring Body pursuant to the Uruguay Round Agreement on Textiles and Clothing (ATC).

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish the 1999 limits. The limits for certain categories have been reduced for carryforward applied to the 1998 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997). Information regarding the 1999 CORRELATION will be published in the **Federal Register** at a later date.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on January 1, 1999, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period beginning on January 1, 1999 and extending through December 31, 1999, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
237	342,660 dozen.
314	4,917,752 square meters.
331/631	3,489,709 dozen pairs.
333/633	65,632 dozen.
334/634	726,659 dozen.
335/835	319,730 dozen.
336/636/836	478,628 dozen.
338/339	1,453,319 dozen.
340/640	1,292,035 dozen.
341/641	2,252,795 dozen of which not more than 1,501,864 dozen shall be in Category 341 and not more than 1,501,864 dozen shall be in Category 641.
342/642/842	758,739 dozen.
345/845	207,151 dozen.
347/348/847	1,178,469 dozen.
350/650	135,642 dozen.
351/651	375,700 dozen.
352/652	1,550,206 dozen.
359–C/659–C [1]	1,492,562 kilograms.
360	1,735,020 numbers.
363	14,048,739 numbers.
369–D [2]	1,116,364 kilograms.
369–S [3]	878,949 kilograms.
434	7,458 dozen.
435	15,981 dozen.
440	10,654 dozen.
611	6,795,497 square meters.
635	426,308 dozen.
638/639/838	1,096,108 dozen.
644	615,290 numbers.
645/646	246,115 dozen.
647/648	1,246,746 dozen.
840	354,181 dozen.

[1] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[3] Category 369–S: only HTS number 6307.10.2005.

The limits set forth above are subject to adjustment pursuant to the provisions of the ATC and administrative arrangements notified to the Textiles Monitoring Body.

Products in the above categories exported during 1998 shall be charged to the applicable category limits for that year (see directive dated December 22, 1997) to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such products shall be charged to the limits set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Troy H. Cribb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 98–26801 Filed 10–6–98; 8:45 am]
BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa Requirements for Textile and Clothing Integrated into GATT 1994 in the Second Stage

September 30, 1998.

AGENCY: Committee for the Implementation of Textile Agreements

ACTION: Issuing a Directive to the Commissioner of Customs amending export visa requirements.

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Lori E. Mennitt, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Uruguay Round Agreement on Textiles and Clothing provides for the integration of textiles and clothing into GATT 1994. The second stage of the integration commenced on January 1, 1998 (see 60 FR 21075, published on May 1, 1995). In a **Federal Register** notice published on October 3, 1997 (62 FR 51832), the Committee for the Implementation of Textile Agreements announced that it had determined that it was necessary to maintain coverage of the currently applicable visa systems for the products to be integrated in the second stage of the integration and that an export visa issued by the government of the country of origin would continue to be required for products integrated on and after January 1, 1998, before entry is permitted into the United States.

Subsequent experience has shown that export visas for these products from World Trade Organization Member countries are not necessary. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to no longer require a visa for these products from World Trade Organization Member countries entered into the United States on and after January 1, 1999.

A description of the textile and apparel categories in terms of HTS

numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 62 FR 66057, published on December 17, 1997).

Troy H. Cribb

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

September 30, 1998.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the World Trade Organization (WTO) Agreement on Textiles and Clothing, you are directed to amend the current visa requirements for textile and apparel products produced or manufactured in WTO Member countries (Bahrain, Bangladesh, Brazil, Colombia, Dominican Republic, Egypt, Haiti, Hong Kong, India, Indonesia, Jamaica, Japan, Korea, Macau, Malaysia, Maldives, Mauritius, Pakistan, Panama, Peru, Philippines, Qatar, Romania, Singapore, Sri Lanka, Thailand, Trinidad and Tobago and United Arab Emirates) that are entered into the United States on and after January 1, 1999 and that are integrated into GATT 1994 in the second stage of the integration.

Effective on January 1, 1999, export visas no longer will be required for certain textile and apparel products from WTO member countries.

Textile categories subject to this directive are 229, 330, 349, 353, 354, 432, 439, 465, 630, 632, 653, 654, 665, 832, 839 and 899; and products in 239—babies garments, except diapers; 359, 459, 659 and 859—footwear; 369, 469 and 669—certain wadding and footwear; and 859—other silk blends and non-cotton vegetable fiber apparel. A complete list of products subject to this directive is attached to this letter.

Export visas will continue to be required for non-integrated products and for products integrated in the second stage produced or manufactured in countries that are not members of the World Trade Organization.

For WTO countries, non-integrated products in Categories 239, 359, 459, 659, 859, 369, 469 and 669 shall continue to be visaed in those categories, except if a letter or number designator for a part-category already exists. All letter or number part category designators shall continue to be used except for ''pt'' (which is currently being used for quota purposes only). If an ''O'' designation already exists, then that part-category shall continue to require an ''O'' designation, excluding the HTS numbers for integrated products. The HTS coverage for non-WTO countries shall remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

ATTACHMENT

I. Part or Partial Categories Integrated January 1, 1998

Babies Garments and Clothing Accessories, Except Diapers

Category	1998 HTS
239	6111201000
239	6111202000
239	6111203000
239	6111204000
239	6111205000
239	6111206010
239	6111206020
239	6111206030
239	6111206040
239	6111301000
239	6111302000
239	6111303000
239	6111304000
239	6111305010
239	6111305015
239	6111305020
239	6111305030
239	6111305040
239	6111901000
239	6111902000
239	6111903000
239	6111904000
239	6111905010
239	6111905020
239	6111905030
239	6111905040
239	6209201000
239	6209202000
239	6209203000
239	6209205030
239	6209205035
239	6209205045
239	6209205050
239	6209301000
239	6209302000
239	6209303010
239	6209303020
239	6209303030
239	6209303040
239	6209901000
239	6209902000
239	6209903010
239	6209903015
239	6209903020
239	6209903030
239	6209903040
239	6505901515
239	6505902030
239	6505905030
239	6505906030
239	6505907030
239	6505908045

Footwear

Category	1998 HTS
359	6406991550
459	6405206030
459	6405206060
459	6405206090
459	6406991505

Footwear—Continued

Category	1998 HTS
459	6406991560
659	6406991510
659	6406991540
859	6406991570

Certain Wadding and Footwear

Category	1998 HTS
369	5601101000
369	5601210090
369	5701901020
369	5701902020
369	5702109020
369	5702392010
369	5702491020
369	5702491080
369	5702591000
369	5702991010
369	5702991090
369	5705002020
369	6406107700
469	5601290020
469	5603941010
469	6406109020
669	5601102000
669	5601220090
669	5607493000
669	5607504000
669	6406109040

Other Silk Blend and Non-cotton Vegetable Fiber Apparel

Category	1998 HTS
859	6103292082
859	6103498060
859	6104292087
859	6104292090
859	6104698020
859	6110909064
859	6110909066
859	6112202030
859	6112390090
859	6112490090
859	6114909020
859	6114909030
859	6114909040
859	6114909070
859	6117809570
859	6117909095
859	6203293080
859	6203498010
859	6204294090
859	6204294092
859	6204696070
859	6204699050
859	6211118040
859	6211128030
859	6211204860
859	6211207830
859	6211399010
859	6211399020
859	6211399060
859	6211399090
859	6211499010
859	6211499020
859	6211499060
859	6211499070
859	6211499090

Other Silk Blend and Non-cotton Vegetable Fiber Apparel—Continued

Category	1998 HTS
859	6213102000
859	6213902000
859	6217109550
859	6217909095
859	6505901560
859	6505902590
859	6505909095
859	6505909085

II. Whole Categories Integrated January 1, 1998

Category	1998 HTS
229	Special Purpose Fabric
330	Handkerchiefs
349	Brassieres and Other Body Supporting Garments
353	Men's and Boys' Down-filled Coats
354	Women's and Girls' Down-filled Coats
432	Hosiery
439	Babies Garments and Clothing Accessories
465	Floor Coverings
630	Handkerchiefs
632	Hosiery
653	Men's and Boys' Down-filled Coats
654	Women's and Girls' Down-filled Coats
665	Floor Coverings
832	Hosiery
839	Babies Garments and Clothing Accessories
899	Other Silk and Vegetable Blend Manufactures

[FR Doc. 98–26802 Filed 10–6–98; 8:45 am]
BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense (Personnel and Readiness) announces public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by December 7, 1998.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness) (Force Management Policy), Defense Commissary Agency, Plans and Policy Directorate, Analysis and Evaluation Division, ATTN: Mr. Herman Weaver, 1300 E. Avenue, Fort Lee, Virginia 23801–6300.

FOR FURTHER INFORMATION CONTACT: To request information on this proposed information collection or to obtain a copy of the proposed and associated collection instruments, please write to the above address, or call (804) 734–8322.

Title and OMB Control Number: Commissary Evaluation and Utility Surveys-Generic Clearance,'' OMB Control Number 0704—[To be determined.]

Needs and Uses: DeCA will conduct a variety of surveys to include, but not necessarily limited to customer satisfaction, transaction based comment cards, transaction based telephone interviews, commissary sizing, and patron migration. The information collected will provide customer perceptions, demographics, and will identify agency operations that need quality improvement, provide early detection of process or system problems, and focus attention on areas where customer service and functional training, new construction/renovations, and changes in existing operations that will improve service delivery.

Affected Public: Individuals or households.

Annual Burden Hours: 4,167.

Number of Respondents: 50,000.

Responses per Respondent: 1.

Average Burden per Response: 5.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

(All respondents are authorized patrons by DoD regulations, unless otherwise described)

Commissary Sizing Survey

Surveys will support commissary renovation and new construction based on perceptions (aisles, bakery, fish, deli, etc.) of patrons and will include demographics and sale projections.

Possible Facility Sites

Patrons will input their answers to questions concerning where they would like new facility located, what configuration (mall, off-post, mini-marts, parking. etc.), and give their opinions on concerns that will affect their shopping experience. Will include demographics, populations maps, and distribution centers.

Patron Migration Survey

These surveys will determine from our patrons which commissary they will migrate to and how sales will affect renovation of receiving facility. Surveys will assess other factors that may determine a need for mini-marts or other small grocery outlet.

BRAC and/or Closure Survey

These surveys will also be given to local townships affected by base closures and its economic impact on surrounding communities, local governments, small and large businesses. The information collected will allow decisions to be made about keeping commissaries open, although, the base has closed or some alternative store for those patrons affected.

Commissary Operational Surveys

These surveys will supply information on processes like TQM, Process Action Team objectives, internal coordination, and vender satisfaction. Also, how DeCA personnel and patron services such as new computer systems for checking groceries, how long patrons wait in line, store throughput and queuing, transaction based comment cards, and any new customer service DeCA may want to implement that will need patron support. The vehicle for any survey whether it is by interview or mailing will not burden the patron over fifteen minutes. The Customer Service Evaluation System (CSES) that uses the Commissary Customer Service Survey may be included under this heading.

Market Basket Surveys

These surveys support the differences between commissary and private sector supermarket prices and the average savings to the commissary patron. Also,

we can determine price differences between OCONUS and CONUS commissaries. The patron will give their perceptions on their savings in the commissary versus local supermarkets.

Awareness Surveys

These surveys allow the customer and DeCA to communicate with each other on issues that will make their shopping experience user-friendly. Telephones in aisles for price checks and location of products, TV videos in front of store for specials, market products, and educate patrons on their benefit are just a few areas to keep the patron informed. Customer service is making the patron aware of new and innovative alternatives to issues that will communicate their desires.

Dated: September 30, 1998.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 98–26814 Filed 10–6–98; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; Environmental Technologies Group, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Environmental Technologies Group, Inc., a revocable, nonassignable, exclusive license to practice in the United States, the Government-owned invention described in U.S. Patent No. 5,595,635 entitled ''Apparatus for Measuring Lead Content in Water.''

DATES: Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404)

Dated: September 28, 1998.

Ralph W. Corey,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–26877 Filed 10–6–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent to Grant Exclusive Patent License; Float, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to Float, Inc., a revocable, nonassignable, exclusive license in the United States, to practice the Government-owned invention described in U.S. Patent Application No. 08/985,430 entitled ''Biorepellant Matrix Coating.''

DATES: Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: September 28, 1998.

Ralph W. Corey,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–26879 Filed 10–6–98; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Exclusive Patent License; NEOS Technologies Group, Inc.

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant to NEOS Technologies Group, Inc., a revocable, nonassignable, exclusive license to practice in the United States, the Government-owned inventions described in U.S. Patent Application Serial No. 08/926,854 entitled ''COMPUTER CONTROLLED THREE-DIMENSIONAL VOLUMETRIC DISPLAY;'' Patent Application Serial No. 08/726,305 entitled ''COMPUTER PROGRAM FOR A THREE-DIMENSIONAL VOLUMETRIC DISPLAY;'' Patent Application Serial No. 08/687,091 entitled ''LASER BASED 3D VOLUMETRIC DISPLAY SYSTEM.''

DATES: Anyone wishing to object to the grant of this license has 60 days from the date of this notice to file written objections along with supporting evidence, if any.

ADDRESSES: Written objections are to be filed with the Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of Naval Research, ONR 00CC, Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

(Authority: 35 U.S.C. 207, 37 CFR Part 404.)

Dated: September 28, 1998.

Ralph W. Corey,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 98–26878 Filed 10–6–98; 8:45 am]

BILLING CODE 3810–FF–P

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

[Recommendation 98–2]

Safety Management at the Pantex Plant

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Notice, recommendation.

SUMMARY: The Defense Nuclear Facilities Safety Board has made a recommendation to the Secretary of Energy pursuant to 42 U.S.C. 2286a(a)(5) concerning safety management at the Pantex Plant. The Board believes that opportunities exist to strengthen and simplify the process by which DOE designs and develops activities at the Pantex Plant and independently evaluates the safety of those operations. The Board believes that DOE should take action to improve these processes. However, the recommendation contains information which is classified and otherwise restricted. Therefore, only the letter forwarding the recommendation (which is unclassified when separated from the attachment) is being published.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Pursateri or Andrew L. Thibadeau at the address above or telephone (202) 208–6400.

Dated: October 1, 1998.

John T. Conway,

Chairman.

Appendix—Transmittal Letter to the Secretary of Energy

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004, (202) 208–6400

SECRET—RESTRICTED DATA

September 30, 1998

The Honorable Bill Richardson,
Secretary of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–1000

Dear Secretary Richardson: On September 30, 1998, the Defense Nuclear Facilities Safety Board (Board), in accordance with 42 U.S.C. § 2286a(a)(5), unanimously approved Recommendation 98–2, which is enclosed for your consideration. Recommendation 98–2, deals with Safety Management at the Pantex Plant.

42 U.S.C. § 2286d(a) requires the Board, after receipt by you, to promptly make this recommendation available to the public in the Department of Energy's (DOE) regional public reading rooms. However, the recommendation contains information which is classified or otherwise restricted. Please arrange to have this letter forwarding the recommendation (which is unclassified when separated from the attachment) promptly placed on file in your regional public reading rooms.

The following is an unclassified summary of the Board's recommendation: The Board believes that opportunities exist to strengthen and simplify the process by which DOE designs and develops activities at the Pantex Plant and independently evaluates the safety of those operations. The Board believes that DOE should take action to improve these processes.

Sincerely,

John T. Conway,

Chairman.

c: Mr. Mark B. Whitaker, Jr.

When separated from enclosures, this document is unclassified. Document transmitted herewith contains Secret/Restricted Data.

[FR Doc. 98–26867 Filed 10–6–98; 8:45 am]

BILLING CODE 3670–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Submission for OMB Review; Comment Request

AGENCY: National Assessment Governing Board.

AGENCY: Submission for OMB review; comment request.

SUMMARY: The Executive Director, National Assessment Governing Board invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before November 5, 1998.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Ray Fields, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233.

FOR FURTHER INFORMATION CONTACT: Ray Fields at 202–357–0395 by telephone, Ray__Fields@ED.GOV by electronic mail, or Ray Fields, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC 20002–4233 by regular mail.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Executive Director, National Assessment Governing Board, publishes this notice containing proposed information collection requests prior to submission of this request to OMB. The proposed information collection contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Ray Fields at the address specified above.

Type of Review: New.

Title: Voluntary National Tests in Reading and Mathematics—Pilot Tests.

Frequency: Annual.

Affected Public: State, local, or Tribal Government SEAs or LEAs; Not-for-profit Institutions.

Reporting and Record-Keeping Hour Burden:

Responses: 50,244.

Burden hours: 99,444.

Abstract: Public Law 105–78 assigned to the National Assessment Governing Board exclusive authority over all policies, guidelines, and direction for the development of voluntary national tests in reading in grade 4 and in mathematics in grade 8 pursuant to contract RJ97153001, with the American Institutes for Research. While permitting test development, Public Law 105–78 prohibits during FY 1998 the pilot testing, field testing, administration, or dissemination of any voluntary national tests, except the National Assessment of Educational Progress or the Third International Mathematics and Science Study.

If pilot testing is not prohibited in FY 1999, pilot tests of test questions developed for the voluntary national tests will be conducted in March 1999. The purpose of the pilot test is to ensure that the test items are of high quality and free from bias. In addition, a limited number of background questions will be included, in order to conduct certain statistical tests related to the test questions.

Dated: October 2, 1998.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 98–26916 Filed 10–6–98; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement for the Proposed Minnesota Agri-Power Plant and Associated Facilities

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), and Minnesota Statutes, Ch 116D, the U.S. Department of Energy (DOE) and the Minnesota Environmental Quality Board [MEQB, a Minnesota State agency] announce their intent to prepare a joint Environmental Impact Statement (EIS) regarding a proposal by the Minnesota Valley Alfalfa Producers (MnVAP) to construct and operate a 75–103 megawatt biomass

fueled gasifier and electric generating facility, known as the Minnesota Agri-Power Plant (MAPP), and associated transmission lines and alfalfa processing facilities. The plant would be fueled with alfalfa stems grown and processed primarily in Minnesota and South Dakota. Two sites (preferred and alternative) for the power plant have been proposed by MnVAP near Granite Falls, Minnesota. Depending upon the site selected for the power plant, 115 kilovolt (kV) transmission lines would run between two and six miles to an existing substation owned by Northern States Power Company in Granite Falls. Alfalfa processing facilities for separating the alfalfa leaves from stems would be located throughout the growing region when the locations of growers are established.

DOE proposes to partially fund the MAPP project, through a cooperative agreement with MnVAP for a renewable energy technology commercialization project under various provisions of the Energy Policy Act of 1992 (Pub. L. 102–486). Under the applicable Minnesota Statutes and Department of Energy NEPA regulations (10 CFR Part 1021), the proposed action requires an EIS. In the spirit of the regulations of the Council on Environmental Quality (CEQ) implementing NEPA (40 CFR 1501.5(b)) and Minnesota Rules Part 4410.3900, DOE and MEQB will be ''joint lead agencies,'' to satisfy the requirements of NEPA and the Minnesota Environmental Policy Act (MEPA). The document will be titled *Minnesota Agri-Power Plant Project Environmental Impact Statement,* DOE–EIS/0300/MAPP–P–1.

In this notice, DOE and MEQB announce their intentions to prepare an EIS and hold public scoping meetings for the proposed project. The scoping process will include notification of the public and Federal, State, Tribal, and local agencies of the proposed action, and identification by the public and agencies of issues and reasonable alternatives to be considered in the EIS.

DATES: The public scoping period begins with the publication of this Notice of Intent and will continue until December 9, 1998. The purpose of this Notice is to encourage public involvement in the EIS process and to solicit public comments on the proposed scope and content of the EIS. DOE and MEQB will hold public scoping meetings at the following locations and times:

Location	Address	Times
St Paul, Minnesota	Minnesota History Center, 345 West Kellogg Boulevard.	7–9 PM, Monday, November 16, 1998.
Granite Falls, Minnesota	American Legion 60 6th Street	7–9 PM, Tuesday, November 17, 1998.
Ada, Minnesota	Ada Elementary School Gym, 209 6th Street West.	7–9 PM, Wednesday, November 18, 1998.
Redfield, South Dakota	Leo's Café, 602 N. Main	7–9 PM, Thursday, November 19, 1998.

Both oral and written comments will be accepted at the meetings. Individuals wishing to schedule a specific time to speak should call Ms. Deborah Turner at the number listed below or the 24-hour toll-free information line, 1–800–267–9330.

In addition to the public meetings, comments can be submitted by calling 1–800–267–9330, or by sending them to Ms. Deborah Turner at the address listed below. All comments on the scope of the EIS will be shared with the MEQB and should be submitted by December 9, 1998, to ensure consideration. Any scoping comments submitted after December 9, 1998, will be considered to the extent practicable.

ADDRESSES: Please direct comments or suggestions on the scope of the EIS, requests to speak at public scoping meetings, requests for special arrangements to enable participation at scoping meetings (e.g., interpreter for the hearing impaired), and questions concerning the project to: Ms. Deborah Turner, Document Manager, U.S. Department of Energy, Golden Field Office 1617 Cole Blvd., Golden, CO 80401, Phone: 303–275–4746 or 1–800–267–9330, Fax: 303–275–4788, E-mail: deborah__turner@nrel.gov.

FOR FURTHER INFORMATION CONTACT: To request information about this EIS, or to be placed on the EIS document distribution list, please call the 24-hour toll-free information line at 1–800–267–9330. Please provide your name, complete address, and phone number, if you are requesting to be placed on the document distribution list so that documents can be mailed as expeditiously as possible.

For general information on the DOE's NEPA process, please contact: Ms. Carol Borgstrom, Director, Office of NEPA Policy and Assistance, EH–42, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0119, Phone: 202–586–4600 or leave a message at 1–800–472–2756.

For information regarding the MEQB process please contact: Mr. John Wachtler, Energy Facility Siting Project Director, Minnesota Environmental Quality Board, 300 Centennial Building, St. Paul, Minnesota 55155, Phone: 651–296–4095, Fax: 651–292–3698, E-mail: john.wachtler@mnplan.state.mn.us.

For information regarding MnVAP, please contact: Mr. David L. Wilbur, General Manager, Minnesota Valley Alfalfa Producers, 681 Prentice Street, Granite Falls, Minnesota 56241, Phone: 320–564–2400, Fax: 320–564–2451.

SUPPLEMENTARY INFORMATION: MnVAP is a farmer-owned cooperative, incorporated in 1994 to increase the value of farm products grown in and near the State of Minnesota. In response to a joint Department of Energy and U.S. Department of Agriculture, Solicitation for Financial Assistance for Biomass Power for Rural Development (DE–PS36–95GO10052), MnVAP submitted a proposal to establish Minnesota Agri-Power as a limited liability corporation, with MnVAP as the majority stock holder, for the purposes of siting, constructing, and operating a 75–103 megawatt power plant fueled with gasified alfalfa stems. DOE selected the MnVAP project as one of several promising efforts to meet the goals of the Energy Policy Act of 1992 to develop and ultimately commercialize biomass energy systems for the purposes of positively affecting global climate change and the revitalization of rural America. (The U.S. Department of Agriculture has declined to participate as a cooperating agency in preparing this EIS). Under the terms of the solicitation, MnVAP and DOE would share the financial burden of taking a biomass gasification technology from the demonstration phase to full commercial production.

The proposed project would also serve in part to meet the Minnesota ''Biomass Power Mandate,'' Minnesota State Law, 216B.2424, which requires that:

> A public utility * * * that operates a nuclear-powered electric generating plant within this state must construct and operate, purchase, or contract to construct and

operate (1) by December 31, 1998, 50 megawatts of electric energy installed capacity generated by farm-grown closed-loop biomass scheduled to be operational by December 31, 2001; and (2) by December 31, 1998, an additional 75 megawatts of installed capacity so generated scheduled to be operational by December 31, 2002.

Northern States Power, the sole producer of nuclear power in Minnesota, has entered into a power purchase agreement with MnVAP to buy power if the proposed plant becomes operational under the governing provisions of the Minnesota Statutes.

MEQB is responsible under the MEPA (Minnesota Statutes, Ch 116D and Minnesota Rules, Part 4410) and the Minnesota Power Plant Siting Act (Minnesota Statutes, Ch 116.51 to 116.69, and Minnesota Rules, Part 4400) for reviewing the proposed action in response to an Application for Site Designation and Certificate of Site Compatibility submitted by MnVAP on August 12, 1998, and accepted by MEQB on September 30, 1998. Copies of the Application are available to the public by contacting DOE or MEQB.

Proposed Action: The MAPP project would use an ''integrated gasification combined-cycle'' or IGCC system. The gasifier would be sized to process approximately 1,100 tons of alfalfa stems per day which is approximately 750 million British thermal units per hour. In the gasifier, the alfalfa stems would be rapidly heated to gasification temperatures at approximately 1,650 degrees Fahrenheit while in contact with air and steam at a pressure of 300 pounds per square inch gage. The gas would then be cooled to 1,020 degrees Fahrenheit and cleaned to meet air quality standards and requirements for the combustion turbine. Since the biomass gasification technology proposed for MAPP has yet to be successfully demonstrated at full commercial scale, DOE is proposing to fund $44 million (up to 30%) of the cost of construction of the plant and associated facilities (approximately $140 to $200 million) as part of the Department's mission to support biomass technology commercialization.

The combustion turbine would be designed to operate efficiently on the low energy biomass fuel produced by the gasifier unit with a gross electric power output of 66 megawatts. The alfalfa gas would be supplemented with natural gas as needed. The usable heat remaining in hot combustion gases leaving the combustion turbine would be recovered in the form of super-heated, high pressure steam. The steam would be used to produce an additional 37 megawatts of gross electrical output in a steam turbine generator. The gross output of the power plant could be as high as 103 megawatts.

Construction of the proposed facility would involve extension of existing water, gas and electric utilities to either of two alternative sites. Depending on the site, the proposed facility would either utilize existing city sanitary capacity or an onsite septic system. Facility cooling may either use conventional mechanical draft cooling towers or air cooling systems. Make-up water for cooling would be obtained from the Minnesota River. Blowdown discharges would go into the Minnesota River after meeting required discharge permit levels. Construction of the facility would require approximately two years and involve 100–300 workers onsite, while operations would require approximately 25 full-time employees.

In addition, the proposed action will require the siting, construction, and operation of four or five alfalfa processing facilities. Construction of these alfalfa processing facilities is likely even if the MAPP is not built. These alfalfa processing facilities would be strategically located in MnVAP's alfalfa production area, which encompasses western Minnesota and eastern South Dakota, in order to minimize total transportation, storage, and handling costs. The exact location of the new processing facilities is not known at this time and will not be decided on the basis of this EIS. The siting and permitting of such facilities would be the subject of environmental review consistent with State requirements when their locations are determined. However, for the purpose of evaluating transportation impacts to and from the proposed MAPP, the operation of processing facilities at regional, non-site-specific locations will be evaluated in this EIS.

Alternative Sites: A preferred and an alternative site near Granite Falls, Minnesota for the power plant have been proposed by MnVAP. The preferred site is located in the Granite Falls Industrial Park (Section 35 & 36, Township 116 & Range 39); the alternative site is located approximately 3.5 miles south of Granite Falls (Section 20, Township 115 & Range 39).

No Action Alternative: Under CEQ and DOE NEPA regulations, and MEPA, the No Action alternative must be analyzed to provide a basis for comparison to the proposed action. Under the No Action alternative in this EIS, it will be assumed, for the comparative purposes set forth in Federal and State regulations, that the proposed MAPP would not be constructed. However, even under the No Action alternative, MnVAP's development of alfalfa production and processing capability would continue because such action is not dependent upon a decision to proceed with funding the MAPP project.

Preliminary Identification of EIS Issues: DOE and MEQB have tentatively identified the following issues for analysis in the EIS. This list is neither intended to be all inclusive nor is it a predetermination of potential environmental impacts. The list is presented to facilitate comments on the scope of the EIS. Additions to or deletions from the list may occur as a result of the public scoping process.

- Comparison of alternative sites;
- Potential impacts of air emissions from the power plant and the alfalfa processing facilities;
- Potential impacts resulting from the use of Minnesota River or ground water;
- Potential traffic impacts resulting from alfalfa shipments to processing facilities and fuel transport to the power plant;
- Potential socioeconomic impacts, especially from the construction work force, which may exceed local housing capacity;
- Potential socioeconomic impacts from long-term operations;
- Potential impacts on cultural, historical and archaeological resources;
- Potential disproportionately high and adverse impacts on minority or low income populations;
- Potential impacts from ash application onto agricultural fields or disposal in landfills;
- Potential impacts on local terrestrial and aquatic flora and fauna, especially endangered species, from facility construction and operations;
- Potential impacts resulting from modification of existing infrastructure;
- Potential noise and visual impacts on neighbors of the proposed MAPP, transmission lines, and alfalfa processing plants;
- Potential agricultural impacts, such as erosion and fertilizer demand, resulting from introduction of alfalfa into existing crop rotations.

Scoping Meetings: DOE and MEQB personnel will be available at the scoping meetings to explain the proposal to the public and answer questions. DOE and MEQB will designate a facilitator for the scoping meetings. At the opening of each meeting, the facilitator will establish the order of speakers and will announce any additional procedures necessary for conducting the meetings. To ensure that all persons wishing to make a presentation are given the opportunity, each speaker may be limited to 5-

minutes, except for public officials and representatives of groups, who will be allotted ten minutes each. DOE encourages those providing oral comments to also submit them in writing. Comment cards will also be available for those who prefer to submit their comments in written form. Speakers may be asked clarifying questions, but the scoping meetings will not be conducted as evidentiary hearings.

Upon close of the scoping period, DOE and MEQB will review all comments and prepare a draft Scope Statement that will identify the proposed scope of the EIS and be issued to all interested parties. The issuance of the draft Scope Statement will be accompanied by a notice of an MEQB/DOE public meeting on the Statement at which the Agencies will finalize the Scope Statement. The final Scope Statement will be distributed to interested parties.

DOE and MEQB will make the final Scope Statement, transcripts of the scoping meetings, the draft EIS and final EIS when issued, and project-related materials available for public review in the following reading rooms:

U.S. Department of Energy, Freedom of Information Public Reading Room, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: (202) 586–3142

U.S. Department of Energy, Golden Field Office, Public Reading Room, 15013 Denver West Parkway, Golden, CO 80401, Telephone: (303) 384–6565

Region 6, Willmar Public Library, 410 Fifth Street, SW., Willmar, MN 56201–3298, Telephone: (320) 235–3162

Minnesota Office of Strategic and Long Range Planning Library, 658 Cedar Street, 300 Centennial Office Building, St. Paul, MN 55155, Telephone: (651) 296–3985

Legislative Reference Library, 645 State Office Building, St. Paul, MN 55155, Telephone: (651) 296–3398

Granite Falls Public Library, 155 Seventh Avenue, Granite Falls, MN 56241, Telephone: (320) 564–3738

NEPA/MEPA Process: The EIS will be prepared in accordance with the requirements of the CEQ's NEPA implementing regulations (40 CFR Parts 1500–1508), DOE's NEPA implementing procedures (10 CFR Part 1021), and Minnesota's MEPA and implementing rules (Minnesota Statutes Ch 116D and Minnesota Rules, Part 4410).

After the completion of the public scoping process, a draft EIS will be prepared. Interested persons, the public, and agencies will be notified when the draft is available through a Notice of Availability published in the **Federal Register**, the *EQB Monitor,* and local media. The draft EIS will be distributed to individuals and agencies that request a copy and will also be placed in the reading rooms listed above. A 45-day comment period on the draft EIS is planned, and public hearings to receive comments will be held approximately four weeks after distribution of the draft EIS. In addition, under the Minnesota Power Plant Siting Act procedures, a Minnesota administrative law judge will hold a formal hearing on the *Application for Site Designation and Certificate of Site Compatibility,* which will include a review of information in the draft EIS. The draft EIS public comment hearings and the formal siting hearing may be combined. The locations and times for comment hearings will be included in the Notice of Availability. The draft EIS is scheduled to be issued during spring 1999.

The final EIS, which will consider the public comments received on the draft EIS, is scheduled to be published during summer 1999. DOE and MEQB will coordinate their decision processes, but each agency will document its decision according to its specific governing statutes. No sooner than 30 days after the U.S. Environmental Protection Agency's Notice of Availability of the final EIS is published in the **Federal Register**, DOE will issue its Record of Decision and publish it in the **Federal Register**. Minnesota State Statutes require that the MEQB issue a decision as to the adequacy of the EIS and if it is deemed adequate, issue a Site Designation and Certificate of Site Compatibility. MEQB will issue its decisions in the *EQB Monitor*. It is currently planned to issue simultaneous DOE/MEQB decision documents during summer/fall 1999.

Signed in St. Paul, Minnesota, this 30th day of September 1998.

Rod Sando,

Chairman, MEQB, State of Minnesota.

Signed in Washington, DC, this 1st day of October 1998.

Peter N. Brush,

Acting Assistant Secretary, Environment, Safety and Health, U.S. Department of Energy.

[FR Doc. 98–26874 Filed 10–6–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Department of Energy, Los Alamos National Laboratory

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos National Laboratory.

DATES: Wednesday, October 28, 1998: 6:00 p.m.–9:00 p.m.; 6:30 p.m. to 7:00 p.m. (public comment session)

ADDRESSES: Cochiti Pueblo Tribal Offices, Community Room, Cochiti Pueblo, New Mexico.

FOR FURTHER INFORMATION CONTACT: Ms. Ann DuBois, Northern New Mexico Citizens' Advisory Board, Los Alamos National Laboratory, 528 35th Street, Los Alamos, New Mexico 87544, (505) 665–5048.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

6:00 p.m.—Call to Order by DOE
6:00 p.m.—Welcome by Chair, Roll Call, Approval of Agenda and Minutes
6:30 p.m.—Public Comments
7:00 p.m.—Break
7:15 p.m.—Board Business
9:00 p.m.—Adjourn

Public Participation: The meeting is open to the public. The public may file written statements with the Committee, either before or after the meeting. A sign-up sheet will also be available at the door of the meeting room to indicate a request to address the Board. Individuals who wish to make oral presentations, other than during the public comment period, should contact Ms. Ann DuBois at (505) 665–5048 five (5) business days prior to the meeting to request that the Board consider the item for inclusion at this or a future meeting. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal

Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Ms. M.J. Byrne, Deputy Designated Federal Officer, Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87185–5400.

Issued at Washington, DC on September 30, 1998.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 98–26875 Filed 10–6–98; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of the Secretary

Federal Power Act; Delegation of Authority to the Federal Energy Regulatory Commission

AGENCY: Department of Energy.

ACTION: Notice of delegation and assignment.

SUMMARY: Notice is hereby given of the delegation and assignment by the Secretary of Energy to the Federal Energy Regulatory Commission of the authority to carry out functions vested in the Secretary under section 202(a) of the Federal Power Act.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Bonnie A. Suchman, Department of Energy, Office of the General Counsel. Telephone: (202) 586–3359.

SUPPLEMENTARY INFORMATION: The Secretary of Energy (Secretary) has authority under Section 202(a) of the Federal Power Act ''to divide the country into regional districts for the voluntary interconnection and coordination of facilities for the generation, transmission, and sale of electric energy * * *'' 16 U.S.C. § 824a. This function was originally vested in the Federal Power Commission. Subsection 301(b) of the Department of Energy Organization Act (the ''DOE Act'') (Pub. L. 95–91) transferred to, and vested in, the Secretary all the functions of the Federal Power Commission not specifically vested by the DOE Act in the Federal Energy Regulatory Commission (Commission). 42 U.S.C. § 7151(b). Sections 401–407, 503, and 504 of the DOE Act set forth the jurisdiction and authority of the Commission, an independent body within the Department of Energy (DOE). 42 U.S.C. §§ 7171–7177; 7193; 7194. The Federal Power Commission's functions with respect to dividing the country into regional districts were not specifically vested in the Commission.

Section 642 of the DOE Act permits the Secretary to delegate any of the Secretary's functions to any officer or employee of the Department the Secretary may designate, including the Commission. Moreover, section 402(e) provides that the Commission shall have jurisdiction over any matter the Secretary assigns to the Commission after public notice. Pursuant to these provisions of the DOE Act, public notice is hereby given that the Secretary delegates and assigns to the Commission the authority to carry out certain functions vested in the Secretary. The assignment is in the form of a delegation.

Section 202(a) of the Federal Power Act provides DOE with sufficient authority to establish boundaries for Independent System Operators (ISOs) or other appropriate transmission entities. DOE has not exercised this authority. However, FERC devotes substantial resources to ISO development and regulation. FERC is also increasingly faced with reliability-related issues. Providing FERC with the authority to establish boundaries for ISOs or other appropriate transmission entities could aid in the orderly formation of properly-sized transmission institutions and in addressing reliability-related issues, thereby increasing the reliability of the transmission system. The Department has therefore concluded that the Commission is the most appropriate agency to exercise authority under Section 202(a). Accordingly, the Secretary is delegating to the Commission his authority under Section 202(a) of the Federal Power Act.

Issued in Washington, D.C. on October 1, 1998.

Bill Richardson,

Secretary of Energy.

Delegation Order No. 0204–166—To the Federal Energy Regulatory Commission

Pursuant to the authority vested in me as Secretary of Energy (''Secretary'') and by sections 642 and 402(e) of the Department of Energy Organization Act (Pub.L. 95–91) (the ''DOE Act''), there is hereby delegated and assigned to the Federal energy Regulatory Commission (Commission) the authority to carry out such functions as are vested in the Secretary under section 202(a) of the Federal Power Act. The authority delegated to the Commission may be further delegated within the Commission, in whole or in part, as may be appropriate.

Nothing in this Order shall preclude the Secretary from exercising or further delegating any of the authority hereby delegated, whenever, in the Secretary's judgment, the exercise or further delegation of such authority is necessary or appropriate to administer the functions vested in the Secretary.

All actions pursuant to any authority delegated prior to this Order or pursuant to any authority delegated by this Order taken prior to and in effect on the date of this Order are hereby confirmed and ratified, and shall remain in full force and effect as if taken under this Order, unless or until rescinded, amended, or superseded.

This Order is effective October 1, 1998.

Bill Richardson,

Secretary of Energy.

[FR Doc. 98–26873 Filed 10–6–98; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–798–000]

Florida Gas Transmission Company; Notice of Request Under Blanket Authorization

October 1, 1998.

Take notice that on September 24, 1998, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP98–798–000 a request pursuant to Sections 157.205, 157.212 and 157.216 of the Commission's Regulations (18 CFR 157.205, 157.212, and 157.216) under the Natural Gas Act (NGA) for authorization to replace an existing tap, regulator station, meter station and connecting pipeline, all located in Leon and Wakulla Counties, Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000, pursuant to Section 7 of the NGA, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to abandon an existing regulator station and connecting pipe in Leon County, Florida, installed to deliver gas to the City of Tallahassee (Tallahassee) for its Purdom Plant, and to construct a new delivery tap on its 36-inch mainline, a new regulatory station and less than 50 feet of 12-inch connecting pipeline in Leon County. FGT also proposes to abandon an existing meter station and approximately 300 feet of 12-inch connecting pipeline in Wakulla County, Florida, and to construct a new meter station and connecting pipeline in

Wakulla County. FGT states that the proposed abandonment and replacement of facilities is necessitated by the expansion of the Purdom Plant in Wakulla County, which requires the relocation of the Purdom Station.

It is asserted that FGT will deliver up to 2,400 MMBtu equivalent of natural gas per hour to Tallahassee. It is estimated that the construction cost of the proposed facilities will be approximately $1,600,000, inclusive of tax gross-up. It is asserted that FGT will be reimbursed by Tallahassee for all costs and expenses incurred in connection with the construction. It is explained that the proposed deliveries will come from existing volumes within existing transportation contracts and will not impact FGT's existing peak day or annual deliveries and will not disadvantage FTG's other existing customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 98–26832 Filed 10–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–803–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

October 1, 1998.

Take notice that on September 25, 1998, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations thereunder, for an order permitting and approving the abandonment of storage service under Rate Schedule LG–A provided to PG Energy, Inc. and Philadelphia Gas Works, all as more fully set forth in the application on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said application should on or before October 22, 1998, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 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 Transco to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 98–26831 Filed 10–6–98; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commisssion

[Docket No. ER98–1919–001, et al.]

California Independent System Operator Corp., et al.; Electric Rate and Corporate Regulation Filings

September 29, 1998.

Take notice that the following filings have been made with the Commission:

1. California Independent System Operator Corporation

[Docket Nos. ER98–1919–001]

Take notice that on September 23, 1998, the California Independent System Operator Corporation (ISO), tendered for filing the revised and executed Scheduling Coordinator Agreement between the ISO and the City of Anaheim (Anaheim) for acceptance by the Commission. The ISO states that this filing revised the Scheduling Coordinator Agreement to comply with the Commission's order issued December 17, 1997 in *Pacific Gas and Electric Co.,* 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced dockets.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

2. TransAlta Energy Marketing Corp. and TransAlta Energy Marketing (U.S. Inc.)

[Docket No. EC98–65–000]

On September 24, 1998, pursuant to Section 203 of the Federal Power Act, TransAlta Energy Marketing Corp. (TEMC) and TransAlta Energy Marketing (U.S.) Inc. (TEMUS) filed a joint application for approval of the transfer of 14 power sales agreements from TEMC to TEMUS. TEMC and TEMUS, subsidiaries of TransAlta Energy Corporation, are both jurisdictional power marketers with market-based rate authority. The transfer of the agreements is part of a corporate reorganization.

Comment date: October 29, 1998, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket Nos. ER98–992–000 ER98–1912–001]

Take notice that on September 23, 1998, the California Independent System Operator Corporation (ISO), tendered for filing the revised and executed Participating Generator Agreement between the ISO and the City of Anaheim (Anaheim) for acceptance by the Commission. The ISO states that this filing revised the Participating Generator Agreement to comply with the Commission's order issued December 17, 1997 in *Pacific Gas and Electric Co.,* 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced dockets.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER98–1914–001]

Take notice that on September 24, 1998, the California Independent System Operator Corporation (ISO), tendered for filing the revised and executed Meter Service Agreement for ISO Metered Entities between the City of Anaheim and the ISO for acceptance by the Commission. The ISO states that this filing revises the Meter Service Agreement for ISO Metered Entities, as directed by the Commission, to comply with the Commission's order issued December 17, 1997 in *Pacific Gas and Electric Co.*, 81 FERC ¶ 61,320 (1997).

The ISO states that this filing has been served on all parties listed on the official service list in the above-referenced docket.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

5. Duquesne Light Company

[Docket No. ER98–4159–000]

Take notice that on September 24, 1998, Duquesne Light Company (Duquesne), tendered for filing supplements to its September 23, 1998, filing by submitting two umbrella service agreements (Service Agreement) with DTE Energy Trading, Inc., and Rainbow Energy Marketing Corporation under Duquesne's pending tariff governing negotiated market-based capacity and energy sales.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

6. Florida Power & Light Company CoEnergy Trading Company, and Denver City Energy Associates, L.P.

[Docket Nos. ER98–4626–000, ER96–1040–012, ER97–4084–000]

Take notice that the following informational filings have been made with the Commission and are available for public inspection and copying in the Commission's Public Reference Room.

On September 21, 1998, Florida Power & Light Company filed certain information as required by the Commission'S October 29, 1997 order in Docket No. ER97–3359–000.

On September 24, 1998, CoEnergy Trading Company filed certain information as required by the Commission's Director, Division of Applications, March 14, 1996 order in Docket No. ER96–1040–000.

On September 28, 1998, Denver City Energy Associates, L.P. filed certain information as required by the Commission'S October 17, 1997 order in Docket No. ER97–4084–000.

7. Southern California Edison Company

[Docket No. ER98–4632–000]

Take notice that on September 24, 1998, Southern California Edison Company (Edison), tendered for filing the Loss Accounting Procedures for the Los Angeles-Banning Firm Transmission Service Agreement Among the Department of Water and Power of the City of Los Angeles (Los Angeles), California, the City of Banning (Banning), and Edison (Loss Accounting Procedures), and the Edison-Banning Loss Accounting Agreement between Edison and Banning (Loss Accounting Agreement).

The Loss Accounting Procedures specifies the parties' responsibilities for payment of transmission losses incurred by Banning pursuant to the Los Angeles-Banning Transmission Service Agreement and for transmission losses incurred by Los Angeles associated with its sale of transmission service to Banning using the Exchange Agreement entered into between Edison and Los Angeles on December 18, 1987. The Loss Accounting Agreement states that transmission losses pursuant to the Los Angeles-Banning Transmission Service Agreement will be determined by the ISO in accordance with the ISO Tariff methodology for determining transmission losses for wheeling services.

Edison is requesting that both the Loss Accounting Procedures and Loss Accounting Agreement become effective on April 1, 1998, the date the ISO assumed operational control of Edison's transmission facilities.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

8. Washington Water Power Company

[Docket No. ER98–4633–000]

Take notice that on September 24, 1998, Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission, pursuant to 18 CFR Section 35.13, executed Service Agreements under WWP's FERC Electric Tariff First Revised Volume No. 9, with (1) Seattle City Light, (which replaces unexecuted Service Agreement No. 55 previously filed with the Commission under Docket No. ER97–1252–000, effective December 15, 1996 and with (2) El Paso Energy Marketing Company.

WWP requests waiver of the prior notice requirement and requests that the Service Agreement with El Paso Energy Marketing Company be accepted for filing effective September 1, 1998.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power and Light Company

[Docket No. ER98–4636–000]

Take notice that on September 23, 1998, Wisconsin Power and Light Company (WP&L), tendered for filing a signed Service Agreement under WP&L's Bulk Power Tariff between itself and Northwestern Wisconsin Electric Company.

WP&L respectfully requests a waiver of the Commission's notice requirements, and an effective date of September 16, 1998.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

10. PP&L, Inc.

[Docket No. ER98–4637–000]

Take notice that on September 24, 1998, PP&L, Inc. (PP&L), filed with the Federal Energy Regulatory Commission a Borderline Service Agreement between PP&L and PECO Energy, dated August 24, 1998. The Agreement supplements a borderline service umbrella tariff approved by the Commission in Docket No. ER93–847–000, by establishing the precise point of delivery, metering arrangements and transmission losses associated with a new point of delivery under the umbrella tariff.

PP&L requests an effective date of August 24, 1998, for the Borderline Service Agreement.

PP&L states that a copy of this filing has been provided to PECO Energy and to the Pennsylvania Public Utility Commission.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

11. The Dayton Power and Light Company

[Docket No. ER98–4638–000]

Take notice that on September 24, 1998, The Dayton Power and Light Company (Dayton), tendered for filing a non-firm transmission service agreement establishing with Duke Power, a division of Duke Energy Corporation as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly,

Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served upon with Duke Power, a division of Duke Energy Corporation and the Public Utilities Commission of Ohio.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

12. The Dayton Power and Light Company

[Docket No. ER98–4639–000]

Take notice that on September 24, 1998, The Dayton Power and Light Company (Dayton), tendered for filing Short-Term Firm Transmission service agreements establishing Duke Power, a division of Duke Energy Corporation and Enron Power Marketing, Inc., as customers under the terms of Dayton's Open Access Transmission Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of the this filing were served and Duke Power, a division of Duke Energy Corporation and Enron Power Marketing Inc., and the Public Utilities Commission of Ohio.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

13. Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corp.

[Docket No. ER98–4640–000]

Take notice that on September 24, 1998, Ohio Valley Electric Corporation (including its wholly-owned subsidiary, Indiana-Kentucky Electric Corporation) (OVEC), tendered for filing a Service Agreement for Non-Firm Point-To-Point Transmission Service, dated September 1, 1998 (the Service Agreement) between Tractebel Energy Marketing, Inc. (Tractebel) and OVEC.

OVEC proposes an effective date of September 1, 1998 and requests waiver of the Commission's notice requirement to allow the requested effective date. The Service Agreement provides for non-firm transmission service by OVEC to Tractebel.

In its filing, OVEC states that the rates and charges included in the Service Agreement are the rates and charges set forth in OVEC's Open Access Transmission Tariff.

A copy of this filing was served upon Tractebel.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

14. Wisconsin Public Service Corporation

[Docket No. ER98–4641–000]

Take notice that on September 24, 1998, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed letter agreement which affects the prices for electric service under a prior service agreement with Wisconsin Public Power Inc., under WPSC's market-Based Rate Tariff. The letter agreement also resolves, with two noted exceptions, all other issues associated with WPSC's administration of its Open Access Transmission Tariff in Docket No. EL98–2–000.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

15. Virginia Electric and Power Company

[Docket No. ER98–4642–000]

Take notice that on September 24, 1998, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement between Virginia Electric and Power Company and Enserch Energy Services, Inc., under the FERC Electric Tariff (Second Revised Volume No. 4), which was accepted by order of the Commission dated August 13, 1998 in Docket No. ER98–3771–000. Under the tendered Service Agreement, Virginia Power will provide services to Enserch Energy Services, Inc., under the rates, terms and conditions of the applicable Service Schedules included in the Tariff.

Copies of the filing were served upon Enserch Energy Services, Inc., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

16. Storm Lake Power Partners I, LLC

[Docket No. ER98–4643–000]

Take notice that on September 24, 1998, Storm Lake Power Partners I, LLC (Storm Lake Power Partners), tendered for filing pursuant to Section 205 of the Federal Power Act, an initial rate schedule for sales to MidAmerican Energy Company, and a request for waivers and pre-approvals under the Federal Power Act.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

17. Louisville Gas And Electric Company

[Docket No. ER98–4644–000]

Take notice that on September 24, 1998, Louisville Gas and Electric Company (LG&E), tendered for filing an executed Service Agreement between LG&E and Florida Power & Light Company under LG&E's Rate Schedule GSS.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

18. Central Power and Light Company

[Docket No. ER98–4645–000]

Take notice that on September 24, 1998, Central Power and Light Company (CPL), tendered for filing a letter agreement between CPL and the City of Robstown, Texas (Robstown). The letter agreement permits Robstown to import third-party power to meet a portion of Robstown's load in the months of August and September 1998.

CPL requests an effective date of August 1, 1998, for the letter agreement and, accordingly, seeks waiver of the Commission's notice requirements.

Copies of this filing were served upon Robstown and the Public Utility Commission of Texas.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

19. American Electric Power Service Corporation

[Docket No. ER98–4646–000]

Take notice that on September 24, 1998, the American Electric Power Service Corporation (AEPSC), tendered for filing service agreements under the Wholesale Market Tariff of the AEP Operating Companies (Power Sales Tariff). The Power Sales Tariff was accepted for filing effective October 10, 1997 and has been designated AEP Operating Companies' FERC Electric Tariff Original Volume No. 5.

AEPSC respectfully requests waiver of notice to permit the service agreements to be made effective for service as specified in the submittal letter to the Commission with this filing.

A copy of the filing was served upon the Parties and the State Utility Regulatory Commissions of Indiana, Kentucky, Michigan, Ohio, Tennessee, Virginia and West Virginia.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

20. Idaho Power Company

[Docket No. ER98–4647–000]

Take notice that on September 24, 1998, Idaho Power Company (IPC) tendered for filing with the Federal Energy Regulatory Commission a Service Agreement for Firm Point-to-Point Transmission Service between Idaho Power Company and PG&E

Energy Trading-Power, L.P. under Idaho Power Company FERC Electric Tariff No. 5, Open Access Transmission Tariff.

Idaho Power Company requests an effective date of August 26, 1998.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

21. PJM Interconnection L.L.C.

[Docket No. ER98–4648–000]

Take notice that on September 24, 1998, PJM Interconnection L.L.C. filed amendments to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection L.L.C. to accommodate state required retail access programs.

PJM requests an effective date of January 1, 1999 for the amendments.

Copies of this filing were served on all members of PJM Interconnection L.L.C. and each state electric utility regulatory commission in the PJM Control Area.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

22. East Texas Electric Cooperative, Inc. and Entergy Power Marketing Corp.

[Docket No. ER98–4649–000]

Take notice that on September 24, 1998, East Texas Electric Cooperative, Inc. tendered for filing an unexecuted Power Sales Agreement with Entergy Power Marketing Corp. This initial rate schedule will enable the parties to purchase and sell energy in accordance with the terms of the Power Sales Agreement.

ETEC respectfully requests an effective date of October 1, 1998.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

23. Duquesne Light Company

[Docket No. ER98–4650–000]

Take notice that on September 23, 1998, Duquesne Light Company (Duquesne) tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreements with DTE Energy Trading, Inc. and Rainbow Energy Marketing Corporation, and unexecuted Service Agreements for Service at Market-Based Rates with American Electric Power Service Corporation, Aquila Power Corporation, The Dayton Power and Light Company, Enron Power Marketing, Inc., Koch Energy Trading, Inc., PECO Energy Company—Power Team, Pennsylvania Power & Light Company, and Virginia Electric and Power Company (collectively, Customers).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreements to become effective as of August 24, 1998.

Copies of this filing were served upon the Customers.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

24. TransAlta Energy Marketing (U.S.) Inc.

[Docket No. ER98–4651–000]

Take notice that on September 24, 1998, TransAlta Energy Marketing (U.S.) Inc. filed a Notice of Succession with the Federal Energy Regulatory Commission which hereby adopts, ratifies, and makes its own, in every respect all applicable rate schedules, and supplements thereto, listed below, heretofore filed with the Commission by TransAlta Energy Marketing Corp. effective August 1, 1998.

1. Power Purchase and Sale Agreement dated January 9, 1997 between TransAlta Energy Marketing Corp. and Citizens Power Sales.
2. Power Purchase and Sale Agreement dated June 30, 1997 between TransAlta Energy Marketing Corp. and ConAgra Energy Services, Inc.
3. Power Purchase and Sale Agreement dated October 1, 1997 between TransAlta Energy Marketing Corp. and Engage Energy US, L.P.
4. Power Purchase and Sale Agreement dated March 9, 1998 between TransAlta Energy Marketing Corp. and Enserch Energy Services, Inc.
5. Power Purchase and Sale Agreement dated June 20, 1997 between TransAlta Energy Marketing Corp. and Entergy Power Marketing Corp.
6. Power Purchase and Sale Agreement dated March 27, 1997 between TransAlta Energy Marketing Corp. and KN Marketing Inc.
7. Power Purchase and Sale Agreement dated April 29, 1998 between TransAlta Energy Marketing Corp. and LG&E Energy Marketing Inc.
8. Power Purchase and Sale Agreement dated March 13, 1998 between TransAlta Energy Marketing Corp. and New Energy Ventures, L.L.C.
9. Power Purchase and Sale Agreement dated April 28, 1997 between TransAlta Energy Marketing Corp. and Tractebel Energy Marketing, Inc.
10. Electric Power Service Agreement, Agreement No. E980501PS, dated February 1, 1998 between TransAlta Energy Marketing Corp. and Vitol Gas & Electric L.L.C.
11. Western Systems Power Pool Agreement dated August 12, 1996; Docket No. ER96–2699–000, Supplement No. 57 to Rate Schedule FERC No. 1.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

25. Utility-2000 Energy Corp.

[Docket No. ER98–4673–000]

Take notice that on September 24, 1998, Utility-2000 Energy Corp, tendered for filing request that its sale of resale Power Marketing Certificate under Rate Schedule FERC No. 1, effective December 29, 1994, filed in Docket No. ER95–187–000, be terminated immediately. Utility-2000 Energy Corporation is no longer involved in power marketing.

Comment date: October 14, 1998, in accordance with Standard Paragraph E at the end of this notice.

26. Polk Power Partners, L.P.

[Docket No. QF92–54–007]

On September 16, 1998, Polk Power Partners, L.P. (Applicant), of 1125 US 98 South, Suite 100, Lakeland, Florida 33801, submitted for filing an application for Commission recertification as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the Applicant, the cogeneration facility is located in Polk County, Florida. The Commission previously certified the facility as a qualifying cogeneration facility in 61 FERC ¶ 61,030 (1992), and recertified in 65 FERC ¶ 62,136 (1993), 66 FERC ¶ 61,116 (1994) and 68 FERC ¶ 62,152 (1994). Notices of self-certification and self-recertification were filed on December 23, 1991 and September 7, 1993. According to the Applicant, the instant recertification is requested to reflect the change in ownership, to notify the Commission of the new Lessee of the thermal host facility, to modify the description of the ethanol production process to include alternate feedstocks in addition to grain and starches, and to propose alternate uses of the end product in addition to fuel-grade ethanol as a gasoline supplement.

Comment date: October 21, 1998, in accordance with Standard Paragraph E at the end of this notice.

27. Sabine Cogen, L.P.

[Docket No. QF98–119–000]

On September 18, 1998, Sabine Cogen L.P. (Applicant), of c/o AL Cogen, Inc. c/o Air Liquide America Corporation 2700 Post Oak Boulevard, Suite 2100,

Houston, Texas 77056 submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to Section 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility, which will be located in Orange County, Texas, will consist of two combustion turbine generators, two heat recovery steam generators, and a steam turbine generator. The primary energy source will be natural gas. The Thermal output of the facility will be sold to Bayer Corporation for internal process uses. The maximum net electric power production from the facility is 116.2 MW. Electric power produced by the facility is to be sold to Entergy Gulf States, Inc. Installation of the facility is scheduled to commence in the fourth quarter of 1998.

Comment date: October 22, 1998, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

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,

Secretary.

[FR Doc. 98–26830 Filed 10–6–98; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission

October 1, 1998.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Major License-Existing Dam.

b. *Project No.:* P–2661–012.

c. *Date filed:* September 24, 1998.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Hat Creek Hydroelectric Project.

f. *Location:* On Hat Creek in Shasta County, California.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Terry Morford, Manager, Hydro Generation, Pacific Gas and Electric Company, P.O. Box 770000, N11C, San Francisco, California, (415) 973–4603.

i. *FERC Contact:* David Turner (202) 219–2844.

j. *Comment Date:* 60 days from the filing date in paragraph c.

k. *Description of Project:* The run-of-river project consists of two developments: Hat Creek No. 1 and Hat Creek No. 2. About 6.57 acres of the project occupy lands of the U.S. Forest Service, Shasta National Forest.

Hat Creek No. 1 consists of: (1) a 12-foot-high, 231-foot-long concrete buttress overflow diversion dam impounding a 13-acre reservoir at a water surface elevation of 3,188 feet (referred to as Cassel Pond); (2) a 2,270-foot-long, 9-foot-deep, 30-foot-wide canal with a hydraulic capacity of about 600 cfs; (3) a 14-foot-high, 750-foot-long shotcreted earthfill forebay with an overflow spillway, having a surface area of about 2 acres; (4) a 1,600-foot-long, riveted steel penstock that varies in inside diameter from 12 feet at the intake to 7 feet-six inches at the powerhouse; (5) a 43 foot x 56.5 foot reinforced concrete powerhouse containing a Francis/Vertical shaft turbine with a generating capacity of 10,000 kilowatt (kW).

Hat Creek No. 2 consists of: (1) Crystal Lake, a natural lake with a surface area of 115 acres at a water surface elevation of 2,980 feet; (2) a 29-foot-high, 120-foot-long concrete gravity overflow diversion dam impounding a 89-acre reservoir at a water surface elevation of 2,975 feet (referred to as Baum Lake); (3) a 4,520 foot-long, 7-foot-deep, 18-foot-wide reinforced concrete flume, with a hydraulic capacity of 600 cfs; (4) a 414-foot-long riveted steel penstock with an inside diameter varying from 14 feet at the intake to 7 feet-six inches at the powerhouse; and (5) a 43 foot by 56.5 foot reinforced concrete powerhouse containing a Francis/Vertical shaft turbine with a generating capacity of 10,000 kW.

l. With this notice, we are initiating consultation with the *California State Historic Preservation Officer (SHPO)*, as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36, CFR 800.4.

m. Under Section 4.32 (b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the date the application is filed, and must serve a copy of the request on the applicant.

David P. Boergers,

Secretary.

[FR Doc. 98–26833 Filed 10–6–98; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00250; FRL–6034–4]

Forum on State and Tribal Toxics Action (FOSTTA) Projects; Open Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Four projects of the Forum on State and Tribal Toxics Action (FOSTTA) will hold meetings open to the public at the time and place listed below in this notice. The public is encouraged to attend the proceedings as observers. However, in the interest of time and efficiency, the meeting is structured to provide maximum opportunity for state, tribal, and EPA invited participants to discuss items on the predetermined agenda. At the discretion of the chair of the project, an effort will be made to accommodate participation by observers attending the proceedings.

DATES: The four projects will meet October 26, 1998, from 8 a.m. to 5 p.m. and October 27, 1998, from 8 a.m. to noon. There will be a plenary session on OPPT's FY '99 programs and activities on Monday, October 26, 1998, from 8 a.m. to 9:30 a.m. In addition, the Division Directors will address how FOSTTA can best help OPPT in achieving its goals.

ADDRESSES: The meetings will be held at The Embassy Suites Hotel, 1900 Diagonal Road, Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Darlene Harrod, Designated Federal Official (DFO), Environmental Assistance Division (7408), Office of

Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–6904; e-mail: harrod.darlene@epamail.epa.gov. Any observer wishing to speak should advise the DFO at the telephone number or e-mail address listed above no later than 4 p.m. on October 21, 1998.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states, tribes, EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS), and Office of Enforcement and Compliance Assurance (OECA). FOSTTA currently consists of the Coordinating Committee and four issue-specific projects. The projects are the: (1) Toxics Release Inventory Project; (2) Pollution Prevention Project; (3) Chemical Management Project; and (4) Lead (Pb) Project.

List of Subjects

Environmental protection.

Dated: September 29, 1998.

Susan B. Hazen,

Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 98–26911 Filed 10–6–98; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30461; FRL–6035–3]

Dow AgroSciences; Application to Register a Pesticide Product

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to conditionally register the pesticide product FirstRate involving a change use pattern of the product pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by November 6, 1998.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30461] and the registration number 62719–275 to: Public Information and Records Intregrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Product Manager (PM 25), Registration Division (7505C), 401 M St., SW., Washington, DC 20460. Office location/telephone number and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy, Arlington, VA, 703–305–5697; e-mail: tompkins.james@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: EPA received from Dow AgroSciences LLC, 9330 Zionville Road, Indianapolis, IN 48268–1054, an application to conditionally register the pesticide product FirstRate, (EPA Registration Number 62719–275), to include aerial application use to its presently registered ground use to control broadleaf weeds on soybeans. This product contains the active ingredient cloransulam-methyl *N*(2-carbomethoxy-6-chlorophenyl)-5-ethoxy-7-fluoro(1,2,4)triazolo-[1,5-c]pyrimidine-2-sulfonamide at 84%, which involves a change use pattern of the product pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30461] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in ''ADDRESSES'' at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30461]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: September 30, 1998.

Arnold E. Layne,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 98–26910 Filed 10–6–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–34128; FRL–6016–5]

Pesticide Reregistration Performance Measures and Goals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's progress in meeting its performance measures and goals for pesticide reregistration during 1997. Publication of this notice meets the requirements of the Federal Insecticide, Fungicide, and

Rodenticide Act (FIFRA) section 4(l), as established by the Food Quality Protection Act of 1996 (FQPA). EPA is completing the task of reregistering all pesticides initially registered prior to November 1984, as mandated by the 1988 amendments to FIFRA (FIFRA 88). Reregistration has become integrated with the reassessment of tolerances required under the FQPA. The new law provides a continuation of fees to support reregistration, and contains a number of requirements to ensure that these fees are used properly by the Agency, including annual publication of this account of program performance measures and goals for reregistration, tolerance reassessment, and expedited registration.

ADDRESSES: Written comments may be submitted by mail 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 comments to: Rm. 119, CM2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments must be identified by docket control number (OPP–34128). Information submitted and any comments concerning this notice 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(s) that does not contain CBI must be submitted for inclusion in the public record.

Comments may be submitted electronically by following the instructions under Unit III below. No CBI should be submitted through e-mail.

FOR FURTHER INFORMATION CONTACT: By mail: Wanda Daughtry, Special Review and Reregistration Division (7508W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 3W63, Crystal Station 1, 2800 Crystal Drive, Arlington, VA 22202. Telephone: (703) 308–8171; e-mail: daughtry.wanda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

EPA must establish and publish annually in the **Federal Register** its performance measures and goals for pesticide reregistration, tolerance reassessment, and expedited registration, under section 4(l) of FIFRA as amended by FQPA. Specifically, such measures and goals are to include:

- The status of reregistration;
- The number of products reregistered, canceled, or amended;
- The number and type of data requests or Data Call-In notices (DCIs) under section 3(c)(2)(B) issued to support product reregistration by active ingredient;
- Progress in reducing the number of unreviewed, required reregistration studies;
- The aggregate status of tolerances reassessed; and
- The number of applications for registration submitted under subsection (k)(3), expedited processing and review of similar applications, that were approved or disapproved; plus
- The future schedule for reregistrations; and
- The projected year of completion of the reregistrations under section 4.

FIFRA as amended in 1988 authorizes EPA to conduct a comprehensive pesticide reregistration program--a complete review of the human health and environmental effects of older pesticides originally registered prior to November 1, 1984. Those pesticides that meet today's scientific and regulatory standards may be declared ''eligible'' for reregistration. In order to be so designated, an older pesticide must have a substantially complete data base, and must be found not to cause unreasonable risks to human health or the environment when used in accordance with Agency approved label directions and precautions.

In addition, all pesticides with food uses must meet the new standard of the Food Quality Protection Act. Under FQPA, EPA must make a determination that pesticide residues remaining in or on food are ''safe''; that is, ''that there is reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue'' from dietary and other sources. In determining allowable levels of pesticide residues in food, EPA must perform a more comprehensive assessment of each pesticide's risks, considering:

Aggregate exposure (from food, drinking water, and residential uses).

Cumulative effects from all pesticides sharing a common mechanism of toxicity.

Possible increased susceptibility of infants and children.

Possible endocrine or estrogenic effects.

FQPA requires the reassessment of all existing tolerances (pesticide residue limits in food) and tolerance exemptions within 10 years, to ensure that they meet the safety standard of the new law. Pesticides posing the greatest potential risks are to be reevaluated first. Specifically, EPA must reassess 33% of the almost 10,000 existing tolerances and exemptions within 3 years (by August 1999), 66% within 6 years (by August 2002), and 100% in 10 years (by August 2006).

EPA will meet FQPA's tolerance reassessment requirements primarily through the reregistration program. Schedules have been coordinated, integrated, and revised so that in the course of making reregistration eligibility decisions, EPA also will complete much of tolerance reassessment within the time frames mandated by the new law.

When the accelerated reregistration program instituted by FIFRA 88 is completed in approximately the year 2002, registration review as mandated by the FQPA will be underway. Under this new program, EPA is to review every pesticide registration on a suggested 15 year cycle. The tolerance reassessment program after 2002 will be accomplished through the registration review program as will the periodic updating of all pesticide registrations.

II. FQPA and Program Accountability

One of the hallmarks of FQPA is enhanced accountability. EPA has incurred several additional obligations under the new law, including the requirement to publish annually this summary of the program's performance measures and goals for reregistration, tolerance reassessment, and expedited registration. The following sections describe EPA's progress in the areas specifically identified by FIFRA section 4(l).

A. Status of Reregistration

Through the reregistration program, EPA is reviewing current scientific data for older pesticides and effecting changes to improve their safety. Pesticides that have sufficient supporting human health and environmental effects data and do not pose unreasonable risks may be declared ''eligible'' for reregistration. EPA presents this finding in a Reregistration Eligibility Decision (RED) document. So far, the Agency has completed 171 REDs out of a universe of 612 cases, or groups of related pesticide active ingredients subject to reregistration. (About 8 of the 171 are voluntary cancellations that were counted as REDs because significant progress had been made in developing RED documents at the time that the requests for cancellation were received.) An additional 231 cases were voluntarily canceled before EPA invested significant resources in

developing their REDs. A total of 402 cases (66%), therefore, have completed the reregistration process, leaving 210 reregistration cases (34%) to complete reregistration by the year 2002.

The 171 completed REDs include 265 active ingredients and encompass about 6,194 products. Seventy-one (71) of these REDs have food uses, and about 1,572 tolerances are associated with these pesticides. (Note: Tolerances for the 53 food use REDs that were completed before FQPA was enacted must be revisited during the next several years to ensure that they meet the safety standard of the new law, as factored into the Agency's Tolerance Reassessment Schedule.)

EPA has completed 30 REDs since the FQPA was enacted in August 1996, and 18 of these REDs have food uses. About 415 tolerances were reassessed for these post-FQPA REDs.

Reducing pesticide risks is an important aspect of the reregistration program. In developing REDs, EPA works with pesticide registrants to develop voluntary measures or regulatory controls needed to effectively reduce risks of concern. Every RED includes some risk reduction measures. The options for reducing risks are extensive, and include voluntary cancellation of pesticide products or uses, declaring certain uses ineligible or not yet eligible (and then proceeding with follow-up action to cancel the uses or require additional supporting data), restricting use of products to certified applicators, limiting the amount or frequency of use, improving use directions and precautions, adding protective clothing and equipment requirements, requiring special packaging or engineering controls, employing ground water, surface water, or other environmental and ecological safeguards, and others.

EPA's goal is to complete about 40 REDs each fiscal year, and to reassess tolerances for 33% of the tolerances existing as of August 3, 1996 by August 1999, with priority given to the food use pesticides that appear to pose the greatest risk.

B. Product Reregistration; Numbers of Products Reregistered, Canceled, and Amended

At the conclusion of the reregistration process, after a pesticide has been declared eligible for reregistration and when product specific data and revised labeling have been received, reviewed, and accepted by EPA, pesticide products may be reregistered. For products with multiple active ingredients, amendments are issued as each active ingredient is reregistered--the product is reregistered when all of its active ingredients are eligible for reregistration, thus completing the process. Alternatively, pesticide producers, or registrants, may voluntarily cancel their end use product registrations. In other situations, registrations may be suspended temporarily by the Agency if registrants have not submitted required product specific studies within the timeframes specified, or have not paid registration maintenance fees.

At the end of fiscal year 1997, the status of the 5,622 pesticide products associated with completed reregistration eligibility decisions (or REDs) was as follows:

Products reregistered.	931
Products amended.	56
Products canceled.	1683
Products suspended.	146
Products pending action.	1658
Products not due for action.	1148
TOTAL	5,622 products associated with completed REDs

In the list above, ''products pending action'' are awaiting decisions by EPA. ''Products not due for action'' are not yet ready for product reregistration decisions; they are associated with REDs that are completed but not yet mailed to registrants for their responses, or they have product specific data that are not yet due to be submitted to EPA.

During fiscal year 1997, EPA completed 387 product reregistration actions, although the target was to complete only 300 actions. The Agency's goal is to complete 900 to 1,200 product reregistration actions during fiscal year 1998. Several significant process improvements are being implemented which should enable the Agency to meet this goal, including:

Establishment of a technical review section within the lead division to provide expedited.

in-house review of product specific data called in by EPA.

Establishment of an in-house label review team.

Development of an improved, tailored tracking system.

Development and use of a clearer, more understandable Data Call-In package for registrants of end use products going through reregistration.

With these improvements in place, EPA expects to eliminate the backlog of pending product reregistration decisions within the next few years.

C. Number and Type of DCIs Issued to Support Product Reregistration by Active Ingredient

The number and type of data requests or Data Call-In notices (DCIs) issued by EPA under FIFRA section 3(c)(2)(B) to support product reregistration for pesticide active ingredients included in fiscal year 1997 REDs are shown in the following Table 1.

TABLE 1. — DATA CALL INS ISSUED TO SUPPORT PRODUCT REREGISTRATION FOR FY–97 REDS

Case No.	Case Name	Number of Products Covered in RED	Number of Product Chemistry Studies Required[1]	Number of Acute Toxicology Studies Required	Number of Efficacy Studies Required
2415	Methylene bis-thiocyanate (MBT)	59	19	48	0
3147	Vancide	2	19	12	0
2725	Troysan	59	19	288	0
0144	Diflubenzuron	32	18	18	0
0187	Pendimethalin	58	17	102	0
0181	Metribuzin	71	17	72	0
0076	Sulprofos[2]	0	0	0	0

TABLE 1. — DATA CALL INS ISSUED TO SUPPORT PRODUCT REREGISTRATION FOR FY–97 REDS—Continued

Case No.	Case Name	Number of Products Covered in RED	Number of Product Chemistry Studies Required[1]	Number of Acute Toxicology Studies Required	Number of Efficacy Studies Required
0263	Dichlobenil	32	17	30	0
2555	Propoxur	147	17	450	0
2755	Brodifacoum	38	13	18	1
2760	Bromadiolone	27	13	12	1
2765	Bromethalin	18	14	108	1
2075	Butralin	2	17	12	0
2100	Chlorophacinone	60	18	30	2
2205	Diphacinone	105	16	30	2
2210	Diphenylamine	3	19	18	0
2810	Pival[3]	2	0	0	0
2465	PNP[2]	1	0	0	0
0039	Terbacil	12	19	6	0
2665	Thiobencarb	23	17	18	0
2710	Triclopyr	37	19	108	0
0026	Zinc Phosphide	59	13	30	2
0247	BT	186	1	930	1

[1]In an effort to reduce the time, resources, and number of animals needed to fulfill acute toxicity data requirements, EPA ''batches'' products which can be considered similar from an acute toxicity standpoint. For example, one batch could contain five products. In this instance, if 6 acute toxicology studies were required, only 6 studies would be needed rather than 30 studies. Factors considered in the sorting process include each product's active and inert ingredients (identity, percent composition, and biological activity), type of formulation (e.g., emulsifiable concentrate, aerosol, wettable powder, granular, etc.), and labeling (e.g., signal word, use classification, precautionary labeling, etc.). The Agency does not describe batched products as ''substantially similar'' since all products within a batch may not be considered chemically similar or have identical use patterns.

[2]Voluntary Cancellation

[3]Not Eligible for Reregistration

D. Progress in Reducing the Number of Unreviewed, Required Reregistration Studies

EPA is making good progress in reviewing scientific studies submitted by registrants in support of pesticides undergoing reregistration. Over 27,000 studies (27,159) have been received by the Agency through the reregistration program. About 75% (20,283) of these studies either have been reviewed (19,007 or 70%), or have been found to be extraneous (1,276 or 5%). (Extraneous studies is a term used to classify those studies that are no longer needed because the guideline or data requirement has been satisfied by other studies or has changed.) EPA still must review 25% (6,876) of all studies received to complete the reregistration program.

The proportion of studies received that have been reviewed by EPA has increased during the past year. At the end of fiscal year 1996, only 69% of all studies received in support of reregistration had been reviewed, compared to 75% at the end of 1997. Thus, the reregistration study review ''backlog'' has decreased; only 25% of all studies received currently are awaiting review, compared with 31% a year ago.

A more detailed account of the number and percent of studies received, reviewed, and awaiting review by reregistration list appears the following in Table 2.

TABLE 2. — REVIEW STATUS OF STUDIES SUBMITTED FOR PESTICIDE REREGISTRATION

	Studies Reviewed + Extraneous	Studies Awaiting Review	Total Studies Received
List A	10,061 + 291 = 10,352 (80%)	2,656 (20%)	13,008
List B	5,541 + 663 = 6,204 (67%)	2,999 (33%)	9,203
List C	2,126 + 228 = 2,354 (73%)	873 (27%)	3,227
List D	1,279 + 94 = 1,373 (80%)	348 (25%)	1,721
Lists A through D	19,007 + 1,276 = 20,283 (75%)	6,876 (25%)	27,159

E. Aggregate Status of Tolerances Reassessed

Tolerance reassessment has been part of the reregistration process since the FIFRA 88 accelerated reregistration program began. EPA reassessed over 1,500 tolerances in the course of making reregistration decisions regarding the 171 pesticides for which REDs have been completed.

Enactment of the FQPA in August 1996 brought a new safety standard--''reasonable certainty of no harm''--for pesticides used on food commodities. All non-occupational sources of exposure including food, drinking water, and residential use must now be considered in establishing new tolerances. All existing tolerances must be reassessed over a 10 year period to consider aggregate exposure from those sources, as well as the cumulative effects of pesticides and other compounds with common mechanisms of toxicity, estrogen/endocrine effects, and the special sensitivities of infants and children. EPA must reassess approximately 1/3 (one third) of the nearly 10,000 existing tolerances and tolerance exemptions every 3 years, giving priority to pesticides posing the greatest potential risks, so that tolerance

reassessment under FQPA will be completed by August 2006.

To meet the first statutory deadline, EPA plans to reassess 33% of the approximately 9,600 existing tolerances and tolerance exemptions, or complete about 3,200 tolerance reassessment actions, by August 1999. Since FQPA was enacted in August 1996, EPA has completed 30 REDs, 18 of which have food uses, and in so doing has reassessed over 400 tolerances. Current Agency plans call for reassessing an additional 1,500 tolerances during 1998.

F. Applications for Registration requiring Expedited Processing - Numbers Approved and Disapproved

During fiscal year 1997, EPA considered and approved the following numbers of applications for registration requiring expedited processing (''fast track'' applications):

Me-too product registration/fast track: 589

Amendments/fast track: 3,273

TOTAL: 3,862 applications processed by expedited means

Regarding numbers of applications disapproved, the Agency generally notifies the registrant of any deficiencies in the application that need to be corrected or addressed before the application can be approved.

On a financial accounting basis, EPA devoted approximately 26 FTEs to reviewing and processing applications for me-too product registrations and fast-track label amendments. The Agency spent $2 million in direct costs (not including administrative expenses, computer systems, management overhead, and other indirect costs) during fiscal year 1997 on expedited processing and reviews.

G. Future Schedule for Reregistrations

EPA's schedule for completing future reregistration eligibility decisions has been reconstructed to embrace the FQPA requirement that the Agency reassess all existing tolerances over a 10 year period to ensure consistency with the law's new safety standard, considering the pesticides that appear to pose the most risk first. EPA's reregistration and tolerance reassessment goals are integrated, as reflected in schedules that will enable the Agency to complete the FIFRA reregistration program by 2002, and complete tolerance reassessment by August 2006.

EPA has prioritized pesticides for reregistration review and tolerance reassessment based on their potential risks, as explained in the tolerance reassessment schedule published in the **Federal Register** on August 4, 1997 (62 FR 42020–42030) (FRL–5734–6) (Raw and Processed Food Schedule for Pesticide Tolerance Reassessment). Three priority groups have been created; pesticides in Group 1 generally appear to pose the greatest risks so they will be examined first. Group 1 includes the organophosphate (OP), carbamate, and organochlorine classes of pesticides, probable and possible human carcinogens, high-hazard inert ingredients, and any pesticides that exceed their reference dose (the amount believed not to cause adverse effects if consumed daily over a 70-year lifetime). Group I also includes pesticides for which REDs were substantially complete prior to enactment of FQPA, even though they are not among those that appear to pose the greatest potential risks. Pesticides in Group 1 are the Agency's highest priority for both tolerancereassessment and reregistration.

EPA's tentative schedule for reviewing clusters or waves of priority Group 1 pesticides for both tolerance reassessment and reregistration during the next several years appears in the following Table 3. The waves are intended to give a general sense of which chemicals will be looked at first, second, and third within the highest priority Group. The final schedule could vary from this listing based on a variety of scheduling factors including the scheduling of some non-food pesticides for reregistration decisions as resources permit.

TABLE 3.— PRIORITY GROUP 1 PESTICIDES SUBJECT TO REREGISTRATION REVIEW AND TOLERANCE REASSESSMENT UNDER FQPA (WAVES 1–11)

Chemical	Chemical Class or Toxicology Concern
WAVE 1	
Ethion	organophosphate
Fenamiphos	organophosphate
Fenthion	organophosphate
Naled	organophosphate
Phorate	organophosphate
Profenophos	organophosphate
Terbufos	organophosphate
Formetanate HCl	carbamate
Chlorothalonil	B2 carcinogen
Captan	B2 carcinogen
Folpet	B2 carcinogen
Telone	B2 carcinogen
Vinclozolin	B2 carcinogen
Dicofol	organochlorine
WAVE 2	
Azinphos-methyl	organophosphate
Chlorpyrifos	organophosphate
DEF	organophosphate
Dimethoate	organophosphate
Isofenphos	organophosphate
ODM	organophosphate

TABLE 3.— PRIORITY GROUP 1 PESTICIDES SUBJECT TO REREGISTRATION REVIEW AND TOLERANCE REASSESSMENT UNDER FQPA (WAVES 1–11)—Continued

Chemical	Chemical Class or Toxicology Concern
Propetamphos	organophosphate
Iprodione	B2 carcinogen
Bendiocarb	carbamate
Carbofuran	carbamate
Methomyl	carbamate
Thiodicarb	carbamate
WAVE 3	
Bensulide	organophosphate
DDVP	organophosphate
Disulfoton	organophosphate
Malathion	organophosphate
Phosmet	organophosphate
Benomyl	carbamate
Alachlor	B2 carcinogen
Propachlor	chloroacetanilide
WAVE 4	
Diazinon	organophosphate
Ethyl Parathionorganophosphate.	
Methyl Parathion	organophosphate
Pirimiphos-methyl	organophosphate
Sulfotepp	organophosphate
Temephos	organophosphate
Al and Mg Phosphide phosphide fumigants (inhalation hazard).	
WAVE 5	
Acephate	organophosphate
Dicrotophos	organophosphate
Ethoprop	organophosphate
Methamidophos	organophosphate
Methidathion	organophosphate
Fonofos	organophosphate
Non-RED Organophosphates[1].	
Food-Use Organophosphates:.	
Cadusafos (post-84)	
Coumaphos (pre-FQPA RED)	
Chlorpyriphos-methyl (post-84)	
Fenitrothion (pre-FQPA RED)	
Mevinphos (pre-FQPA RED)	
Monocrotophos	
Phostebupirim (post-84)	
Chlorethoxyfos (post-84)	
Tetrachlorvinphos (pre-FQPA RED)	
Trichlorfon (pre-FQPA RED)	
Non-Food Use Organophosphates:.	
Isazophos-methyl (post-84).	
WAVE 6	
Phenmedipham	carbamate
Asulam	carbamate
CIPC	carbamate
Desmedipham	carbamate
Propamocarb hydrochloride (pre-FQPA RED)	carbamate
Aldicarb	oxime carbamate
Oxamyl	oxime carbamate

TABLE 3.— PRIORITY GROUP 1 PESTICIDES SUBJECT TO REREGISTRATION REVIEW AND TOLERANCE REASSESSMENT UNDER FQPA (WAVES 1–11)—Continued

Chemical	Chemical Class or Toxicology Concern
Aldoxycarb (post-84)	oxime carbamate
Molinate	thiocarbamate
	C carcinogen
Tri-allate	thiocarbamate
	C carcinogen
EPTC	thiocarbamate
Pebulate	thiocarbamate
Vernolate	thiocarbamate
Butylate	thiocarbamate
WAVE 7	
Lindane	organochlorine, B2
Endosulfan	organochlorine
Methoxychlor	organochlorine
WAVE 8	
2-Phenylphenol	
Ethylene oxide (ETO)	
Propylene oxide	
Mancozeb	alkylenebis(dithiocarbamate)
Maneb	alkylenebis(dithiocarbamate)
Metiram	alkylenebis(dithiocarbamate)
Cacodylic Acid	organo arsenical
Propargite	organosulfur
TPTH	organotin
Oxythioquinox	quinoxaline
Terrazole	Thiazole
PCNB	aromatic hydrocarbon derivative
Formaldehyde	
Paraformaldehyde	
Sodium dimethyldithiocarbamate	diphenyl ether
Thiram	
WAVE 9	
Carbaryl	carbamate
Atrazine	1,3,5-triazine
Simazine	1,3,5-triazine
Propazine (section 18 use only)	1,3,5-triazine
Cyanazine (to be canceled in 1999 & phased out by 2002)	1,3,5-triazine
Oxadiazon	
Imazalil	benzimidazole
Oxyfluorfen	diphenyl ether
Permethrin	pyrethroid
Thiabendazole	benzimidazole
Thiophanate methyl	benzimidazole
Lactofen	diphenyl ether
Sodium salt of fomesafen	diphenyl ether
Diclofop-methyl	2-(4-aryloxyphenoxy) propionic acid
Fenoxaprop-ethyl	2-(4-aryloxyphenoxy) propionic acid
Quizalofop-ethyl	2-(4-aryloxyphenoxy) propionic acid
Sodium salt of acifluorfen	dimethyldithiocarbamate
WAVE 10	
Cypermethrin	pyrethroid
Propiconazole	azole
Triadimefon	azole
Fenbuconazole	azole

TABLE 3.— PRIORITY GROUP 1 PESTICIDES SUBJECT TO REREGISTRATION REVIEW AND TOLERANCE REASSESSMENT UNDER FQPA (WAVES 1–11)—Continued

Chemical	Chemical Class or Toxicology Concern
Myclobutanil	azole
Tebuconazole	azole
Triflumazole	azole
Triadimenol	azole
Difenoconazole	azole
WAVE 11	
Diphenamid	
Dipropyl isocinchomeronate	
DNOC	
TCMB	
Tetradifon	
2,4-D	aryloxyalkanoic acid
Cycloate	
Chloramben	
Chloroxuron	
Diethatyl ethyl	
Hexythiazox	
Benfluralin	2,6-dinitroaniline
Ethalfluralin	2,6-dinitroaniline
Oryzalin	2,6-dinitroaniline
Pendimethalin	2,6-dinitroaniline
Trifluralin	2,6-dinitroaniline
Butralin	2,6-dinitroaniline
Dinocap	dinitrophenol derivative

[1] These Organophosphates (OPs) are not in the reregistration queue--REDs were completed for them prior to FQPA, or they are not subject to reregistration (initially registered prior to November 1, 1984). However, for most, tolerances still must be re-assessed under FQPA. The other OPs are scheduled for REDs in Waves 1 through 5.

H. Projected Year of Completion of Reregistrations

EPA is committed to completing the pesticide reregistration program by the year 2002.

III. Electronic Submissions and Public Response

This notice is not subject to a formal public comment period. Nevertheless, EPA welcomes input from interested parties and the general public. Public responses to this notice should be submitted to the address in the ADDRESS section above, with an additional copy sent to Wanda Daughtry, Special Review and Reregistration Division, at the address and telephone number listed above in the section titled, ''FOR FURTHER INFORMATION CONTACT.''

The official record for this notice, as well as the public version, has been established under docket number OPP–34128 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m. Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESS'' at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@.epa.gov. Electronic responses must be submitted in ASCII file format, avoiding the use of special characters and any form of encryption. Comments will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34128. Electronic responses to this schedule may be filed on line at many Federal Depository libraries.

List of Subjects

Environmental protection.

Dated: September 30, 1998.

Lynn R. Goldman,

Assistant Administrator, Office of Prevention, Pesticides, and Toxic Substances.

[FR Doc. 98–26909 Filed 10–6–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[PF–831; FRL–6026–3]

Notice of Filing of Pesticide Tolerance Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–831, must be received on or before November 6, 1998.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Divison (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, Crystal Mall (CM) #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by following the instructions under ''SUPPLEMENTARY INFORMATION.'' No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as CBI. CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Leonard Cole	Rm. 209, CM #2, 703–305–5412; e-mail: cole.leonard@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Mark Dow	Rm. 214, CM #2, 703–305–5533; e-mail: Dow.mark@epamail.epa.gov.	Do.
James Tompkins	Rm. 239, CM #2, 703 305–5697; e-mail: tompkins.james@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment of regulations for residues of certain pesticide chemicals in or on various raw food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports grantinig of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice, as well as the public version, has been established for this notice of filing under document control number PF–831 (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in ''ADDRESSES''.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 file format or ASCII file format. All comments and data in electronic form must be identified by the document control number (PF–831) and appropriate petition number. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

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

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 29, 1998.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Below summaries of the pesticide petitions are printed. The summaries of the petitions were prepared by the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. FMC Corporation

PP 8F5014

EPA has received a pesticide petition (PP 8F5014) from FMC Corporation, 1735 Market Street, Philadelphia, PA 19103 proposing pursuant to section 408(d) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Bifenthrin: (2-methyl [1,1′-biphenyl]-3-yl)methyl 3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2 dimethylcyclopropanecarboxylate in or on the raw agricultural commodity corn, grain (sweet) at 0.05 and corn, forage at 3.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of bifenthrin in plants is adequately understood. Studies have been conducted to delineate the metabolism of radiolabelled bifenthrin in various crops all showing similar results. The residue of concern is the parent compound only.

2. *Analytical method*. There is a practical 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 these tolerances (Gas Chromatography with Electron Capture Detection (GC/ECD) analytical method P–2132M, PP 0E3921, MRID 41658601).

3. *Magnitude of residues*. Field residue trials meeting EPA study requirements have been conducted at the maximum label rate for the crop sweet corn. Results from these trials demonstrate that the proposed bifenthrin tolerances on corn, sweet (k+cwhr) at 0.05 ppm and on corn, forage at 3.0 ppm will not be exceeded when the product is applied following the proposed use directions.

B. Toxicological Profile

1. *Acute toxicity*. For the purposes of assessing acute dietary risk, FMC has used the maternal No-Observed-Adverse-Effects-Level (NOAEL) of 1.0 milligram/kilogram/day (mg/kg/day) from the oral developmental toxicity study in rats. The maternal Lowest Effect Level (LEL) of this study of 2.0 mg/kg/day was based on tremors from day 7–17 of dosing. This acute dietary endpoint is used to determine acute dietary risks to all population subgroups.

2. *Genotoxicty*. The following genotoxicity tests were all negative:

gene mutation in *Salmonella* (Ames); chromosomal aberrations in Chinese hamster ovary and rat bone marrow cells; Hypoxanthine guanine phophoribosyl transferase (HGPRT) locus mutation in mouse lymphoma cells; and unscheduled DNA synthesis in rat hepatocytes.

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

ii. Post-natal sensitivity. 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.

4. *Subchronic toxicity*. Short- and intermediate-term toxicity. The maternal NOAEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats is also used for short- and intermediate-term Margins of Exposure (MOE) calculations (as well as acute, discussed in (1) above). The maternal LEL of this study of 2.0 mg/kg/day was based on tremors from day 7–17 of dosing.

5. *Chronic toxicity*. i. The Referenced Dose (RfD) has been established at 0.015 mg/kg/day. This RfD is based on a 1–year oral feeding study in dogs with a NOAEL of 1.5 mg/kg/day, based on intermittent tremors observed at the Lowest Observed Effects Level (LOEL) of 3.0 mg/kg/day; an uncertainty factor of 100 is used.

ii. Bifenthrin is classified as a Group C chemical (possible human carcinogen) based upon urinary bladder tumors in mice; assignment of a Q* has not been recommended.

6. *Animal metabolism*. The metabolism of bifenthrin in animals is adequately understood. Metabolism studies in rats with single doses demonstrated that about 90% of the parent compound and its hydroxylated metabolites are excreted.

7. *Metabolite toxicology*. The Agency has previously determined that the metabolites of bifenthrin are not of toxicological concern and need not be included in the tolerance expression.

8. *Endocrine disruption*. No special studies investigating potential estrogenic or other endocrine effects of bifenthrin have been conducted. However, no evidence of such effects were reported in the standard battery of required toxicology studies which have been completed and found acceptable. Based on these studies, there is no evidence to suggest that bifenthrin has an adverse effect on the endocrine system.

C. Aggregate Exposure

1. *Dietary exposure. — Food*. Tolerances have been established 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 (field, seed, and pop) grain, forage, and fodder; cottonseed; and from the associated meat, milk and meat by-products from livestock commodities of cattle, goats, hogs, horses, sheep, and poultry. Additionally, time-limited tolerances associated with emergency exemptions were established for broccoli, cauliflower, raspberries, cucurbits and canola. A pending tolerance for artichokes also exists. For the purposes of assessing the potential dietary exposure for these existing and pending tolerances as well as the existing time-limited tolerances under FIFRA section 18 emergency exemptions, FMC has utilized available information on anticipated residues, monitoring data and percent crop treated as follows:

i. *Acute exposure and risk*. Acute dietary exposure 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. For the purposes of assessing acute dietary risk for bifenthrin, the maternal NOAEL of 1.0 mg/kg/day from the oral developmental toxicity study in rats was used. The maternal LEL of this study of 2.0 mg/kg/day was based on tremors from day 7–17 of dosing. This acute dietary endpoint was used to determine acute dietary risks to all population subgroups. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into a Tier 3 analysis, using Monte Carlo modeling for commodities that may be consumed in a single serving. These assessments show that the MOE are significantly greater than the EPA standard of 100 for all subpopulations. The 95th percentile of exposure for the overall U. S. population was estimated to be 0.001105 mg/kg/day (MOE of 905); 99th percentile 0.002064 mg/kg/day (MOE of 484); and 99.9th percentile 0.003955 mg/kg/day (MOE of 253). The 95th percentile of exposure for all infants < 1 year old was estimated to be 0.002234 mg/kg/day (MOE of 448); 99th percentile 0.004459 mg/kg/day (MOE of 224); and 99.9th percentile 0.006945 mg/kg/day (MOE of 144). The 95th percentile of exposure for nursing infants < 1 year old was estimated to be 0.00061 mg/kg/day (MOE of 1,639); 99th percentile 0.001376 mg/kg/day (MOE of 727); and 99.9th percentile 0.002009 mg/kg/day (MOE of 498). The 95th percentile of exposure for non-nursing infants < one year old was estimated to be 0.002804 mg/kg/day (MOE of 357); 99th percentile 0.004831 mg/kg/day (MOE of 207); and 99.9th percentile 0.007236 mg/kg/day (MOE of 138). The 95th percentile of exposure for children 1 to 6 years old (the most highly exposed population subgroup) was estimated to be 0.002377 mg/kg/day (MOE of 421); 99th percentile 0.003483 mg/kg/day (MOE of 287); and 99.9th percentile 0.00628 mg/kg/day (MOE of 159). Therefore, FMC concludes that the acute dietary risk of bifenthrin, as estimated by the dietary risk assessment, does not appear to be of concern.

ii. *Chronic exposure and risk*. The acceptable RfD is based on a NOAEL of 1.5 mg/kg/day from the chronic dog study and an uncertainty factor of 100 is 0.015 mg/kg/day. The endpoint effect of concern were tremors in both sexes of dogs at the LEL of 3.0 mg/kg/day. A chronic dietary exposure/risk assessment has been performed for bifenthrin using the above RfD. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into the analysis to estimate the anticipated residue contribution (ARC). The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000384 mg/kg body weight (bwt)/day and utilize 2.6% of the RfD for the overall U. S. population. The ARC for non-nursing infants (<1 year) and children 1–6 years old (subgroups most highly exposed) are estimated to be 0.000837 mg/kg bwt/day and 0.001265 mg/kg bwt/day and utilizes 5.6% and 8.4% of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of bifenthrin, as estimated by the dietary risk assessment, does not appear to be of concern.

2. *Drinking water*. Laboratory and field data have demonstrated that bifenthrin is immobile in soil and will not leach into groundwater. Other data show that bifenthrin is virtually insoluble in water and extremely lipophilic. As a result, FMC concludes that residues reaching surface waters from field runoff will quickly adsorb to sediment particles and be partitioned

from the water column. Further, a screening evaluation of leaching potential of a typical pyrethroid was conducted using EPA's Pesticide Root Zone Model (PRZM3). Based on this screening assessment, the potential concentrations of a pyrethroid in groundwater at depths of 1 and 2 meters are essentially zero (<<0.001 parts per billion (ppb)). Surface water concentrations for pyrethroids were estimated using PRZM3 and Exposure Analysis Modeling System (EXAMS) using standard EPA cotton runoff and Mississippi pond scenarios. The maximum concentration predicted in the simulated pond was 0.052 ppb. Concentrations in actual drinking water would be much lower than the levels predicted in the hypothetical, small, stagnant farm pond model since drinking water derived from surface water would normally be treated before consumption. Based on these analyses, the contribution of water to the dietary risk estimate is negligible. Therefore, FMC concludes that together these data indicate that residues are not expected to occur in drinking water.

3. *Non-dietary exposure.* Analyses were conducted which included an evaluation of potential non-dietary (residential) applicator, post-application and chronic dietary aggregate exposures associated with bifenthrin products used for residential flea infestation control and agricultural/commercial applications. The aggregate analysis conservatively assumes that a person is concurrently exposed to the same active ingredient via the use of consumer or professional flea infestation control products and to chronic level residues in the diet.

In the case of potential non-dietary health risks, conservative point estimates of non-dietary exposures, expressed as total systemic absorbed dose (summed across inhalation and incidental ingestion routes) for each relevant product use category (i.e., lawn care) and receptor subpopulation (i.e., adults, children 1 - 6 years and infants < 1 year) are compared to the systemic absorbed dose NOAEL for bifenthrin to provide estimates of the MOEs. Based on the toxicity endpoints selected by EPA for bifenthrin, inhalation and incidental oral ingestion absorbed doses were combined and compared to the relevant systemic NOAEL for estimating MOEs.

In the case of potential aggregate health risks, the above mentioned conservative point estimates of inhalation and incidental ingestion non-dietary exposure (expressed as systemic absorbed dose) are combined with estimates (arithmetic mean values) of chronic average dietary (oral) absorbed doses. These aggregate absorbed dose estimates are also provided for adults, children 1 - 6 years and infants < 1 year. The combined or aggregated absorbed dose estimates (summed across non-dietary and chronic dietary) are then compared with the systemic absorbed dose NOAEL to provide estimates of aggregate MOEs.

The non-dietary and aggregate (non-dietary + chronic dietary) MOEs for bifenthrin indicate a substantial degree of safety. The total non-dietary (inhalation + incidental ingestion) MOEs for post-application exposure for the lawn care product evaluated was estimated to be >51,000 for adults, 1,900 for children 1–6 years old and 1,800 for infants < 1 year. The aggregate MOE (inhalation + incidental oral + chronic dietary, summed across all product use categories) was estimated to be 2,479 for adults, 559 for children 1–6 years old and 712 for infants (<1 year). It can be concluded that the potential non-dietary and aggregate (non-dietary + chronic dietary) exposures for bifenthrin are associated with substantial margins of safety.

D. Cumulative Effects

In consideration of potential cumulative effects of bifenthrin and other substances that may have a common mechanism of toxicity, to our knowledge there are currently no available data or other reliable information indicating that any toxic effects produced by bifenthrin would be cumulative with those of other chemical compounds; thus only the potential risks of bifenthrin have been considered in this assessment of its aggregate exposure. FMC intends to submit information for the EPA to consider concerning potential cumulative effects of bifenthrin consistent with the schedule established by EPA published in the **Federal Register** of August 4, 1997 (62 FR 42020) (FRL 5734–6) and other EPA publications pursuant to the Food Quality Protection Act (FQPA).

E. Safety Determination

1. *U.S. population.* Based on a complete and reliable toxicology database, the acceptable RfD is 0.015 mg/kg/day, based on a NOAEL of 1.5 mg/kg/day from the chronic dog study and an uncertainty factor of 100. Available information on anticipated residues, monitoring data and percent crop treated was incorporated into an analysis to estimate the Anticipated Residue Contribution (ARC) for 26 population subgroups. The ARC is generally considered a more realistic estimate than an estimate based on tolerance level residues. The ARC are estimated to be 0.000384 mg/kg bwt/day and utilize 2.6% of the RfD for the overall U. S. population. The ARC for non-nursing infants (<1 year) and children 1–6 years old (subgroups most highly exposed) are estimated to be 0.000837 mg/kg bwt/day and 0.001265 mg/kg bwt/day and utilizes 5.6% and 8.4% of the RfD, respectively. Generally speaking, the EPA has no cause for concern if the total dietary exposure from residues for uses for which there are published and proposed tolerances is less than 100% of the RfD. Therefore, FMC concludes that the chronic dietary risk of bifenthrin, as estimated by the aggregate risk assessment, does not appear to be of concern.

For the overall U.S. population, the calculated MOE at the 95th percentile was estimated to be 905; 484 at the 99th percentile; and 253 at the 99.9th percentile. For all infants < one year old, the calculated MOE at the 95th percentile was estimated to be 448; 224 at the 99th percentile; and 144 at the 99.9th percentile. For nursing infants < 1 year old, the calculated MOE at the 95th percentile was estimated to be 1,639; 727 at the 99th percentile; and 498 at the 99.9th percentile. For non-nursing infants < 1 year old, the calculated MOE at the 95th percentile was estimated to be 357; 207 at the 99th percentile; and 138 at the 99.9th percentile. For the most highly exposed population subgroup, children 1 - 6 years old, the calculated MOE at the 95th percentile was estimated to be 421; 287 at the 99th percentile; and 159 at the 99.9th percentile. Therefore, FMC concludes that there is reasonable certainty that no harm will result from acute exposure to bifenthrin.

2. *Infants and children.* —i. *General.* In assessing the potential for additional sensitivity of infants and children to residues of bifenthrin, FMC considered data from developmental toxicity studies in the rat and rabbit, and a 2–generation reproductive study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA may apply an additional 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.

ii. *Developmental toxicity studies.* In the rabbit developmental study, there were no developmental effects observed in the fetuses exposed to bifenthrin. The maternal NOAEL 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 NOAEL was 1 mg/kg/day, based on tremors at the LOEL of 2 mg/kg/day. The developmental (pup) NOAEL was also 1 mg/kg/day, based upon increased incidence of hydroureter at the LOEL 2 mg/kg/day. There were 5/23 (22%) 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, 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 at 5.0 mg/kg/day with a NOAEL 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, FMC 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. As stated above, aggregate exposure assessments utilized significantly less than 1% of the RfD for either the entire U. S. population or any of the 26 population subgroups including infants and children. Therefore, it may be concluded that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to bifenthrin residues.

F. International Tolerances

There are no Codex, Canadian, or Mexican residue limits for residues of bifenthrin in or on corn, sweet. (Mark Dow)

2. Norvartis Crop Protection

PP 8F4984

EPA has received a pesticide petition (PP 8F4984) from Norvartis Crop Protection, P.O. Box 18300 proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Prymetrozine in or on the raw agricultural commodity cotton at 0.4 parts per million (ppm), and on cotton gin by-products at 3.0 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism*. The metabolism of CGA-215944 in plants is understood for the purposes of the proposed tolerance. Studies in rice, tomatoes, cotton and potatoes gave similar results. Identified metabolic pathways have demonstrated that pymetrozine is the residue of concern for tolerance setting purposes.

2. *Analytical method*—i. *Crops*. Novartis has submitted two analytical methods for the determination of pymetrozine and its major crop metabolite, in crop substrates. For both methods, the limit of detection (LOD) is 1.0 nanogram (ng) and the limit of quantitation (LOQ) of 0.02 ppm. Samples are extracted using acetonitrile: 0.05M sodium borate and an aliquot is taken for each method. The aliquots were cleaned up with solid-phase and/or liquid-liquid partitions and analyzed by high preformance liquid chromatography (HPLC) with column-switching and Ultra violet (UV) detection. Both methods have undergone independent laboratory validation. The pymetrozine Analytical Method is proposed as the tolerance enforcement method.

ii. *Livestock*. Novartis has submitted an analytical methods for the determination of pymetrozine in eggs, milk and poultry, dairy and goat tissues. The LOD for the analytical method is 1.0 ng and the LOQ is 0.01 ppm. Samples are extracted using acetonitrile:water, cleaned up with solid-phase and liquid-liquid partitions, and analyzed for pymetrozine by HPLC with column switching and UV detection.

Novartis has also submitted an analytical method for the determination of the major livestock metabolite of pymetrozine in dairy and goat tissues and milk. This method also accounts for a phosphate conjugate, which is a significant metabolite found only in milk. The LOD for the metabolite method is 1.5 ng and the is LOQ of 0.01 ppm. Samples are extracted using methanol:water. Milk samples are heated to hydrolyze the phosphate conjugate, and all samples are cleaned up with solid-phase partitions and analyzed by HPLC with UV detection. The parent Analytical Method has successfully undergone independent laboratory validation.

3. *Magnitude of residues* —i. *Cotton*. The maximum residues of pymetrozine detected in samples of undelinted cottonseed from cotton supporting the maximum proposed application rate of 3 x 0.086 lbs. active ingredient/Acre (ai/A) = 0.258 lbs. ai/A (residue program performed at 1 x 0.099 lbs. ai/A + 2 x 0.132 lbs. ai/A = 0.363 lbs. ai/A) harvested with a 21–day pre-harvest interval (PHI) were 0.32 ppm. The maximum residues of the major metabolite GS–23199 detected in samples of undelinted cottonseed resulting from cotton treated as described above and harvested with a 21–day PHI were 0.04 ppm.

The maximum residues of pymetrozine detected in samples of cotton gin trash from cotton supporting the maximum proposed application rate of 3 x 0.086 lbs. ai/A = 0.258 lbs. ai/A (residue program performed at 1 x 0.099 lbs. ai/A + 2 x 0.132 lbs. ai/A = 0.363 lbs. ai/A) harvested with a 21–day PHI were 2.4 ppm. The maximum residues of GS–23199 detected in samples of cotton gin trash resulting from cotton treated as described above and harvested with a 21–day PHI were 0.31 ppm.

The maximum residues of pymetrozine detected in samples of cottonseed hulls from cotton supporting the maximum proposed application rate of 3 x 0.086 lbs. ai/A = 0.258 lbs. ai/A (residue program performed at 1 x 0.099 lbs. ai/A + 2 x 0.132 lbs. ai/A = 0.363 lbs. ai/A) harvested with a 21–day PHI were 0.08 ppm. No residues of GS–23199 were detected in samples of cottonseed hulls.

No detectable residues of either pymetrozine or GS–23199 were found in samples of cottonseed meal or refined oil from cotton supporting the maximum proposed application rate of

3 x 0.086 lbs. ai/A = 0.258 lbs. ai/A (residue program performed at 1 x 0.099 lbs. ai/A + 2 x 0.132 lbs. ai/A = 0.363 lbs. ai/A) harvested with a 21–day PHI.

ii. *Livestock*. A 3–level dairy feeding study was conducted using pymetrozine as the test substance. Holstein dairy cows were dosed daily with pymetrozine at levels equivalent to 0 (Control), 1.0 ppm, 3.0 ppm and 10 ppm. These rates represent 1.6, 5 and 16 times the maximum contribution to the diet that could be expected from cotton. This study was designed to provide data concerning the level of residues of pymetrozine, and CGA–313124, in milk and tissues which could occur as a result of feeding crops treated with pymetrozine to dairy cows. The results are used to estimate the transfer of residues from the diet to the tissues and milk of livestock.

No detectable residues of pymetrozine or CGA–313124 were observed in samples of liver, kidney, perirenal fat, omental fat, round muscle, or tenderloin muscle from cows dosed with 10 ppm (16×) pymetrozine. No detectable residues of pymetrozine were observed in samples of milk from cows dosed with 10 ppm (16×), 3 ppm (5×), or 1 ppm 1.6×) pymetrozine at any sampling interval. Detectable residues of CGA–313124 occurred only in milk samples from 80× dosed cows at a maximum level of 0.05 ppm.These results indicate that there is no need to establish a meat and milk tolerance.

B. Toxicological Profile

1. *Acute toxicity*. Pymetrozine has low acute toxicity. The oral LD_{50} in rats is >5,820 milligram/kilograms (mg/kg) for males and females, combined. The rat dermal LD_{50} is > 2,000 mg/kg and the rat inhalation LC_{50} is > 1.8 mg/liter (L) air. Pymetrozine is not a skin sensitizer in guinea pigs and does not produce dermal irritation in rabbits. It produces minimal eye irritation in rabbits. End-use water-dispersible granule formulations of pymetrozine have similar low acute toxicity profiles.

2. *Genotoxicty*. Pymetrozine has low acute toxicity. The oral LD_{50} in rats is > 5,820 mg/kg for males and females, combined. The rat dermal LD_{50} is > 2,000 mg/kg and the rat inhalation LC_{50} is > 1.8 mg/L air. Pymetrozine is not a skin sensitizer in guinea pigs and does not produce dermal irritation in rabbits. It produces minimal eye irritation in rabbits. End-use water-dispersible granule formulations of pymetrozine have similar low acute toxicity profiles.

3. *Reproductive and developmental toxicity*. In a teratology study in rats, pymetrozine caused decreased body weights (bwts) and food consumption in females given 100 and 300 mg/kg/day during gestation. This maternal toxicity was accompanied by fetal skeletal anomalies and variations consistent with delayed ossification. The no-observed-adverse-effect-level (NOAEL) for maternal and fetal effects in rats was 30 mg/kg/day. A teratology in rabbits showed that pymetrozine caused maternal death and reduced body weight gain and food consumption at 125 mg/kg/day highest dose tested (HDT). Maternal toxicity was accompanied by embryo- and feto-toxicity (abortion in one female and total resorptions in two females). Body weight and food consumption decreases, early resorptions and postimplantation losses were also observed in maternal rabbits given 75 mg/kg/day. There was an increased incidence of fetal skeletal anomalies and variations at these maternally toxic doses. The NOAEL for maternal and fetal effects in rabbits was 10 mg/kg/day. Pymetrozine is not teratogenic in rats or rabbits. In a 2-generation reproduction study in rats, parental body weight and food consumption were decreased, liver and spleen weights were reduced and histopathological changes in liver, spleen and pituitary were observed at 2,000 ppm HDT. Liver hypertrophy was observed in parental males at 200 ppm (approximately 10–40 mg/kg/day). Reproductive parameters were not affected by treatment with pymetrozine. The NOAEL for reproductive toxicity is 2,000 ppm (approximately 110–440 mg/kg/day). Offspring bwts were slightly reduced at 2,000 and 200 ppm and eye opening was slightly delayed in pups at 2,000 ppm. Effects on offspring were secondary to parental toxicity. The NOAEL for toxicity to adults and pups is 20 ppm (approximately 1–4 mg/kg/day).

4. *Subchronic toxicity*. Pymetrozine was evaluated in 13–week subchronic toxicity studies in rats, dogs and mice. Liver, kidneys, thymus and spleen were identified as target organs. The NOAEL was 500 ppm (33 mg/kg/day) in rats and 100 ppm (3 mg/kg/day) in dogs. In mice, increased liver weights and microscopical changes in the liver were observed at all doses tested. The NOAEL in mice was <1,000 ppm (198 mg/kg/day). No dermal irritation or systemic toxicity occurred in a 28–day repeated dose dermal toxicity study with pymetrozine in rats given 1,000 mg/kg/day. Minimum direct dermal absorption (1.1%) of pymetrozine was detected in rats over a 21 hour period of dermal exposure. Maximum radioactivity left on or in the skin at the application site and considered for potential absorption was 11.9%.

5. *Chronic toxicity*. Based on chronic toxicity studies in the dog and rat, a reference dose (RfD) of 0.0057 mg/kg/day is proposed for pymetrozine. This RfD is based on a NOAEL of 0.57 mg/kg/day established in the chronic dog study and an uncertainty factor of 100 to account for interspecies extrapolation and interspecies variability. Minor changes in blood chemistry parameters, including higher plasma cholesterol and phospholipid levels, were observed in the dog at the lowest-observed-effect level (LOEL) of 5.3 mg/kg/day. The NOAEL established in the rat chronic toxicity study was 3.7 mg/kg/day, based on reduced bwt gain and food consumption, hematology and blood chemistry changes, liver pathology and biliary cysts.z.

6. *Animal metabolism*. The metabolism of pymetrozine (CGA–215944) in the rat is well understood. Metabolism involves oxidation of the 5-methylene group of the triazine ring yielding 4,5-dihydro-5-hydroxy-6-methyl-4–[(3-pyridinylmethylene)amino]-1,2,4-triazin-3(2*H*)-one (CGA–359009). Oxidation of the methyl substituent of the triazine ring led to 4,5-dihydro-6-(hydroxymethyl)-4-[(3-pyridinylmethylene)amino]-1,2,4-triazin-3(2*H*)-one (CGA–313124) which was further oxidized to the corresponding carboxylic acid, 4,5-dihydro-6-carboxy-4-[(3-pyridinylmethylene)amino]-1,2,4-triazin-3(2*H*)-one. Hydrolysis of the enamino bridge yielded 4-amino-6-methyl-1,2,4-triazin-3,5(2*H*,4*H*)-dione (CGA–294849). This was further degraded to 6-methyl-1,2,4-triazin-3,5(2*H*,4*H*)-dione (metabolite). Hydrolysis of the enamino bridge of CGA–215944 produced CGA–215525 which undergoes either acylation (CGA–259168) or deamination yielding 4,5-dihydro-6-methyl-1,2,4-triazin-3(2*H*)-one (CGA–249257). Hydrolysis of the enamino bridge also formed 3-pyridinecarboxaldehyde (CGA–300407), nicotinic acid (CGA–180777), nicotinamide (CGA–180778), 3-pyridinemethanol (CGA–128632) and 1,6-dihydro-1-methyl-6-oxo-3-pyridinecarboxamide. Identified metabolic pathways in animals and plants are similar.

7. *Metabolite toxicology*. The residue of concern for tolerance setting purposes is the parent compound. Metabolites of pymetrozine are considered to be of equal or lesser toxicity than the parent.

8. *Endocrine disruption*. Pymetrozine does not belong to a class of chemicals known or suspected of having adverse

effects on the endocrine system. There is no evidence that pymetrozine has any effect on endocrine function in developmental and reproduction studies. Furthermore, histological investigation of endocrine organs in chronic dog, rat and mouse studies did not indicate that the endocrine system is targeted by pymetrozine.

C. Aggregate Exposure

1. *Dietary exposure— Food/Water.* Dietary exposure to pymetrozine was estimated based on tolerance level residues on fruiting vegetables, tuberous and corm vegetables, cucurbits, cotton, hops (import/domestic), associated dairy products and drinking water. Maximum expected exposure to the U.S. population (48 States, all seasons) was calculated to be 6.66% of the RfD described as 0.0057 mg/kg/bwt/day. Maximum expected exposure to the most sensitive population subgroup, non-nursing infants was calculated to be 14.4% of the RfD. The above values were determined by using tolerance level values for each appropriate crop with an assumption of 100% market share (most conservative scenario). In addition, the drinking water component was evaluated using the Generic expected environmental concentration (GENEEC) surface water model (worst case scenario) and the resulting calculated value was then incorporated into the crop and animal aspect of the diet and is included in the above values. There is a reasonable certainty that no harm will result from exposure to dietary residues (including drinking water) of pymetrozine. There are no proposed residential uses of pymetrozine, therefore the potential for non-occupational exposure to the general population is not significant.

2. *Non-dietary exposure.* There are no other uses currently registered for pymetrozine. The proposed uses involve application of pymetrozine to crops grown in an agricultural environment. There are no proposed uses which would be expected to result in residential exposure of pymetrozine. Therefore, there is no potential for non-occupational exposure to the general population.

D. Cumulative Effects

The potential for cumulative effects of pymetrozine and other substances that have a common mechanism of toxicity has also been considered. Pymetrozine belongs to a new chemical class known as pyridine azomethines. It exhibits a unique mode of action which can be characterized as nervous system inhibition of feeding behavior. It does not have a general toxic or paralyzing effect on insects, but selectively interferes with normal feeding activities by affecting nervous system regulation of fluid intake. There is no reliable information to indicate that toxic effects produced by pymetrozine would be cumulative with those of any other chemical including another pesticide. Therefore, Novartis believes it is appropriate to consider only the potential risks of pymetrozine in an aggregate risk assessment.

E. Safety Determination

1. *U.S. population.* Using the conservative exposure assumptions and the proposed RfD described above, the aggregate exposure to pymetrozine will utilize 6.66% of the RfD for the U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate exposure over a lifetime will not pose appreciable risks to human health. Therefore, Novartis concludes that there is a reasonable certainty that no harm will result from aggregate exposure to pymetrozine residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of pymetrozine, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat have been considered.

In a teratology study in rats, developmental toxicity anomalies and variations associated was observed only at maternally toxic doses. Similarly, in a rabbit teratology study, was observed only at maternally toxic doses. The NOAELs in the rat and rabbit teratology studies were 30 and 10 mg/kg/day, respectively. In the 2-generation reproduction study, there were no effects on reproductive parameters. Offspring bwts were slightly reduced and eye opening was slightly delayed at dose levels producing parental toxicity. The NOAEL for parental and offspring toxicity was 20 ppm (approximately 1–4 mg/kg/day).

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological requirements, the database relative to pre- and post-natal effects for children is complete. Further, for pymetrozine, the NOAEL of 0.57 from the chronic feeding study in dogs, which was used to calculate the RfD (0.0057 mg/kg/day), is already lower than the developmental NOAELs (30 and 10 mg/kg/day) from the teratogenicity studies in rats and rabbits by a factor of more than 10 fold. In the pymetrozine rat reproduction study, the mild nature of the effects observed (decreased bwt) at the systemic LOEL (10-40 mg/kg/day) and the fact that the effects were observed at a dose that is more than 10 times greater than the NOAEL in the chronic dog study (0.57 mg/kg/day) suggest that there is no additional sensitivity for infants and children. Therefore, it is concluded that an additional uncertainty factor is not warranted to protect the health of infants and children and that an RfD of 0.0057 mg/kg/day based on the chronic dog study is appropriate for assessing aggregate risk to infants and children from pymetrozine.

Using the exposure assumptions (residues at proposed tolerance levels on all crops and a 100% market share), the percent of the RfD that will be utilized by aggregate exposure to residues of pymetrozine is 3.83% for nursing infants less than 1 year old, 14.4% for non-nursing infants and 10.17% for children 1–6 years old. Therefore, based on the completeness and reliability of the toxicity database, Novartis concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to pymetrozine residues.

F. International Tolerances

There are no Codex maximum levels established for residues of pymetrozine. (Leonard Cole)

3. Zeneca Ag. Products

PP 5F1625/5H5088

EPA has received pesticide petitions PP 5F1625 and 5H5088 from Zeneca Ag Products, 1800 Concord Pike, P.O. Box 15458, Wilmington, Delaware 19850–5458, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, (FFDCA) 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide paraquat (1,1-dimethyl-4,4′-bypyridinium) derived from the corn harvest-aid application of the dichloride salt (calculated as the cation) in or on the raw agricultural commodities corn, pop, grain at 0.05 part per million (ppm); corn, field, grain at 0.05 ppm; corn, field, forage at 3.0 ppm; corn, pop, forage at 3.0 ppm; corn, field, stover at 10.0 ppm; corn, pop, stover at 10 ppm; and corn, flour at 0.1 ppm.

An adequate analytical method (spectrophotometric method) has been accepted and published in the Pesticide Analytical Manual (PAM Vol. II) for the enforcement of tolerances in plant

commodities. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residue in plants is adequately understood based on studies depicting the metabolism of paraquat in carrots and lettuce following pre-emergence treatments and in potatoes and soybeans following desiccant treatment. The residue of concern in plants is the parent, paraquat; the current tolerance expression for plant commodities, as defined in 40 CFR 180.205(a) and (b).

2. *Analytical method.* An adequate analytical method (spectrometric method) has been accepted and published in the The Pesticide Analytical Manual (PAM Vol. II) for the enforcement of tolerances in plant commodities.

3. *Magnitude of residues.* Paraquat residues on corn forage ranged from <0.025 to 3 ppm and on corn fodder ranged from 0.025 to 6 ppm following preemergence and post-directed applications as described for MRID 41151523 and 41151506. Residue data submitted in tolerance petition PP 5F1625 (MRID 00114426) for corn harvest-aid use of paraquat indicate that corn grain residues would not exceed the established tolerance of 0.05 ppm when applied broadcast postemergence at 0.5 lbs ai/A with a 7–day pre-harvest interval. Residue data submitted in tolerance petition PP 5F1625 (MRID 00114426) for corn harvest-aid use of paraquat indicate that corn fodder (stover) residues range from 1.3 to 10.0 ppm when applied broadcast postemergence at 0.5 lbs ai/A with a 7–day pre-harvest interval. These data support a corn forage tolerance of 3 ppm and a corn stover tolerance of 10 ppm.

B. Toxicological Profile

1. *Acute Toxicity.* Acute toxicity studies conducted with the 45.6% paraquat dichloride technical concentrate give the following results: oral LD_{50} in the rat of 344 mg/kg (males) and 283 mg/kg (females) (Category II); dermal LD_{50} in the rat of ≤ 2,000 mg/kg for males and females (Category III); the primary eye irritation study showed corneal involvement with clearing within 17 days (Category II); and dermal irritation of slight erythema and edema at 72 hours (Category IV). Paraquat is not a dermal sensitizer. Acute inhalation studies conducted to EPA guideline with aerosolized sprays result in LD_{50} of 0.6 to 1.4 µg paraquat cation/Liter (L) (Category I). However, since paraquat dichloride has no measurable vapor pressure; and hydraulic spray droplets are too large to be respirable, inhalation exposure is not a concern in practice.

2. *Genotoxicity.* Paraquat dichloride was not mutagenic in the Ames test using *Salmonella typhinurium* strains TA1535, TA1538, TA98, and TA100; the chromosomal aberrations in the bone marrow test system; or in the dominant lethal mutagenicity study with CD-1 mice. Additionally, paraquat dichloride was negative for unscheduled DNA synthesis in rat hepatocytes in *in vitro* and *in vivo*. Paraquat was weakly positive in the mouse lymphoma cell assay only in the presence of metabolic activation. Paraquat dichloride was weakly positive in mammalian cells (lymphocytes) and positive in the sister chromatid exchange (SCE) assay in Chinese hamster lung fibroblasts. Paraquat is non-mutagenic.

3. *Reproductive and developmental toxicity.* A 3–generation reproduction study in rats fed diets containing 0, 25, 75, and 150 ppm which correspond to 0, 1.25, 3.75 or 7.5 mg of paraquat cation/kg/day, respectively. Paraquat, at all levels tested, had no effect on body weight gain, food consumption and utilization, fertility and length of gestation of the F_0 F_1 and F_2 parents. The NOAEL and LOEL for systemic toxicity are 25 ppm (1.25 mg/kg/day) and 75 ppm (3.75 mg/kg/day), respectively, expressed as paraquat cation. The NOAEL for reproductive toxicity is ≥150 ppm (7.5 mg/kg/day; HDT) expressed as paraquat cation, as there were no reproductive effects observed.

Two developmental toxicity studies were conducted in rats given gavage doses of 0, 1, 5, and 10 mg/kg/day and 0, 1, 3, and 8 mg/kg/day, respectively, expressed as paraquat cation. In the first study, the NOAEL for maternal toxicity was 1 mg/kg/day based on clinincal signs of toxicity and decreased body weight gain at 5 mg/kg/day (the LOEL). The NOAEL for developmental toxicity was set at 5 mg/kg/day based on delayed ossification of the forelimb and hindlimb digits. In the second, study, the maternal and developmental NOAEL is 8 mg/kg/day (HDT) as there were no effects observed at any dose level even though the animals were examined more carefully in the manus and pes assessment. Based on both studies the overall NOAEL for maternal and developmental toxicity is at least 3 mg/kg/day.

Two developmental toxicity studies were conducted in mice given gavage doses of 0, 1, 5, and 10 mg/kg/day and 0, 7.5, 15, or 25 mg/kg/day paraquat ion, respectively. Both the maternal and developmental NOAEL's are at 15 mg/kg/day in the second study. The maternal LOEL of 25 mg paraquat cation/kg/day is based on death, decreases in body weight and body weight gain, and other clinical signs. The developmental LOEL is 25 mg/kg/day. In the first study there was a statistically significant effect on ''partial ossification'' of the 4th sternebra at 10 mg/kg/day (HDT). However, it is not believed the ossification pattern of the 4th sternebra was affected by paraquat as evidenced by the lack of increase in ''4th sternebra - not ossified.''

Additionally there were no statistically significant skeletal abnormalities seen in the second study. The developmental/maternal NOAEL should be based on the second study and is 15 mg/kg/day. Paraquat dichloride is not a developmental toxin.

4. *Subchronic toxicity.* A 90 day feeding study in dogs fed doses of 0, 7, 20, 60 or 120 ppm with a NOAEL of 20 ppm based on long effects such as alveolitis and alveolar collapse seen at the LOEL of 60 ppm.

A 21 day dermal toxicity study in rabbits exposed dermally to doses of 0, 1.5, 3.4, 7.8 or 17.9 mg/kg/day with a NOAEL of 1.15 mg/kg/day and a LOEL of 2.6 mg/kg/day based on dermal irritation.

A 21 day inhalation toxicity study in rats were exposed to respirable aerosols of paraquat at doses of 0, 0.01, 0.1, 0.5 and 1.0 µg/L with a NOAEL of 0.01 µg/L and a LOEL of 0.10 µg/L based on histopathological changes to the epithelium of the larynx and nasal discharge.

5. *Chronic toxicity.* In a 12-month feeding study in dogs fed dose levels of 0, 15, 30, or 50 ppm, expressed as paraquat cation. These levels corresponded to 0, 0.45, 0.93 or 1.51 mg of paraquat cation/kg/day, respectively, in male dogs or 0, 0.48, 1.00 or 1.58 mg of paraquat cation/kg/day, respectively for female dogs. There was a dose-related increase in the severity and extent of chronic pneumonitis in the mid-dose and high-dose male and female dogs. This effect was also noted in the low-dose male group, but was minimal when compared with the male controls. The systemic NOAEL is 15 ppm (0.45 mg/kg/day for males and 0.48 mg/kg/day for females, expressed as paraquat cation). The systemic LOEL is 30 ppm (0.93 mg/kg/day for males and

1.00 mg/kg/day for females, expressed as paraquat cation).

In a 2-year chronic feeding/carcinogenicity study, rats were fed doses of paraquat dichloride at 0, 25, 75, or 150 ppm which corresponded to 0, 1.25, 3.75, or 7.5 mg of paraquat cation/kg/day. Paraquat enhanced the development of ocular lesions in all of the treated groups. The predominant lesions detected opthalmoscopically were lenticular opacities and cataracts. At test week 103, dose-related statistically significant (P<0.001) increases in the incidence of ocular lesions were observed only in the mid-dose and high-dose male and female groups. Based on these findings, the NOAEL (approximate) and the LOEL for systemic toxicity, for both sexes, are 25 ppm (1.25 mg/kg/day) and 75 ppm (3.75 mg/kg/day), respectively.

In another 2-year chronic feeding/carcinogenicity study, rats were dosed at 0, 6, 30, 100 or 300 ppm, expressed as paraquat dichloride (nominal concentrations), equivalent to 0, 0.25, 1.26, 4.15, or 12.25 mg/kg/day, respectively (males) and 0, 0.30, 1.5, 5.12 or 15.29 mg/kg/day respectively (females), expressed as paraquat dichloride. The incidence of ocular changes were low and not caused by paraquat in this study. The systemic NOAEL is 100 ppm of paraquat dichloride (4.15 and 5.12 mg/kg/day, for males and females, respectively); or 3.0 mg/kg/day (males) and 3.7 mg/kg/day (females), expressed as paraquat cation. The systemic LOEL is 300 ppm of paraquat dichloride (12.25 and 15.29 mg/kg/day, for males and females, respectively); or 9.0 mg/kg/day (males) and 11.2 mg/kg/day (females), expressed as paraquat cation.

A chronic feeding/carcinogenicity study in rats fed dose levels of 0, 25, 75 or 150 ppm, expressed as paraquat cation (nominal concentrations). These doses corresponded to 0, 1.25, 3.75, or 7.5 mg paraquat cation/kg/day, respectively. There was uncertain evidence of carcinogenicity (squamous cell carcinomas in the head region; ears, nasal cavity, oral cavity and skin) in males at 7.5 mg/kg/day (HDT) with a systemic NOAEL of 1.25 mg/kg/day. Upon submission of additional data to EPA, the incidence of pulmonary adenomas and carcinomas was well within historical ranges and it was determined that paraquat was not carcinogenic in the lungs and the head region of the rat.

In another chronic feeding/carcinogenicity study, rats were fed dose levels of 0, 6, 30, 100 or 300 ppm, expressed as paraquat dichloride. There were no carcinogenic findings in this study at the highest dose tested. In a two year chronic feeding/oncogenicity study, SPF Swiss derived mice were fed paraquat dichloride at dose levels of 0, 12.5, 37.5, or 100/125 ppm, expressed as paraquat cation. These rates correspond to 0, 1.87, 5.62, and 15 mg/kg/day as cation. Because no toxic signs appeared after 35 weeks of dosing, the 100 ppm level was increased to 125 ppm at week 36. There were no carcinogenic effects observed in this study.

The systemic NOAEL for both sexes is 12.5 ppm (1.87 mg/kg/day) and the systemic LOEL is 37.5 ppm (5.6 mg/kg/day), each expressed as paraquat cation based on renal tubular degeneration in males and weight loss and decreased food intake in females.

Paraquat is classified Category E for carcinogenicity (no evidence of carcinogenicity in animal studies).

6. *Animal metabolism*. The qualitative nature of the residue in animals is adequately understood based on the combined studies conducted with ruminants (goats and cows), swine, and poultry. The residue of concern in eggs, milk, and poultry and livestock tissues is the parent, paraquat.

7. *Metabolite toxicology.* The nature of residues in plants and animals is adequately understood. The residue of concern in eggs, milk, poultry, livestock, and in crops is the parent paraquat. There are no metabolites.

8. *Endocrine disruption.* EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) ''may have an effect produced by a naturally occurring estrogen, or such other endocrine effect .'' The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientist in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects.

C. Aggregate Exposure

In examining aggregate exposure, FQPA directs EPA to take into account available information concerning exposures from the pesticide residue in food and all other exposures for which there is reliable information. These other sources of exposure including drinking water, and non-occupational exposures, e.g., to pesticides used in and around the home. For estimating acute and chronic risks the Agency considers aggregate exposures from the diet and from drinking water. Exposures from uses in and around the home that may be short term, intermediate or other duration may also be aggregated as appropriate for specific chemicals.

1. *Dietary exposure.* The Residue Chemistry data base for paraquat is substantially complete, and the nature of the residues in plants and animals is adequately understood. The residue of concern is the parent, paraquat; the current tolerance expression for plants and animal commodities, as defined in 40 CFR 180.205(a) and (b), is adequate. The Reference Dose (RfD) for chronic dietary assessments is 0.0045 mg/kg/day, based on a NOAEL of 0.45 mg/kg/day from a 1 year dog study and the addition of a standard uncertainty factor of 100.

2. *Food.* —i. *Chronic dietary assessment.* A chronic dietary exposure analysis was performed using current and reassessed tolerance level residues, contributions from the proposed use as a corn harvest aid, and 100% crop treated information to estimate the Theoretical Maximum Residue Contribution (TMRC) for the general population and 22 subgroups. The resulting TMRC for the general U.S. population from all established uses is 0.001669 mg/kg/day (37% of the RfD). For children ages 1–6, the most highly exposed subgroup, the resulting TMRC is 0.003679 mg/kg/day (82% of the RfD). A refined chronic dietary assessment using percent crop treated data provided a more accurate estimate of exposure, called the Anticipated Residue Contribution (ARC). The resulting ARC for the general population is 0.00037 mg/kg/day (8.0% of the RfD), and 0.001 mg/kg/day (22% of the RfD) for children ages one to six.

ii. *Acute dietary assessment.* EPA has determined that current data on paraquat shows no acutedietary endpoint of concern. Therefore, an acute dietary risk assessment is not required for paraquat.

3. *Drinking water.* Paraquat is not expected to be a contaminant of groundwater. Paraquat dichloride binds strongly to soil clay particles and it did not leach from the surface in terrestrial field dissipation studies. There were, however, detections of paraquat in drinking water wells from 2 states cited in the Pesticides in Ground Water Database (1991). These detections are not considered to be representative of normal paraquat use. Therefore, paraquat is not expected to be a groundwater contaminant or concern based on normal use patterns.

Due to its persistent nature, paraquat could potentially be found in surface

water systems associated with soil particles carried by erosion, however, paraquat is immobile in most soils, and at very high application rates (50–1,000X), there was no desorption of paraquat from soils. Therefore, based on paraquat's normal use patterns and unique environmental fate characteristics, exposures to paraquat in drinking water are not expected to be obtained from surface water sources.

4. *Non-dietary exposure.* Paraquat dichloride has no residential or other non-occupational uses that might result in non-occupational, non-dietary exposure for the general population. Paraquat products are Restricted Use, for use by Certified Applicators only, which means the general public cannot buy or use paraquat products.

D. Cumulative Effects

In assessing the potential risk from cumulative effects of paraquat and other chemical substances, the Agency has considered structural similarities that exist between paraquat and other bipyridylium compounds such as diquat dibromide. Examination of the toxicology databases of paraquat and diquat dibromide, indicates that the two compounds have clearly different target organs. Based on available data, the Agency does not believe that the toxic effects produced by paraquat would be cumulative with those of diquat dibromide.

E. Safety Determination

1. *U.S. population.* Based on the information provided in this notice, EPA has determined that for the aggregate exposure assessment the only exposure route of concern for paraquat is chronic dietary. The toxicology database for paraquat is considered by EPA to be complete and reliable. Using the conservative assumptions presented earlier, EPA has established an RfD of 0.0045 mg/kg/day. This was based on the NOAEL for the 1-year dog study of 0.45 mg/kg/day and employed a 100-fold uncertainty factor. Results of this aggregate exposure assessment, which includes EPA's reassessment of tolerances for existing crops and the addition of corn harvest aid, utilize a maximum of 22% of the RfD. Generally, exposures below 100% of the RfD are of no concern because it represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risk to human health. Thus, there is reasonable certainty that no harm will result from aggregate exposures to paraquat residues.

2. *Infants and children.* EPA has determined that the established tolerances for paraquat, with amendments and changes as specified in this notice, meet the safety standards under the FQPA amendments to section 408(b)(2)(*C*) for infants and children. The safety determination for infants and children considers the factors noted above for the general population, but also takes into account the possibility of increased dietary exposure due to specific consumption patterns of infants and children, as well as the possibility of increased susceptibility to the toxic effects of paraquat residues in this population subgroup.

In determining whether or not infants and children are particularly susceptible to toxic effects from paraquat residues, EPA considered the completeness of the database for developmental and reproductive effects, the nature and severity of the effects observed, and other information.

Based on the current data requirements, paraquat has a complete database for developmental and reproductive toxicity. In the developmental studies effects were seen (delayed ossification in the forelimb and hindlimb digits) in the fetuses only at the same or higher dose levels than effects in the mother. In the reproduction study, no effects on reproductive performance were seen. Also because the NOAELs from the developmental and reproduction studies were equal to or greater than the NOAEL used for establishing the reference dose, EPA concludes that it is unlikely that there is additional risk concern for immature or developing organisms. Finally, the Agency has no epidemiological information suggesting special sensitivity of infants and children to paraquat. Therefore, the Agency finds that the uncertainty factor (100X) routinely used in RfD calculations is adequately protective of infants and children, and an additional uncertainty factor is not warranted for paraquat.

Zeneca estimates that paraquat residues in the diet of non-nursing infants (less than 1 year) account for 18% of the RfD and 22% of the RfD for children aged 1–6 years. Further, residues in drinking water are not expected. Therefore, the Zeneca has determined that there is reasonable certainty that dietary exposure to paraquat will not cause harm to infants and children.

F. International Tolerances

Codex maximum residue levels (MRL) are established for residues of paraquat for corn grain at 0.1 ppm. The proposed tolerances for corn grain at 0.05 ppm differ from the Codex MRL's based on field residue data generated in the United States for this use (Pesticide Petitions 5F1625 and 5H5088 for corn grain. Differences in use patterns and pre-harvest intervals may account for the differences between the Codex MRLs and the tolerance values generated from the pesticide residue trials in the United States. (Jim Tompkins)

[FR Doc. 98–26783 Filed 10–6–98; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–6173–6]

State and Tribal Water Quality Standards; Notice of EPA Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This document contains a listing of State and Tribal submissions of new or revised water quality standards that EPA approved during the period September 1, 1995 through March 31, 1998. This document is published in accordance with a requirement contained in the Water Quality Standards Regulation (40 CFR 131.21). Additionally, this notice contains a listing of Indian Tribes that obtained EPA approval to administer a water quality standards program during the same period. It also contains a list of EPA actions to promulgate or remove Federal water quality standards during the same period.

FOR FURTHER INFORMATION CONTACT:

Region	WQS coordinator	Phone No.
1	Bill Beckwith, Office of Ecosystem Protection (MC CWQ), JFK Federal Building, Boston, MA 02203	617–565–3539
2	Wayne Jackson, Division of Environmental Planning and Protection, 290 Broadway, New York, NY 10007.	212–637–3807
3	Denise Hakowski, Water Protection Division (3WP11), 1650 Arch St., Philadelphia, PA 19103–2029	215–814–5726
4	Fritz Wagener, Water Division—15th Floor, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303.	404–562–9267

Region	WQS coordinator	Phone No.
5	David Pfeifer, Water Division (WT–15J), 77 West Jackson Boulevard, Chicago, IL 60604–3507	312–353–9024
6	Sharon Parrish, Water Division, 1445 Ross Avenue, First Interstate Bank Tower, Dallas, TX 75202	214–665–7145
7	Larry Shepard, Water Resources Protection Branch, 726 Minnesota Avenue, Kansas City, KS 66101	913–551–7441
8	Bill Wuerthele, Office of Ecosystems Protection and Remediation, Ecosystems Protection Program (8EPR–EP), 999 18th Street, Suite 500, Denver, CO 80202–2466.	303–312–6943
9	Phil Woods, Water Division (WTR–5), 75 Hawthorne Street, San Francisco, CA 94105	415–744–1997
10	Lisa Macchio, Water Division (OW–134), 1200 Sixth Avenue, Seattle, WA 98101	206–553–1834

SUPPLEMENTARY INFORMATION: This document contains a list of State and Tribal water quality standards adoptions and revisions which EPA approved during the period beginning on September 1, 1995, and ending on March 31, 1998. The most recent previous such list was published on October 3, 1995 (60 FR 51793).

For each EPA approval action, this document provides a reference to the state's or Tribe's regulations that contain the State and Tribal water quality standards; the date of State and Tribal adoption; the date of EPA approval; and a brief description of EPA's approval. Additionally, this notice contains a listing of Tribes that have obtained EPA approval to administer a water quality standards program. It also contains a listing of federal water quality standards rulemakings.

This document does not include the following information: (1) the text of the water quality standards, (2) any conditions (including disapprovals of portions of the State and Tribal submittals) that might have been attached to the approvals, (3) Tribal application materials submitted to EPA for authorization to administer the water quality standards program, or (4) the text of the federal water quality standards rulemakings. The text of a State's or Tribe's standards and copies of the approval letters may be obtained from the State's or Tribe's pollution control agency or the appropriate EPA Regional Office (see ''For Further Information Contact'' section above). Proprietary publications such as those of the Bureau of National Affairs, Inc. also contain the text of State and Tribal water quality standards.

WATER QUALITY STANDARDS APPROVALS

EPA REGION 1

CONNECTICUT

Water quality standards for the State of Connecticut as adopted pursuant to section 22a–426 of the Connecticut General Statutes.

Adopted by the State: April 8, 1997
Effective date: October 20, 1997
EPA Action: Approval on October 20, 1997

Connecticut adopted revisions to its water quality standards establishing site-specific copper criteria for certain freshwater stream segments and updated other numeric criteria to incorporate new scientific information and maintain consistency with EPA recommendations.

VERMONT

Water quality standards for the State of Vermont as adopted pursuant to Vermont state law at 3 V.S.A.

Adopted by the State: January 23, 1996
Effective Date: February 13, 1996
EPA Action: Approval on December 5, 1996

Vermont adopted revisions to its water quality standards removing the absolute presumption that nonpoint sources satisfy water quality standards if the activities are conducted in accordance with ''accepted agricultural and silvicultural practices'' or other appropriate management practices. In addition, the definition of ''Waters of the U.S.'' was clarified to ensure coverage for wetlands. The State also adopted numeric criteria for toxic pollutants and eliminated the waiver of water quality criteria in small drainage areas.

EPA REGION 2

NEW JERSEY

Water quality standards for the State of New Jersey are adopted pursuant to: New Jersey Administrative Code 7:9B.

Adopted by the State: July 15, 1996
Effective Date: July 15, 1996
EPA Action: Approval on September 27, 1997

New Jersey adopted revisions to its water quality standards establishing site-specific copper criteria for those waters of the New York/New Jersey Harbor for which the State of New Jersey has jurisdiction, including the Hudson River south from the Tappan Zee Bridge; Upper and Lower New York Bays to the Sandy Hook—Rockaway transect; Raritan Bay; Newark Bay; and the tidal portions of the New Jersey tributaries, including the Hackensack, Passaic, and Raritan Rivers. These water quality criteria were developed through the joint efforts of EPA, the States of New York and New Jersey, the New York City Department of Environmental Protection and the New York/New Jersey Harbor Estuary Program. Three waters have been reclassified to reflect trout production: a tributary to the Musconetcong River; Turkey Hill Brook (Delaware River Basin); and Blue Mine Brook (Passaic River Basin).

EPA REGION 3

DISTRICT OF COLUMBIA

Water quality standards for the District of Columbia are contained in: Chapter 11 of Title 21 DCMR, Water Quality Standards (WQS) of the District of Columbia.

Adopted by the District: March 4, 1994
Effective Date: March 4, 1994
EPA Action: Approval on November 4, 1996

The District of Columbia adopted revisions to its water quality standards in response to EPA's June 27, 1994 disapproval of subsection 1103.2 of the District's regulations. The disapproval was removed based on the District's January 30, 1996 letter which certified the broad application of the District's definition of wetlands. The District removed the public water supply use designation from subsection 1101.1.

PENNSYLVANIA

Water quality standards for the Commonwealth of Pennsylvania are contained in: Title 25, Environmental Protection, Department of Environmental Protection, Chapter 93, Water Quality Standards, and Chapter 16, Water Quality Standards Toxics Management Strategy, Appendix C and D, Statement of Policy.

Adopted by the Commonwealth: May 28, 1996
Effective Date: May 28, 1996
EPA Action: Conditional approval on April 29, 1996

Pennsylvania adopted revisions to its water quality standards modifying the site specific acute and chronic water quality criteria for copper, based upon a water-effect ratio, for Laurel Run, a tributary to the Schuylkill River near Reading, Pennsylvania at the site of the NGK Metals Corporation. EPA's approval was conditional upon satisfactory completion of the public participation requirements.

Adopted by the Commonwealth: June 13, 1996
Effective Date: June 13, 1996
EPA Action: Conditional approval on June 18, 1996

Pennsylvania adopted revisions to its water quality standards modifying the site-specific acute and chronic water quality criteria for copper and zinc, based upon a water-effect ratio, for the Upper Wissahickon Creek, a tributary to the Schuylkill River, near North Wales, Pennsylvania at the site of the Upper Gwynned Township Authority. EPA's approval was conditional upon satisfactory completion of the public participation requirements.

Adopted by the Commonwealth: October 25, 1995
Effective Date: Conditional approval on October 16, 1995

Pennsylvania adopted revisions to its water quality standards modifying the site specific acute and chronic water quality criteria for cadmium in Chester Creek, a tributary of the Delaware River Estuary, at the site of the Southwest Delaware County Municipal

Authority. EPA's approval was conditional upon satisfactory completion of the public participation requirements.

Date of Adoption: November 18, 1995
Effective Date: November 18, 1995
EPA Action: Approval on June 27, 1997

Pennsylvania adopted revisions to its water quality standards amending Chapter 16 which includes: adoption of dissolved aquatic life criteria for arsenic, cadmium, chromium VI, copper, lead, mercury (acute only), nickel, selenium, silver and zinc; conversion factors to convert total recoverable criteria to dissolved criteria; the adoption of regulations to allow dischargers to derive site-specific chemical and biological translators; the adoption of EPA's final lead criteria formulae; and, the replacement of the human health criterion of 0.02 ug/l for arsenic with the current drinking water maximum contaminant level of 50 ug/l.

VIRGINIA

Water quality standards for the Commonwealth of Virginia are contained in: 9 VAC 25–260–5 et seq.

Adopted by the Commonwealth: December 12, 1996
Effective Date: March 19, 1997
EPA Action: Approval on November 6, 1997

Virginia adopted revisions to its antidegradation policy requiring the State Water Control Board to notify localities and other affected parties when a water body is nominated for designation as an Exceptional State Water. The revision also specifies the information that the Board must disclose to the affected parties.

Adopted by the Commonwealth: December 12, 1996
Effective Date: April 30, 1997
EPA Action: Approval on November 6, 1997

Virginia adopted revisions to its antidegradation policy designating one surface water for special protection as an Exceptional Water. The segment of North Creek, Upper James River watershed, located within the Glenwood Ranger District of the Jefferson National Forest in Botetourt County was designated as an exceptional water.

Adopted by the Commonwealth: September 12, 1996
Effective Date: April 2, 1997
EPA Action: Approval on January 8, 1998

Virginia adopted revisions to its water quality standards deleting the Potomac Embayment Special Standard and adding a paragraph explaining that a Policy for the Potomac River Embayments had been adopted by the State on September 12, 1996. In addition, the State adopted revisions necessary to conform the Potomac River Subbasin section and the special standards and requirements section of the water quality standards to the new policy.

WEST VIRGINIA

Water quality standards for the State of West Virginia are contained in: Title 46, Legislative Rule, Environmental Quality Board, Series 1, Requirements Governing Water Quality Standards.

Adopted by the State: May 23, 1995
Effective Date: August 18, 1995
EPA Action: Conditional approval and partial approval on November 9, 1995

West Virginia adopted revisions to its water quality standards for the State's antidegradation policy, mixing zone policy, definitions, and specific water quality criteria. EPA conditionally approved and partially approved portions of these revisions. Provisions that were conditionally approved include the antidegradation policy, and the mixing zone policy and definitions. Provisions that were partially approved include specific water quality criteria.

EPA REGION 4

ALABAMA

Water quality standards for the State of Alabama are contained in: Rules of Alabama Department of Environmental Management, Water Division, Water Quality Program, Chapter 335–6–10 (Water Quality Criteria) and Chapter 335–6–11 (Water Use Classifications for Interstate and Intrastate Waters).

Adopted by the State: April 22, 1997
Effective date: May 30, 1997
EPA Action: Approval on December 7, 1997

The State of Alabama adopted revisions to its water quality standards modifying the designated use of Fish and Wildlife for 15 stream segments, formerly classified for the Agricultural and Industrial Water Supply use, as well as several other reclassification actions. The State also adopted a revised reference dose for mercury for use in establishing water quality criteria for the protection of human health.

GEORGIA

Water quality standards for the State of Georgia are contained in: Rules and Regulations for Water Quality Control, Chapter 391–3–6-.03, Water Use Classification and Water Quality Standards.

Adopted by the State: June 26, 1996 and September 27, 1996
Effective date: July 20, 1996 and November 6, 1996
EPA Action: Approval on April 30, 1997

Georgia adopted revisions to its water quality standards including site specific criteria for West Point Lake (June 26, 1996) and Lake Jackson and Lake Walter F. George (September 27, 1996). Georgia also adopted revised water quality criteria for arsenic.

KENTUCKY

Water quality standards for the State of Kentucky are contained in: Kentucky Administrative Regulations, Title 401, Chapters 5:026, 5:029, 5:030, and 5:031.

Adopted by the Commonwealth: July 12, 1995
Effective date: July 12, 1995
EPA Action: Partial approval on August 7, 1997

Kentucky adopted revisions to its water quality standards including a new regulation, 401 KAR 5:030, which comprises the procedures for implementation of antidegradation for point sources within the Commonwealth.

MISSISSIPPI

Water quality standards for the State of Mississippi are contained in: State of Mississippi Water Quality Criteria for Intrastate, Interstate, and Coastal Waters.

Adopted by the State: February 24, 1994
Effective date: February 24, 1994
EPA Action: Approval on September 12, 1995

Mississippi adopted revisions to its water quality standards including a Fish and Wildlife use classification for seven stream segments that were previously classified as Ephemeral Streams.

NORTH CAROLINA

Water Quality Standards for the State of North Carolina are contained in: 15 NCAC 2B .0100 Procedures for Assignment of Water Quality Standards and .0200 Classifications and Water Quality Standards Applicable to Surface Waters of North Carolina.

Adopted by State: May 11, July 13, and September 14, 1995; and February 8, 1996
EPA Action: Approval on June 12, 1997

North Carolina adopted revisions to its water quality standards including an overall reorganization of its water quality standards.

Adopted by State: October 12, 1996
Effective date: April 1, 1997
EPA Action: Approval on November 3, 1997

North Carolina adopted revisions to its water quality standards adding section .0229 Tar-Pamlico River—Nutrient Sensitive Waters: Nutrient Offset Payments for non-Tar-Pamlico Basin Association Members to further the state's effort in continued implementation of its Nutrient Sensitive Water management strategy for the Tar-Pamlico Basin.

Adopted by State: March 14, 1996
Effective date: October 1, 1996
EPA Action: Approval on January 9, 1998

North Carolina adopted revisions to its water quality standards revising and establishing water quality standards for wetlands. (15 NCAC 2B .0100, .0200 and 2H .0500). The wetland rules established freshwater and saltwater classifications for wetlands and a supplemental classification for unique wetlands. The rules defined wetlands to be classified, and established narrative water quality standards to protect the designated uses of wetlands, and the addition of a separate codified procedural review process for reviewing requests for Clean Water Act section 401 Water Quality Certification.

SEMINOLE OF FLORIDA

Water quality standards for the Seminole of Florida are contained in: Seminole Tribe of Florida's Rules, Chapter B, Part 12, Water Quality Standards for Surface Waters.

Adopted by Tribe: September 13, 1996
Effective Date: September 13, 1996
EPA Action: Approval on September 26, 1997

The Seminole of Florida adopted water quality standards establishing designated uses, water quality criteria, and an antidegradation policy for the Seminole waters of the Big Cypress Reservation.

TENNESSEE

Water quality standards for the State of Tennessee are contained in: State of

Tennessee Water Quality Standards, Rules of the Department of Environment and Conservation, Bureau of Environment, Division of Water Pollution Control Chapter 1200–4–3 General Water Quality Criteria and Chapter 1200–4–4 Use Classifications for Surface Waters.

Adopted by the State: July 30, 1995
Effective Date: July 30, 1995
EPA Action: Approval on April 3, 1996

Tennessee adopted revisions to its water quality standards including an additional 46 priority and non-priority pollutant criteria values for Domestic Water Supply, additional water quality criteria values for Total Residual Chlorine and an updated PCB criterion, additional narrative standards for Biological Integrity and additional toxic substance criteria (human health: water and organism consumption) applicable to waters classified for both recreation and water supply uses.

The state also adopted a new procedure for development of fish consumption advisories for typical and atypical consumers. The state adopted a new designation process for Outstanding National Resource Waters and language for the protection of these waters. Additional language characterizing High Quality Waters was also adopted. The State also revised its use classifications to include: additional stream segments named and listed, additional designation of trout and naturally reproducing trout streams, and several stream segments upgraded by the removal of industrial water supply designation.

EPA REGION 5

Mole Lake Band of the Lake Superior Tribe of Chippewa Indians, Sokaogon Chippewa Community

Water quality standards for the Mole Lake Tribe are contained in: Sokaogon Chippewa Community Water Quality Standards.

Date Adopted: December 29, 1995
Effective Date: December 29, 1995
EPA Action: Approval on January 22, 1996

The Sokaogon Chippewa Community adopted water quality standards including designated uses, water quality criteria and an antidegradation policy. Designated uses include the protection of fish and aquatic life uses, recreation in and on the water, public water supplies and other cultural uses. The Tribe's antidegradation policy designates all Tribal waters as outstanding national resource waters (ONRWs).

EPA REGION 6

ARKANSAS

Water Quality Standards for the State of Arkansas are contained in: Regulation No. 2-Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas.

Adopted by the State: September 29, 1995
EPA Action: Approval on April 9, 1996

Arkansas adopted revisions to its water quality standards modifying the total dissolved solids criteria for Bayou de Loutre. The State also removed the domestic water supply use designation for Gum Creek, Bayou de Loutre from the confluence of Gum Creek to the State Line, Walker Branch, and Little Cornie Bayou from the confluence of Walker Branch to the State Line.

LOUISIANA

Water quality standards for the State of Louisiana are contained in: Louisiana Administrative Code, Title 33, Part IX, Chapter 11.

Adopted by the State: July 20, 1995
Effective Date: July 20, 1995
EPA Action: Approval on October 31, 1995

Louisiana adopted revisions to its water quality standards changing its beneficial uses and/or dissolved oxygen criteria for five water bodies: Tisdale Brake/Staulkinghead Creek, Deer Creek, Mahlin Bayou/McCain Creek, Red Chute Bayou and Bayou Cocodrie. These changes to the water quality standards were supported by use attainability analyses.

Adopted by the State: November 20, 1996
Effective Date: November 20, 1996
EPA Action: Approval on February 21, 1997

Louisiana adopted revisions to its water quality standards modifying the dissolved oxygen criteria for the portion of the Ouachita River from the Arkansas-Louisiana state line to Columbia Lock and Dam. The previous numerical criterion for dissolved oxygen was modified to site-specific seasonal dissolved oxygen criteria.

OKLAHOMA

Water Quality Standards for the State of Oklahoma are contained in: OAC 785:45, Oklahoma's Water Quality Standards.

Adopted by State: July 24, 1995
EPA Action: Approval on February 26, 1997

Oklahoma adopted revisions to its water quality standards including new numeric criteria for the following substances: Acrylonitrile, Dichlorobromomethene, Mercury, Tetrachloroethylene, Thallium and Hexahydro-1,3,5-trinitro-1,3,5-triazine (RDX). The State removed the chronic criteria for silver. The State made a provision for the designation of the Habitat Limited Aquatic Community under certain circumstances. Oklahoma adopted limits for chlorides, sulfides, and TDS in stream segments. Stream segments located within the following areas were added to the category of Appendix B waters (waters of the state within State parks, forests, wilderness areas, wildlife management areas, and wildlife refuges): Deep Fork National Wildlife Refuge, Little River National Wildlife Refuge, Oklahoma Bat Caves National Wildlife Refuge, and Washita National Wildlife Refuge.

PUEBLO OF NAMBE

Water quality standards for the Pueblo of Nambe are contained in the Pueblo of Nambe Water Quality Code as adopted by Tribal Resolution NP 95–023.

Adopted by the Tribe: May 11, 1995
Effective Date: May 11, 1995
EPA Action: Approval on August 18, 1995

The Pueblo of Nambe adopted its first set of water quality standards which contains designated uses, criteria to protect uses and an antidegradation policy. Discretionary items include: compliance schedules, variances, mixing zones, critical low flow design and short-term exemptions on a limited basis.

Note: The water quality standards for the Pueblo of Nambe were omitted from the most recent list of review and revisions of State and Tribe water quality standards published October 3, 1995 (60 FR 51793). It is printed here for a matter of record.

PUEBLO OF POJOAQUE

Water quality standards for the Pueblo of Pojoaque are contained in the Pueblo of Pojoaque Water Quality Code as adopted pursuant to Tribal Resolution No. 95–55.

Adopted by the Tribe: December 15, 1995
Effective Date: December 15, 1995
EPA Action: Approval on March 21, 1996

The Pueblo of Pojoaque adopted its first set of water quality standards containing designated uses, water quality criteria to protect uses and an antidegradation policy. Discretionary items include: compliance schedules, variances, mixing zones, critical low flow design and short-term exemptions on a limited basis.

PUEBLO OF TESUQUE

Water quality standards for the Pueblo of Tesuque are contained in the Pueblo of Tesuque Water Quality Code as adopted pursuant to Tribal Resolution 1996–11–01.

Adopted by the Tribe: November 26, 1996
Effective Date: November 26, 1996
EPA Action: Approval on April 29, 1997

The Pueblo of Tesuque adopted its first set of water quality standards containing designated uses, water quality criteria and an antidegradation policy. Discretionary items include: compliance schedules, variances, mixing zones, critical low flow design and short-term exemptions on a limited basis.

TEXAS

Water quality standards for the State of Texas are contained in: Surface Water Quality Standards Chapter 307.

Adopted by the State: June 14, 1995
Effective Date: July 13, 1995
EPA Action: Approvals on June 28, 1996 and March 11, 1998

Texas adopted revisions to its water quality standards establishing site-specific aquatic life use designations for the following water bodies: Beals Creek, Black Cypress, Chacon Creek, Fort Ewell Creek, Grace Creek, control ditches (Harris), Rabbs Bayou, Jefferson County canals (0702), Pond Creek, Rabbit Creek, Rita Blanca Lake, South Concho River water bodies and Eightmile Creek. These specific standards were justified by use attainability analyses. Texas added water quality criteria for dicolfol, diuron, benzo(a)anthracene, benzo(a)pyrene, chrysene, and cyanide. Chronic and human health criteria were deleted for silver. Other water quality criteria values were revised, including site-specific standards for several designated segments.

Adopted by the State: March 19, 1997
Effective Date: April 30, 1997
EPA Action: Approval on March 11, 1998

Texas adopted revisions to its water quality standards establishing site-specific aquatic life uses for 39 previously unclassified

streams and a presumed use of high aquatic life use for unclassified, perennial streams.

EPA REGION 7

KANSAS

Water Quality Standards for the State of Kansas are contained in: Kansas Administrative Regulations, Title 28, Article 16, Section 28, Surface Water Quality Standards.

Adopted by the State: June 28, 1994
Effective Date: August 29, 1994
EPA Action: Partial approval on February 19, 1998

Kansas adopted revisions to its water quality standards designating all surface waters for at least secondary contact recreation and aquatic life uses. Numeric criteria were adopted for an additional 176 pollutants or parameters. The State adopted by reference a Kansas Surface Water Register and associated maps for all classified surface water based on EPA's River Reach Files 2 and 3.

EPA REGION 8

COLORADO

Water quality standards for the State of Colorado are contained in: The Basic Standards and Methodologies for Surface Water (3.1.0 (5 CCR 1002–8)).

Date Effective: December 12, 1994
EPA Action: Approval on February 23, 1996

Colorado adopted a plan of implementation for salinity control, as contained in ''1993 Review Water Quality Standards for Salinity, Colorado River System Final Report,'' October 1993, as a policy statement.

CONFEDERATED SALISH AND KOOTENAI TRIBES

Water quality standards for the Confederated Salish and Kootenai Tribes are contained in: Confederated Salish and Kootenai Tribes of the Flathead Reservation—Surface Water Quality Standards and Antidegradation Policy.

Adopted by the Tribe: March 28, 1995
Effective Date: April 27, 1995
EPA Action: Approval on March 18, 1996

The Tribes adopted water quality standards for all surface waters within the reservation boundary. The standards include designated uses, numerical criteria for toxic and conventional pollutants, narrative criteria, and an antidegradation policy.

UTAH

Water quality standards for the State of Utah are contained in: Part II Utah Wastewater Disposal Regulation, Standards of Quality for Waters of the State.

Effective Date: February 16, 1994
EPA Action: Approval on February 23, 1996

Utah adopted a plan of implementation for salinity control, as contained in ''1993 Review Water Quality Standards for Salinity, Colorado River System Final Report,'' October 1993.

WYOMING

Water quality standards for the State of Wyoming are contained in: Water Quality Rules and Regulations, Chapter 1—Quality Standards for Wyoming Surface Waters.

Effective Date: May 19, 1993
EPA Action: Approval on February 23, 1996

Wyoming adopted revisions to its water quality standards amending its Statewide Water Quality Management Plan to incorporate the plan of implementation for salinity control, as contained in ''1993 Review Water Quality Standards for Salinity, Colorado River System Final Report.''

EPA REGION 9

ARIZONA

Water quality standards for the State of Arizona are contained in: Arizona's Rules on Water Quality Standards for Surface Waters (Title 18, Chapter 11, Article 1).

Adopted by the State: March 22, 1996 and April 3, 1996; implementation procedures on January 16, 1996 and April 1, 1996
Effective Date: April 24, 1996
EPA Action: Partial approval on April 26, 1996

Arizona adopted revisions to its water quality standards including the addition of the Fish Consumption designated use for approximately 90 water bodies, the modification of the Mining Impoundment Exemption and the deletion of Practical Quantitation Limits. Also, Arizona adopted a mercury tissue residue monitoring plan to implement its mercury criteria. (These revisions were the subject of EPA's partial approval.)

The State also adopted procedures for the implementation of its narrative standards: (1) Implementation Guidelines for the Narrative Nutrient Standard, and (2) Interim Whole Effluent Toxicity Implementation Guidelines for Arizona.

California

These water quality standards for the State of California are contained in: ''1993 Review—Water Quality Standards for Salinity, Colorado River System Final Report,'' October 1993. (State Water Resources Control Board Resolution No. 94–28).

Adopted by the State: March 21, 1994
EPA Action: Approval on October 16, 1995

California adopted the 1993 Review of Salinity Standards for the Colorado River Basin.

These water quality standards for the State of California are contained in: ''Water Quality Control Plan for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (1995 Bay/Delta Plan). (State Water Resources Control Board Resolution No. 95–24).

Adopted by the State Office of Administrative Law: July 17, 1995
EPA Action: Approval on September 26, 1995

California adopted the 1995 Bay/Delta Plan to replace the water quality standards in the 1991 Plan that were partially disapproved by EPA on September 3, 1991.

NEVADA

Water quality standards for the State of Nevada are contained in: Nevada Administrative Code (NAC), Water Pollution Control Provisions.

Adopted by the State: Nevada Attorney General certified on July 7, 1994 and June 26, 1995
EPA Action: Approval on November 8, 1995

Nevada adopted revised water quality standards for Carson River System and revised its un-ionized ammonia criteria for Las Vegas Bay.

Adopted by the State: Nevada Attorney General certified on July 7, 1994 and June 13, 1996
EPA Action: Approval on July 13, 1997

Nevada adopted revisions to its water quality standards for metals expressed as dissolved metals for the protection of the aquatic life beneficial uses. The State also revised water quality standards for the protection of municipal and domestic water supply uses based on current maximum contaminant levels.

Adopted by the State: Nevada Attorney General certified on June 13, 1996
EPA Action: Approval on January 31, 1997

Nevada adopted revised water quality standards for Lake Tahoe and selected tributaries.

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

Water quality standards for the Commonwealth of the Northern Mariana Islands are contained in: Commonwealth of the Northern Mariana Islands Water Quality Standards.

Adopted by the Commonwealth: January 15, 1997
EPA Action: Approval on February 3, 1997

The Commonwealth of the Northern Mariana Islands adopted revisions to its water quality standards including miscellaneous changes to use designations and criteria, revisions to the Water Quality Certification (section 401) process, and clarification of implementation provisions.

EPA REGION 10

ALASKA

Water quality standards for the State of Alaska are contained in: Alaska Administrative Code (AAC), Chapter 18 (i.e. identified in 18 AACC 70.020).

Adopted by State: December 4, 1994, amended February 16, 1996
Effective Date: January 4, 1995, amendments on March 16, 1996
EPA Action: Approval with one exception on April 7, 1997

Alaska adopted water quality standards revisions to its antidegradation policy and conventional pollutants criteria, including color for freshwater use categories and fecal coliform criteria. For site-specific criteria, Alaska added a definition of natural background and clarified processes that may be used in the development of site specific criteria. A revision to the petroleum hydrocarbon criterion was also adopted.

Adopted by State: August 22, 1997
Effective Date: November 17, 1997
EPA Action: Approval on November 17, 1997

Alaska adopted revisions to its water quality standards restructuring its mixing

zone policy. Additions and deletions were made to the mixing zone policy that had been adopted December 4, 1994. Chapter 18 AAC 70 was reorganized and wording changed in several sections to clarify the meaning of the regulations.

Adopted by State: February 26, 1997
Effective Date: February 11, 1998
EPA Action: Approval on February 11, 1998

Alaska adopted water quality standards revisions to their designated uses for Red Dog Creek, several small tributaries to Red Dog Creek (Sulfur, Shelly, Connie, Rachael, and Hilltop Creeks), and Ikalukrok Creek in the DeLong Mountains in Northwest Alaska.

CONFEDERATED TRIBES OF THE CHEHALIS RESERVATION

Water quality standards for the Confederated Tribes of the Chehalis Reservation are codified in the Law and Order Code, Title 20 (Environmental Protection), Chapter 1.

Adoption by the Tribes: February 15, 1996
Effective Date: February 15, 1996
EPA Action: Approval on February 3, 1997

The Tribes adopted water quality standards covering all surface waters within the boundary of the Reservation and including both toxic and conventional numeric water quality criteria as well as narrative criteria, designated uses based on a classification system, an antidegradation policy, and policies for mixing zones and allowance of short-term modifications of standards.

IDAHO

Water quality standards for the State of Idaho are contained in: IDAPA 16, Title 1, Chapter 2 Water Quality Standards and Wastewater Treatment Requirements.

Adopted by State: August 24, 1994; April 10, 1995; and April 14, 1995
EPA Action: Approval on June 25, 1996

Idaho adopted revisions to its water quality standards including numeric toxic criteria, chronic ammonia criteria for warm water and cold water biota, human health criteria for arsenic, dissolved oxygen criteria, bacteriological criteria, specific designated uses, antidegradation policy, variance policy and mixing zone policy.

Adopted by State: June 19, 1997
EPA Action: Conditional approval on July 15, 1997

Idaho adopted water quality standards revisions to its designated uses for thirty-five specific water bodies, provisions to the mixing zone policy, uses for undesignated waters and numeric temperature criteria for Kootenai River sturgeon spawning.

Adopted by State: November 14, 1996
Effective Date: December 1, 1996
EPA Action: Approval on May 27, 1997

Idaho adopted revisions to its water quality standards including factors for converting aquatic life water quality criteria for metals from total recoverable to dissolved concentrations.

Adopted by State: February 11, 1997
EPA Action: Approval on May 27, 1997

Idaho adopted water quality standards revisions to its designated uses for Lindsay Creek and West Fork Blackbird Creek and to its antidegradation policy.

PUYALLUP TRIBE OF INDIANS

Water Quality Standards for the Puyallup Tribe of Indians are contained in the Tribal Water Quality Standards Ordinance.

Adopted by Tribe: August 15, 1994
Effective Date: August 15, 1994
EPA Action: Approval on October 31, 1994

The Puyallup Tribe of Indians adopted its first set of water quality standards. These standards include narrative and numeric water quality criteria for toxics and conventional pollutants, an antidegradation policy, and use designations for surface waters specified in the Puyallup Land Claim Settlement Act.

Note: The water quality standards for the Puyallup Tribe of Indians were omitted from the most recent list of review and revisions of State and Tribe water quality standards published October 3, 1995 (60 FR 51793). It is printed here for a matter of record.

WASHINGTON

Water Quality Standards for surface waters for the State of Washington are contained in: Chapter 173–201A Washington Administrative Code (WAC).

Adopted by State: November 18, 1997
Effective Date: December 19, 1997
EPA Action: Approval on February 6, 1998

Washington adopted water quality standards revisions clarifying definitions and revising ammonia criteria. Conversion factors for dissolved metals and a site specific criterion for marine cyanide have been added. The State adopted a chronic marine copper criterion, developed an approach to nutrient criteria for lakes, adopted wetlands provisions and revised its short-term modification provisions.

TRIBAL WATER QUALITY STANDARDS PROGRAM AUTHORIZATIONS

EPA REGION 5

MOLE LAKE BAND OF THE LAKE SUPERIOR TRIBE OF CHIPPEWA INDIANS, SOKAOGON CHIPPEWA COMMUNITY

EPA Approval: September 29, 1995

FOND DU LAC BAND OF CHIPPEWA

EPA Approval: May 16, 1996

GRAND PORTAGE BAND OF CHIPPEWA

EPA Approval: July 15, 1996

EPA REGION 6

PUEBLO OF POJOAQUE

EPA Approval: March 21, 1996

PUEBLO OF TESUQUE

EPA Approval: April 29, 1997

EPA REGION 8

ASSINIBOINE AND SIOUX TRIBES OF THE FORT PECK RESERVATION

EPA Approval: August 29, 1996

EPA REGION 9

HOOPA VALLEY TRIBE

EPA Approval: May 17, 1996

WHITE MOUNTAIN APACHE TRIBE

EPA Approval: February 3, 1997

REGION 10

TULALIP TRIBES

FEDERAL WATER QUALITY STANDARDS RULEMAKINGS

For purposes of informing the public, EPA is listing those federal water quality standards rulemakings taken pursuant to section 303(c)(4) of the CWA for the period of September 1, 1995 through March 31, 1998. For the full text of the rules, the reader is referred to the **Federal Register** notices cited below.

EPA REGION 3

PENNSYLVANIA

Date of Rule: August 29, 1996
Reference: 61 FR 64822 (40 CFR 131.32)

EPA promulgated an antidegradation policy for application in the State.

EPA REGION 9

ARIZONA

Date of Rule: May 7, 1996
Reference: 61 FR 20685 (40 CFR 131.31.(b))

EPA established the fish consumption use for 14 waterbodies and set forth a requirement that EPA or the State implement a monitoring program to identify where mercury contamination of fish may be affecting wildlife.

EPA REGION 10

ALASKA

Date of Rule: October 10, 1997
Reference: 62 FR 53212

EPA withdrew from Federal Regulation (National Toxics Rule) 19 acute aquatic life water quality criteria applicable to Alaska.

Date of Rule: March 2, 1998
Reference: 63 FR 10140

EPA withdrew from Federal Regulation (National Toxics Rule) the arsenic human health water quality criteria applicable to Alaska.

IDAHO

Date of Rule: November 29, 1996
Reference: 61 FR 60616

EPA withdrew from Federal Regulation (National Toxics Rule) all human health water quality criteria applicable to Idaho except for arsenic.
Date of Rule: July 31, 1997
Reference: 62 FR 41162

EPA's rule ensures that (1) five water body segments not currently designated for fishable uses will have an aquatic life use; (2) the numeric criteria for temperature will adequately protect bull trout; and (3) where waters on privately-owned lands are waters of the U.S., those waters will be protected in the same way other unclassified waters are protected. In addition, in recognition that new information may become available over time, EPA incorporated a provision which allows site-specific adjustments to the bull trout temperature criteria; a provision which allows the list of bull trout waters to be modified; and a variance provision for

temporary site-specific relief from the criteria associated with the federal aquatic life use designation.

Date of Rule: October 9, 1997
Reference: 62 FR 52926

EPA withdrew from Federal Regulation (National Toxics Rule) the arsenic human health water quality criteria applicable to Idaho.

Dated: September 30, 1998.

Tudor T. Davies,

Director, Office of Science and Technology.

[FR Doc. 98–26887 Filed 10–6–98; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Emergency Review and Approval

October 1, 1998.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. The Commission is seeking emergency approval for this information collection by October 23, 1998 under the provisions of 5 CFR 1320.13.

DATES: Written comments should be submitted on or before October 21, 1998.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 234, 1919 M St., NW, Washington, DC 20554 or via internet to lesmith@fcc.gov and Timothy Fain, OMB Desk Officer, 10236 NEOB 725 17th Street, NW, Washington, DC 20503 or fain__t@a1.eop.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at 202–418–0217 or via internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 3060–0600.

Title: Application to Participate in an FCC Auction.

Form No.: FCC 175 and FCC 175–S.

Type of Review: Revision of an existing collection.

Respondents: Business or other for profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 12,400.

Estimate Hour Per Response: the time for completing the FCC 175 and providing the required Identity/Ownership Information is .75 hours per response. The estimated time for completing the FCC 175–S is .25 hours per response.

Total Annual Burden: 15,600 hours.

Estimated Total Annual Costs: $3,120,00. The Commission assumes most respondents will hire an attorney at approximately $200 per hour to prepare the required information. There are not additional costs associated with these requirements.

Frequency of Response: On occasion.

Needs and Uses: The information will be used by the Commission to determine if the applicant is legally, technically, and financially qualified to participate in an FCC auction. The rules and requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants and deter possible abuses of the bidding and licensing process. The Commission plans to use this form for all upcoming auctions and reauctions.

Federal Communications Commission.

Shirley S. Suggs,

Chief, Publications Branch.

[FR Doc. 98–26849 Filed 10–6–98; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 98–18]

Owens Refrigerated Freight Limited Possible Violations of Section 10(a)(1) of the Shipping Act of 1984; Order of Investigation and Hearing

Owens Refrigerated Freight Limited (''Owens'') is a tariffed and bonded non-vessel-operating common carrier (''NVOCC'') located at 100 Carlyle Street, P.O. Box 1044, Christ Church, New Zealand. Between April 8, 1994 and February 11, 1997, Owens maintained an effective tariff in the Commission's Automated Tariff Filing and Information System (''ATFI'') under the name Cooltainer Services Limited. (ATFI Tariff No. 012483–001) Since February 12, 1997, Owens has maintained its current tariff under the name, Owens Refrigerated Freight Limited (ATFI Tariff No. 014596–001). A NVOCC bond of $50,000 issued by Washington International Insurance Company (Bond No. 56065) has covered Owens' operations since April 8, 1994.[1] Owens is the refrigerated freight division of a publicly traded New Zealand corporation, Owens Group Limited.[2] According to its Directors' Report published on the Internet, Mr. Russell J. Hunter is the Group General Manager of Owens and, according to ATFI, he is the contact person for Owens' tariff filing. Owens' resident agent in the United States is NORAM Agencies Limited (''Noram''), 801 Second Ave., #419, Seattle, WA 98104.[3]

Between March 15, 1994 and August 19, 1997, Owens is believed to have entered into and participated in arrangements which allowed Owens to obtain ocean transportation for property at less than the rates or charges that would be otherwise applicable for shipments between Australia/New Zealand and the United States. In March 1994, Owens entered into an agreement with a common carrier, Ocean Management, Inc. (''OMI''), in which Owens obtained certain ocean transportation rates and other special transportation considerations from OMI for the transportation of Owens' cargo between the United States and Australia. The terms of this arrangement were not filed with the Commission. The agreement between OMI and Owens appears to have continued until March 1, 1997, when Owens and OMI entered into a service contract which was filed with the Commission and became effective on March 1, 1997.

In November 1996, Owens entered into another agreement with an ocean common carrier, South Seas Steamship Co., Ltd., in which Owens obtained certain ocean transportation rates and other special transportation

[1] Washington International Insurance Company is located at Suite 500, 300 Park Blvd., Itasca, IL 60143–2625.

[2] In addition to the refrigerated freight division, Owens Group Limited has operating divisions for specialized transport, ship agency, container services, international freight, etc.

[3] According to ATFI, Noram has been Owens' resident agent in the United States since July 28, 1995. Prior to that time, Owens apparently did not designate a resident agent in its NVOCC tariff.

considerations for the transportation of Owens' cargo between the United States and New Zealand. The terms of this arrangement were not filed with the Commission until August 20, 1997, when they were filed in the tariff of South Seas Steamship Co., Ltd.

Section 10(a)(1) of the Shipping Act of 1984 (''1984 Act''), 46 USC app. 1709(a)(1), prohibits any person from knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or by any other unjust or unfair device or means, obtaining or attempting to obtain ocean transportation for property at less than the rates or charges that would otherwise be applicable. Owens may have violated section 10(a)(1) of the 1984 Act by entering into and utilizing off-tariff agreements for ocean transportation. These arrangements appear to have given the NVOCC, Owens, ocean transportation rates which were less than the applicable tariff rates and may have provided Owens with various untariffed services and benefits for at least three years and involving hundreds of shipments.

Under section 13 of the 1984 Act, 46 USC app. 1712, a person is subject to a civil penalty of not more than $25,000 for each knowing and willful violation of the 1984 Act, and not more than $5,000 for each other type of violation.[4] In addition, section 23 of the 1984 Act, 46 USC app. 1721, provides that a common carrier's tariff may be suspended for violations of section 10(a)(1) of the 1984 Act.

Now therefore, It is ordered, That pursuant to sections 10, 11, 13, 14 and 23 of the 1984 Act, 46 USC app. 1709, 1710, 1712, 1713 and 1721, an investigation is instituted to determine:

(1) whether Owens Refrigerated Freight Limited violated section 10(a)(1) of the 1984 Act between March 15, 1994 and August 19, 1997, by knowingly and willfully, directly or indirectly obtaining or attempting to obtain ocean transportation at less than the rates and charges otherwise applicable by means of agreements whose terms were not filed in the applicable tariff(s) or essential terms publication(s) with the Commission;

(2) whether, in the event violations of section 10(a)(1) of the 1984 Act are found, civil penalties should be assessed against Owens Refrigerated Freight Limited and, if so, the amount of penalties to be assessed;

(3) whether, in the event violations of section 10(a)(1) of the 1984 Act are found, the tariff of Owens Refrigerated Freight Limited should be suspended or canceled; and 4) whether, in the event violations are found, an appropriate cease and desist order should be issued against Owens Refrigerated Freight Limited.

It is further ordered, That a public hearing be held in this proceeding and that this matter be assigned for hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges at a date and place to be hereafter determined by the Administrative Law Judge in compliance with Rule 61 of the Commission's Rules of Practice and Procedure, 46 CFR 502.61. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Administrative Law Judge only after consideration has been given by the parties and the Presiding Administrative Law Judge to the use of alternative forms of dispute resolution, and upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That Owens Refrigerated Freight Limited is designated as Respondent in this proceeding;

It is further ordered, That the Commission's Bureau of Enforcement is designated a party to this proceeding;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served on parties of record;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 CFR 502.72;

It is further ordered, That all further notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record;

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 CFR 502.118, and shall be served on parties of record; and

It is further ordered, That in accordance with Rule 61 of the Commission's Rules of Practice and Procedure, the initial decision of the Administrative Law Judge shall be issued by October 1, 1999 and the final decision of the Commission shall be issued by January 31, 2000.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 98–26815 Filed 10–6–98; 8:45 am]

BILLING CODE 6730–01–P

[4] The $25,000 and $5,000 penalties have been increased to $27,500 and $5,500, respectively, effective November 7, 1996. See Inflation Adjustment of Civil Monetary Penalties, 27 SRR 809 (1996), and 46 CFR Part 506.

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 31, 1998.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Chaparall Bancshares, Inc., Richardson, Texas, and Chaparall Bancshares of Delaware, Inc., Dover, Delaware; to acquire up to 75 percent of

the voting shares of Van Alstyne Financial Corporation, Van Alstyne, Texas, and thereby indirectly acquire The First National Bank of Van Alstyne, Van Alstyne, Texas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. East West Bancorp, Inc., San Marino, California; to become a bank holding company by acquiring 100 percent of the voting shares of East-West Bank, San Marino, California.

Board of Governors of the Federal Reserve System, October 1, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–26836 Filed 10–6–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitios by, and Mergers of bank Holding Companies; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 98-26074) published on pages 52273 and 52274 of the issue for Wednesday, September 30, 1998.

Under the Federal Reserve Bank of New York heading, the entry for Valley National Bancorp, Wayne, New Jersey, is revised to read as follows:

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President) 33 Liberty Street, New York, New York 10045-0001:

1. Valley National Bancorp, Wayne, New Jersey to acquire up to 9.9 percent of the voting shares of Vista Bancorp, Inc., Phillipsburg, New Jersey, and thereby indirectly acquire Phillipsburg National Bank and Trust Company, Phillipsburg, New Jersey, and Twin Rivers Community Bank, Eastern, Pennsylvania.

Comments on this application must be received by October 23, 1998.

Board of Governors of the Federal Reserve System, October 1, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–26838 Filed 10–6–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than October 21, 1998.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. PNC Banc Corp., Pittsburgh, Pennsylvania; to acquire Hilliard-Lyons, Inc., Louisville, Kentucky, and thereby indirectly acquire J.J.B. Hilliard, W.L. Lyons, Inc., and Hilliard Lyons Trust Company, both of Louisville, Kentucky, and thereby engage in underwriting and dealing in, to a limited extent, all types of debt, equity, and other securities (other than ownership interests in open-end investment companies) that a member bank may not underwrite or deal in (''bank ineligible securities'' or ''Tier II Securities'') (*See, J.P. Morgan & Co., Inc., The Chase Manhattan Corp., Bankers Trust New York Corp., Citicorp, and Security Pacific Corp.*, 75 Fed. Res. Bull. 192 (1989) *and Citicorp*, 73 Fed. Res. Bull. 473 (1987); provide administrative services to open-end and closed-end investment companies (*See Bankers Trust New York Corp.*, 83 Fed. Res. Bull. 780 (1997); *Commerzbank AG*, 83 Fed. Res. Bull. 67 (1997)*; and Mellon Bank Corporation*, 79 Fed. Res. Bull. 626 (1993); provide cash management services (*See Societe Generale*, 84 Fed. Res. Bull. 680 (1998); provide employee benefit consulting services, pursuant to § 225.28(b)(9)(ii) of Regulation Y (*See Fifth Third Bancorp*, 84 Fed. Res. Bull. 677 (1998); provide credit and credit related services, pursuant to §§ 225.28(b)(1) and (2) of Regulation Y; provide trust company services, pursuant to § 225.28(b)(5) of Regulation Y; provide financial and investment advice, pursuant to § 225.28(b)(6) of Regulation Y; provide securities brokerage, riskless principal, private placement, and other agency transactional services, pursuant to § 225.28(b)(7) of Regulation Y; in investment transactions as principal, including underwriting and dealing in government obligations and money market instruments and investing and trading activities, pursuant to § 225.28(b)(8) of Regulation Y.

Board of Governors of the Federal Reserve System, October 1, 1998.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 98–26837 Filed 10–6–98; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 981–0324]

Medtronic, Inc.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 7, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, FTC/H–374, Washington, DC 20580, (202) 326–2932 or Ann Malester, FTC/S–2308, Washington, DC 20580, (202) 326–2820.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's

Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 1, 1998), on the World Wide Web, at ''http://www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (''Commission'') has accepted, subject to final approval, an agreement containing a proposed Consent Order from Medtronic, Inc. (''Medtronic''). The proposed Consent Order contains a number of provision designed to remedy the anticompetitive effects resulting from Medtronic's acquisition of Physio-Control International Corporation's (''Physio-Control'') automated external defibrillator business and its ownership interest in SurVivaLink Corporation ''SurVivaLink), a direct competitor of Physio-Control.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the proposed Order.

On June 27, 1998, Medtronic entered into an Agreement and Plan of Merger with Physio-Control to acquire all of the voting stock of Physio-Control in exchange for Medtronic voting stock valued at $530 million. The proposed compliant alleges that the transaction, if consummated, would constitute a violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the FTC Act, as amended, 15 U.S.C 45, in the market for the research, development, manufacture and sale of automated external defibrillators.

Automated external defrillators are portable, automated devices used in emergency situation, by persons with limited medical training, such as policemen, firemen and lifeguards, to treat people suffering from sudden cardiac arrest. The market for automated external defibrillators is highly concentrated with only three significant players in the United States: Physio-Control, SurVivaLink and Hewlett-Packard/Heartstream.

The relevant geographic market is the United States. Only companies that have received U.S. Food and Drug Administration approval to sell their devices in the United States may supply automated external defibrillators to U.S. customers.

In addition, new entry into the market for automated external defibrillators is unlikely and would not occur in a timely manner to deter or counteract the adverse competitive effects of Medtronic's acquisition of Physio-Control. Entry into this market is unlikely and would not be timely because of the time and expense required to design and develop a competitively viable product, obtain approvals from the U.S. Food and Drug Administration, and establish a sales and distribution network.

Medtronic's acquisition of Physio-Control raises serious competitive concerns in the market for automated external defibrillators because of its ownership interest in SurVivaLink, Physio-Control's direct competitor. Pursuant to an investment agreement entered into between Medtronic and SurVivaLink, Medtronic was given the explicit right to name a member to SurVivaLink's Board of Directors and to receive certain non-public competitively sensitive information. Medtronic also has the right to receive certain non-public competitively sensitive information under Minnesota law. In addition, Medtronic has the right as a shareholder in SurVivaLink to vote on all matters requiring a shareholder vote. Medtronic's entanglements with SurVivaLink and its acquisition of Physio-Control would cause anticompetitive harm in the market for automated external defibrillators by potentially eliminating direct competition, increasing the likelihood of coordinated interaction, reducing innovation and ultimately increasing prices for automated external defibrillator customers.

The proposed Consent Order remedies the acquisition's anticompetitive effects in the market for automated external defibrillators by making Medtronic a passive investor in SurVivaLink and by preventing Medtronic from exercising its right to name a member to SurVivaLink's Board of Directors. The proposed Consent Order also prevents Medronic from exercising its rights, pursuant to its investment agreement with SurVivaLink or under Minnesota law, to receive non-public competitively sensitive information relating to SurVivaLink.

The proposed Consent Order also limits Medtronic's ability to vote on any matter that requires a vote of SurVivaLink's shareholders by requiring Medtronic to delegate its voting rights to be voted in a manner proportional to the votes of all other shareholders. The propose Consent Order would also prohibit Medronic from proposing any corporate action or participating in any business decisions of SurVivaLink. Additionally, the proposed Consent Order prevents Medronic from increasing its ownership interest in SurVivaLink without prior written notice to the Commission. Finally, the proposed Consent Order requires Medtronic to return to SurVivaLink any documents that contain any trade secrets, commercial information or financial information relating to SurVivaLink.

Under the provisions of the proposed Order, Medtronic is also required to provide the Commission with a report of compliance with the provisions of the order within sixty (60) days following the date this Order becomes final, and annually thereafter until such time as Medtronic sells or transfers all of its ownership interest in SurVivaLink or Physio-Control.

The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–26855 Filed 10–6–98; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 981–0166]

Shell Oil Company, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of

federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before December 7, 1998.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: William Baer, FTC/H–374, Washington, DC 20580 (202) 326–2932 or John Hoagland, Dallas Regional Office, Federal Trade Commission, 1999 Bryan St., Suite 2150, Dallas, TX 75201 (214) 979–9350.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for October 1, 1998), on the World Wide Web, at ''http:/www.ftc.gov/os/actions97.htm.'' A paper copy can be obtained from the FTC Public Reference Room, Room H–130, Sixth Street and Pennsylvania Avenue, NW, Washington DC 20580, either in person or by calling (202) 326–3627. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission (''Commission'') has accepted for public comment from Shell Oil Company (''Shell'') and Tejas Energy, LLC (''Tejas''), a wholly owned subsidiary of Shell, an agreement containing Consent Order designed to remedy the anticompetitive effects resulting from Shell and Tejas' proposed acquisition of certain gas gathering assets of The Coastal Corporation (''Coastal''). The Consent Order requires the divestiture of approximately 171 miles of Coastal's gas gathering pipeline in western Oklahoma and the Texas panhandle to a Commission-approved buyer.

This agreement has been placed on the public record for sixty (60) days for the receipt of comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's Order.

On January 20, 1998, Transok, LLC (''Transok''), a wholly-owned subsidiary of Tejas, and ANR Field Services Company and ANR Production Company (collectively referred to as (''ANR''), subsidiaries of Coastal, entered into a Letter of Intent for Transok to acquire gas gathering assets of ANR located in Oklahoma, Texas, and Kansas. Gas gathering is the pipeline transportation of natural gas from a wellhead or central delivery point to a gas transmission pipeline or gas processing plant. The Commission found that the acquisition may create competitive problems in parts of Roger Mills, Beckham, Custer, Washita, Caddo and Grady Counties, Oklahoma, and Wheeler County, Texas (hereafter referred to as the overlap counties). The Commission's Complaint alleges that Transok's acquisition agreement with ANR violates Section 5 of the Federal Trade Commission Act, as amended, 15 U.S.C. 45, and the acquisition, if consummated, would violate Section 5 of the Federal Trade Commission Act and Section 7 of the Clayton Act, as amended, 15 U.S.C. 18.

With the overlap counties, Tejas, through its subsidiary Transok, is the largest gas gatherer and Coastal, through its ANR subsidiaries, is a substantial competitor in gas gathering. Six areas were identified where gas producers could only turn to Tejas and Coastal or, at most, one other gas gatherer, for gas gathering services. In these areas, the proposed merger would eliminate competition between Tejas and Coastal in providing gas gathering services to gas producers and would likely lead to anticompetitive increases in gathering rates and an overall reduction in gas drilling and production. It is unlikely that the competition eliminated by the proposed acquisition would be replaced by new entry into the gas gathering market in these areas.

The proposed Consent Order requires Shell and Tejas to divest parts of the ANR pipeline system within these six areas. The gas gathering assets to be divested are listed, with accompanying maps showing the locations of the pipelines, in Schedule A of the proposed Consent Order. The purposes of the divestiture are to ensure the continued use of the Schedule A assets as gas gathering assets and to remedy the lessening of competition resulting from the acquisition.

Shell and Tejas must divest the assets by January 5, 1999, or thirty days following the consummation of the acquisition, whichever is later. If Shell and Tejas fail to divest the assets by the deadline, the Commission may appoint a trustee to sell the assets. The trustee may include additional assets with those specified in Schedule A to assure the marketability, viability, and competitiveness of the Schedule A assets so as to accomplish expeditiously the remedial purposes of the order. Shell and Tejas have agreed to maintain the assets that are being divested in their current condition and provide gathering service at existing terms and conditions to customers under contract with ANR until the Schedule A assets are sold.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 98–26854 Filed 10–6–98; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

The Division of HIV/AIDS Prevention, Intervention, Research and Support (DHAP, IRS), National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC), Announces the Following Meeting

Name: African American Gay Men's Consultation for HIV Prevention.

Time and Date: 9 a.m. to 5:30 p.m., October 19, 1998.

Place: The Wyndham Garden Hotel, Midtown, 125 10th Street, Atlanta, Georgia 30309.

Status: Open to the public for observation and comment, limited only by space available. The meeting room accommodates approximately 65 people.

Purpose: The purpose of this meeting is to provide a forum for consultation and discussion among African American gay men from non-governmental organizations and representatives from the Division of HIV/AIDS, IRS (DHAP) to address the HIV/AIDS prevention and education needs of African American gay men.

This project, known as the ''People of Color Initiative'', provides the foundation for examining the HIV/AIDS prevention and education needs within communities of color. This consultation will be the first of several to assess and respond to the prevention and education needs in these communities.

Matters to be Discussed: HIV prevention and education needs within the African American community for men who have sex with men.

Contact Person for More Information: Marcus W. Johnson, Division of HIV/AIDS Prevention, Intervention, Research and Support Community Assistance, Planning and National Partnerships Branch, National Center for HIV, STD and TB Prevention Centers for Disease Control and Prevention, 1600 Clifton Road, NE, M/S E–58, Atlanta, GA 30333. E-mail, mhj3@cdc.gov.

Dated: October 1, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–26843 Filed 10–6–98; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics (NCHS), Data Policy and Standards Staff, Announces the Following Meeting

Name: ICD–9–CM Coordination and Maintenance Committee meeting, Vols. 1, 2 & 3 (Diagnosis & Procedures).

Times and Dates: 9 a.m.–4 p.m., Monday, November 2, 1998. 9 a.m.–4 p.m., Tuesday, November 3, 1998.

Place: The Health Care Financing Administration, Auditorium, 7500 Security Boulevard, Baltimore, Maryland.

Status: Open to the public.

Purpose: The ICD–9–CM Coordination and Maintenance (C&M) Committee will hold its second meeting of the 1998 cycle on Monday and Tuesday, November 2–3, 1998. The C&M meeting is a public forum for the presentation of proposed modifications to the International Classification of Diseases, Ninth-Revision, Clinical Modification. 2

Matters to be Discussed: Agenda items include Human Monocytic Ehrlichiosis (HME)and Human Granulocytic Ehrlichiosis (HGE); Screening for Osteoporosis; Lack of normal physiological development for infants and children; Adult failure to thrive; Observation for suspected child abuse/neglect; Endovascular repair of abdominal aortic aneurysm; Implantation of musculoskeletal stimulator with tendon transplant; Transplant of intestine; Addenda.

Contact Person For Additional Information: Gretchen Young-Charles, 301/436–7050 ext. 124 (diagnosis), or Amy Gruber, 410/786–1542 (procedures), NCHS, CDC, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782.

Dated: October 1, 1998.

John C. Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 98–26844 Filed 10–6–98; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Project

Title: Child Care and Development Fund Tribal Annual Financial Report.

OMB No.: New.

Description: The form provides specific data regarding claims and provides a mechanism for Tribes to report program expenditures. Failure to collect this data would seriously compromise ACF's ability to monitor expenditures. This information is also used to estimate outlays and may be used to prepare ACF budget submissions to Congress.

Respondents: Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ACF–696T	236	1	8	1,888

Estimated Total Annual Burden Hours: 1,888.

In compliance with the requirements of Section 3506(c) (2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, Division of Information Resource Management Services, 370 L'Enfant Promenade, SW; Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: October 1, 1998.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–26914 Filed 10–6–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request Proposed Project

Title: Developmental Disabilities Council State Plan.

OMB No.: 0980–0162.

Description: Developmental Disabilities Councils (DD Councils) in each State are required under the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C., 6000 *et seq.*) to develop plans on a triennial basis and to review those plans at least annually. Each council develops its plan as a basis for promoting systems change and capacity building in service systems for persons with developmental disabilities in the State. The State plan must be made available for public comment in the State and must be approved by the Governor of the State. After that it is submitted to the Department of Health and Human Services, which will use the information to ensure compliance of the State with requirements in the Act. The information in the State plan is also used as one basis for providing technical assistance, such as during site visits.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Three Year State Plan	55	1	100	5,500

Estimated Total Annual Burden Hours: 5,500.

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments 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) 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. Consideration will be given to comment and suggestions submitted within 60 days of this publication.

Dated: October 1, 1998.

Robert Sargis,

Acting Reports Clearance Officer.

[FR Doc. 98–26915 Filed 10–6–98; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–260]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. Due to the fact that the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320, we are requesting an emergency review.

The Balanced Budget Act of 1997 (BBA) included a number of quality assurance provisions for managed care organizations contracting with Medicare and Medicaid. The Quality Improvement System for Managed Care (QISMC), developed with the assistance of State and industry representatives, consists of a set of standards and guidelines that are designed to implement the BBA provisions and the regulations, HCFA–1030–FC (which establishes the Medicare+Choice program) and HCFA–2001–P (which revises the Medicaid managed care program). For Medicare, the QISMC document is equivalent to a program manual. As such, the document simply represents HCFA's administrative interpretation of the Medicare+Choice requirements relating to an organization's operation and performance in the areas of quality measurement and improvement and the delivery of health care and enrollee services. These standards and guidelines are derivatives of the regulatory requirements, and are necessary to implement the requirements in a consistent manner. For Medicaid, the standards and guidelines are tools for States to use at their discretion in ensuring the quality of managed care organizations with Medicaid contracts. The QISMC standards for Medicaid managed care organizations parallel many of the BBA quality assurance provisions and were developed in conjunction with the regulation HCFA–2001–P. Therefore, while States are free to develop their own standard for Medicaid managed care organizations to meet the quality assurance provisions of the BBA, QISMC is a recommended vehicle for consistency and compliance with the BBA. Further, use of the QISMC

standards assures States that the quality standards they adopt most closely resemble the standards HCFA will be using with Medicare+Choice organizations.

The purpose of this submission is to request approval of use of the QISMC standards and guidelines. It should be noted that QISMC was developed with State and industry participation. In this OMB submission, we are particularly soliciting comment on whether these QISMC standards impose additional reporting requirements beyond those explicitly articulated in regulations HCFA–1030–IFC and HCFA–2001–P. In the mean time we have assigned one token hour of burden for these requirements.

HCFA is requesting OMB review and approval of this collection within ten working days of publication of this notice in the **Federal Register**, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below by nine working days of the publication of this notice. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New Collection.

Title of Information Collection: Quality Improvement System for Managed Care.

Form Number: HCFA–R–260 (OMB approval #: 0938–NEW)

Use: The primary purpose of the QISMC standards and guidelines is to implement regulatory requirements relating to Medicare and Medicaid managed care organizations' operation and performance in the areas of quality measurement and improvement and the delivery of health care and enrollee services.

Frequency: Annual.

Affected Public: Business or other for-profit.

Number of Respondents: 952 (450 Medicare and 502 Medicaid managed care organizations)

Total Annual Responses: 952.

Total Annual Hours Requested: 1 hour.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and record keeping requirements must be mailed and/or faxed to the designees referenced below within nine working days of the publication of this notice in the **Federal Register**:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.Fax Number: (410) 786–0262, Attn: Louis Blank HCFA–R–260

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167 Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: September 18, 1998.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 98–26876 Filed 10–6–98; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Notice of the Secretary's Assumption of Jurisdiction Over Probate of Estates in Which Property Escheated to an Indian Tribe Pursuant to 25 U.S.C. 2206 and Opportunity to Comment

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: In response to a petition filed by the Deputy Commissioner of Indian Affairs with the Office of Hearings and Appeals to reopen estates in which property escheated to an Indian tribe pursuant to the escheat provision of the Indian Land Consolidation Act, the Secretary of the Interior has assumed jurisdiction over the petition pursuant to his regulatory authority and has issued a proposed order reopening the cases. In *Babbitt* v. *Youpee*, a 1997 decision, the United States Supreme Court found the escheat provision unconstitutional. The reopening of the estates would permit the Department of the Interior the opportunity to distribute escheated interests to the rightful distributees without regard to the unconstitutional provision.

The Secretary will accept comments on the petition and the proposed order to reopen the estates. All comments must be filed with the Office of Hearings and Appeals, Department of the Interior.

DATES: Comments must be received by the Office of Hearings and Appeals on or before November 2, 1998.

ADDRESSES: Comments from interested parties should be submitted to the Director, Office of Hearings and Appeals, United States Department of the Interior, 4015 Wilson Boulevard, Mail Stop 1103–BT3, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Director, Office of Hearings and Appeals, at the address listed above. The Director's telephone number is 703–235–3810.

SUPPLEMENTARY INFORMATION: On January 21, 1997, the United States Supreme Court issued a decision in *Babbitt* v. *Youpee*, 519 U.S. 234 (1997), in which it held that the ''escheat provision'' of the Indian Land Consolidation Act, 25 U.S.C. 2201 *et seq.*, as amended, is unconstitutional. That provision provides in part:.

> No undivided interest held by a member or nonmember Indian in any tract of trust land or restricted land within a tribe's reservation or outside of a reservation and subject to such tribe's jurisdiction shall descend by intestacy or devise but shall escheat to the reservation's recognized tribal government.

5 U.S.C. 2206(a).

On October 2, 1998, the Deputy Commissioner of Indian Affairs filed a petition (Petition) with the Office of Hearings and Appeals (OHA), requesting the reopening of all estates in which land passed to a tribe by escheat pursuant to 25 U.S.C. 2206. On October 2, 1998, the Secretary signed an order (Order) assuming jurisdiction over the Petition, pursuant to his authority at 43 CFR 4.5. Also on October 2, 1998, the Secretary issued a proposed order (Proposed Order) that would reopen the estates in question. The Proposed Order provides that prior escheat cases are reopened and the determinations made therein ''are modified to the extent that the appropriate Bureau of Indian Affairs official having jurisdiction over the affected land titles shall distribute any such escheated interests to the rightful distributees without regard to the provisions of 25 U.S.C. 2206, except that prior determinations where an Indian tribe has paid fair market value for any escheated interest under 25 U.S.C. 2206 will not be reopened or modified.''

Cases which fall outside of the parameters of the Proposed Order would be considered by Departmental Administrative Law Judges on an *ad hoc* basis (i.e., cases where there were no determinations of heirs, cases of will construction, and any other type of miscellaneous case where the Bureau of Indian Affairs (BIA) is uncertain how to proceed).

The Secretary's Order provides that any tribe or affected interest wishing to file comments regarding the Petition and the Proposed Order has until November 2, 1998, to submit comments. Additionally, the Order directs the BIA to hold any current or future assets derived from lands escheated to the tribes under 25 U.S.C. 2206, and not to release any such assets to any tribe pending further order. Copies of the Petition, the Order and the Proposed Order may be obtained from the Director, OHA.

Dated: October 2, 1998.

Edward B. Cohen,

Deputy Solicitor.

[FR Doc. 98–26881 Filed 10–6–98; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–036–08–1220–04; GP8–0351]

Notice of Closure of Public Lands, Malheur County, OR

AGENCY: Bureau of Land Management, Vale District Office, Jordan Resource Area.

ACTION: Closure of public lands in Malheur County, Birch Creek Ranch, Owyhee Wild and Scenic River.

SUMMARY: Pursuant to the regulations contained in Title 43 CFR 8351.2–1, notice is hereby served that the public lands in the Birch Creek Ranch area are closed to vehicle operation and open campfires except in those areas specifically designated for such uses. The purpose of this closure is to meet the objectives of the Owyhee Wild and Science River Plan to protect resource values including cultural sites, wildlife and fisheries habitats and soil and water resources, in addition to reducing the risk of fire in the ranch area.

Dispersed walk-in camping will continue to be permitted, however, the firepan and toilet requirements currently under the existing regulations will apply.

The road beginning in T27S R43E sec. 18 at the Caretakers Residence and heading up river is closed to all motor vehicles.

The lands affected by this closure are more specifically described as: T27S, R43E sec. 18 NW ¼ and, NE ¼; sec. 7, NE ¼, SE ¼, and SW ¼, known as the Birch Creek and Morrison Ranch properties, approximately 300 acres of public land.

Personnnel that are exempt form this closure include any Federal, State or local officer or any member of an organized rescue or firefighting force in the performance of an official duty. Additional personnel may be authorized in writing in advance by the Jordan Resource Area Manager.

DATES: The closure will become effective immediately and will remain in effect until rescinded by the authorized officer.

PENALTIES: Violators are subject to fines not to exceed $500 or imprisonment not to exceed six months, or both.

FOR FURTHER INFORMATION CONTACT: Jerry L. Taylor, Jordan Resource Area Manager, 100 Oregon St, Vale, Oregon 97918, (Telephone 541–473–3144).

Jerry L. Taylor,

Jordan Resource Area Manager.

[FR Doc. 98–26819 Filed 10–6–98; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–61–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting, notice of meeting and tour.

SUMMARY: This notice announces a meeting and tour of the Arizona Resource Advisory Council. The meeting and tour will be held November 5–6, 1998 in Lake Havasu City, Arizona. On November 5, the RAC will conduct a one-day meeting from 8:30 a.m until approximately 3:00 p.m. The meeting will be held at Havasu Springs Resort located at 2581 Highway 95 in Parker, Arizona. The agenda items to be covered at the meeting include review of previous meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Presentations on the Lower Colorado River Multi-Species Conservation Plan, Noxious Weed Impacts on Public Lands, and BLM Law Enforcement—Under-Age Drinking Issue; Proposed Field Office Rangeland Resource Teams; and Reports by the Standards and Guidelines, Recreation and Tourism, Public Relations, and Wild Horse and Burro Working Groups; Reports from BLM Field Office Managers; Reports from RAC members; and Discussion on future meetings. A public comment period will take place at 11:30 a.m. on November 5, 1998, for any interested members of the public who wish to address the Council. In addition, a native fish release will also be conducted at Havasu Spring Resort during the 10 o'clock break of the RAC meeting. On November 6, a tour will highlight the Lake Havasu Fisheries Improvement Program Work Camp and Fishing Dock. The tour will depart from Havasu Springs Resort at 8:00 a.m. and include stops to Site Six, Campbell Cove, and Mesquite Bay. Next, the RAC and BLM staff and participants will travel to Kingman to tour the BLM Kingman Corrals. The tour will conclude at 12:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Arizona 85004–2203, (602) 417–9215.

Denise P. Meridith,

Arizona State Director.

[FR Doc. 98–26842 Filed 10–6–98; 8:45 am]

BILLING CODE 4310–32–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–380, Enforcement Proceeding]

Certain Argicultural Tractors Under 50 Power Take-Off Horsepower; Notice of Institution of Formal Enforcement Proceeding

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has instituted a formal enforcement proceeding relating to certain of the cease and desist orders issued at the conclusion of the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3152.

SUPPLEMENTARY INFORMATION: On February 25, 1997, the Commission issued cease and desist orders against eleven respondents at the conclusion of the above-captioned investigation, including against Gamut Imports, 14354

Cronese Road, Apple Valley, California 92307 (''Gamut Imports''), and Gamut Trading Company, Inc., 13450 Nomwaket Road Apple Valley, California 92308 (''Gamut Trading''). The cease and desist orders provide that the respondents shall not:

(A) Import or sell for importation into the United States covered products [i.e., agricultural tractors under 50 power take-off horsepower manufactured by Kubota Corporation of Japan that infringe the federally-registered U.S. trademark ''KUBOTA'']; or

(B) Sell, market, distribute, offer for sale, or otherwise transfer (except for exportation) in the United States imported covered product.

The cease and desist orders apply not only to the named respondent but also to ''any of its principals, stockholders, officers, directors, employees, agents, licensees, distributors, controlled (whether by stock ownership or otherwise) and/or majority-owned business entities, successors and assigns.''

On July 16, 1998, complainants Kubota Corporation, Kubota Tractor Corporation, and Kubota Manufacturing of America Corporation (collectively ''Kubota'') filed a complaint seeking institution of a formal enforcement proceeding against Gamut Imports and Gamut Trading, and against two officers and directors of Gamut Trading, Ronald A. DePue and Darrel J. Du Puy. Kubota requested that the Commission enforce the cease and desist orders, impose civil penalties, and impose such other remedies and sanctions as are appropriate.

The Commission, having examined the request for a formal enforcement proceeding filed by Kubota, and having found that the request complies with the requirements for institution of a formal enforcement proceeding, determined to institute formal enforcement proceedings to determine whether Gamut Trading Co., Inc., Gamut Imports, Ronald A. DePue, and/or Darrel J. Du Puy are in violation of the Commission cease and desist orders issued in the investigation and what if any enforcement measures are appropriate.

The following were named as parties to the formal enforcement proceeding: (1) Kubota Corporation, 2–47 Shikitsuhigashi 1-chome, Naniwa-ku,Osaka 556–8601, Japan; Kubota Tractor Corporation, 3401 Del Amo Boulevard, Torrance, California 90503; and Kubota Manufacturing of America Corporation, Industrial Park North, 2715 Ramsey Road, Gainesville, Georgia 30501 (complainants in the underlying investigation and requesters of the formal enforcement proceeding); (2) Gamut Trading Co., Inc., 13450 Nomwaket Road, Apple Valley, California 92308 (enforcement proceeding respondent); (3) Gamut Imports, 14354 Cronese Road, Apple Valley, California 92307 (enforcement proceeding respondent); (4) Ronald A. DePue, Chief Executive Officer and Chairman of the Board of Directors of Gamut Trading Co., Inc. (enforcement proceeding respondent); (5) Darrel J. Du Puy, Chief Financial Officer, President and member of the Board of Directors of Gamut Trading Co., Inc.(enforcement proceeding respondent); and (6) a Commission investigative attorney to be designated by the Director, Office of Unfair Import Investigations.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and section 210.75 of the Commission's Rules of Practice and Procedure (19 CFR 210.75).

Copies of the Commission's order and all other nonconfidential documents filed in connection with this enforcement proceeding are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: September 28, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–26872 Filed 10–6–98; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–384 and 731–TA–806–808 (Preliminary)]

Certain Hot-Rolled Steel Products From Brazil, Japan, and Russia

AGENCY: United States International Trade Commission.

ACTION: Institution of countervailing duty and antidumping investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase countervailing duty investigation No. 701–TA–384 (Preliminary) and antidumping investigations Nos. 731–TA–806–808 (Preliminary) under sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil of certain hot-rolled steel products that are alleged to be subsidized by the Government of Brazil, and imports from Brazil, Japan, and Russia of certain hot-rolled steel products that are alleged to be sold in the United States at less than fair value.[1] Unless the Department of Commerce extends the time for initiation pursuant to section 702(c)(1)(B) or 732(c)(1)(B) of the Act (19 U.S.C. 1671a(c)(1)(B) or 19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in these investigations in 45 days, or in this case by November 16, 1998. The Commission's views are due at the Department of Commerce within five business days thereafter, or by November 23, 1998.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: September 30, 1998.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed

[1] Such imports are provided for in headings 7208, 7210, 7211, 7212, 7225, and 7226 of the Harmonized Tariff Schedule of the United States.

on September 30, 1998, by Bethlehem Steel Corp. (Bethlehem, PA), U.S. Steel Group, a unit of USX Corp. (Pittsburgh, PA); Ispat Inland Steel (East Chicago, IN); LTV Steel Co., Inc. (Cleveland, OH); National Steel Corp. (Mishawaka, IN); California Steel Industries (Fontana, CA); Gallatin Steel Co. (Ghent, KY); Geneva Steel (Vineyard, UT); Gulf States Steel, Inc. (Gadsden, AL); IPSCO Steel Inc. (Muscatine, IA); Steel Dynamics (Butler, IN); Weirton Steel Corp. (Weirton, WV); Independent Steelworkers Union Weirton, WV); and the United Steelworkers of America (Pittsburgh, PA).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in these investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 21, 1998, at the U.S. International Trade Commission Building, 500 E Street SW, Washington, DC. Parties wishing to participate in the conference should contact Douglas Corkran (202–205–3177) not later than October 19, 1998, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions.—As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 26, 1998, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 1, 1998.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 98–26871 Filed 10–6–98; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

International Competition Policy Advisory Committee (ICPAC); Notice of Hearings

The International Competition Policy Advisory Committee (''Advisory Committee'') will hold hearings from November 2–4, 1998. The Advisory Committee was established by the Department of Justice to provide advice regarding issues relating to international competition policy; specifically, how best to cooperate with foreign authorities to eliminate international anticompetitive agreements, how best to coordinate United States' and foreign antitrust enforcement efforts in the review of multinational mergers, and how best to address issues that interface international trade and competition policy concerns. The hearings will be held at the American Geophysical Union Conference Center, 2000 Florida Avenue, NW., Washington, DC 20009–1277. The proposed agenda and schedule for the hearings are as follows:

Day 1—November 2, 1998

Discussion With Foreign Competition Officials

9 a.m.–9:30 a.m.—Welcoming Remarks
9:30 a.m.–12:15 p.m.—Testimony by Officials from Foreign Competition Authorities
1:15 p.m.–2:30 p.m.—Roundtable Discussion with Foreign Competition Officials From Jurisdictions That Have Bilateral Antitrust Agreements with the United States
2:30 p.m.–6 p.m.—Roundtable Discussion with Foreign Competition Officials on Enforcement Cooperation, Multijurisdictional Mergers and Trade and Competition Interface Matters

Day 2—November 3, 1998

Multijurisdictional Mergers

9 a.m.–9:15 a.m.—Opening Remarks
9:15 a.m.–10:45 a.m.—Panel on Commercial and Economic Perspectives on the Current Merger Wave
11 a.m.–12:30 p.m.—Panel on Information Sharing and Procedural Harmonization (Part I)
1:30 p.m.–3:15 p.m.—Panel on Information Sharing and Procedural Harmonization (Part II)
3:30 p.m.–6 p.m.—Panel on Conflicts and Remedies

Day 3—November 4, 1998

9 a.m.–9:15 a.m.—Welcoming Remarks

International Cartels

9:15 a.m.–11 a.m.—Panel on International Cartels in a Global Economy

Trade and Competition Interface

11:15 a.m.–12:45 p.m.—Panel on Enforcement Cooperation: Bilateral and Plurilateral Efforts (Part I)
1:30 p.m.–3 p.m.—Panel on Enforcement Cooperation: Bilateral and Plurilateral Efforts (Part II)
3:15 p.m.–6 p.m.—Panel on International Competition Policy, Multilateral Institutions, and Foreign Economic Policy

The hearings format is not final and is subject to further changes. For the

latest information about the hearings format or other matters related to the hearings, please check the Advisory Committee's website at: www.usdoj.gov/atr/icpac/icpac.htm or contact Marianne Pak of the Advisory Committee staff at (202) 353–9074.

Attendance is open to the interested public, limited by the availability of space. Persons needing special assistance, such as sign language interpretation or other special accommodations, should notify the contact person listed below as soon as possible. Members of the public may submit written statements by mail, electronic mail, or facsimile at any time before or after the meeting to the contact person listed below for consideration by the Advisory Committee. All written submissions will be included in the public record of the Advisory Committee. Oral statements from the public will not be solicited or accepted at the hearings. For further information contact: Merit Janow, c/o Marianne Pak, U.S. Department of Justice, Antitrust Division, 601 D Street, NW., Room 10011, Washington, DC 20530, Telephone: (202) 353–9074, Facsimile: (202) 514–4508, Electronic mail: icpac.atr@usdoj.gov.

Merit E. Janow,

Executive Director, International Competition Policy Advisory Committee.

[FR Doc. 98–26921 Filed 10–6–98; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review: Application for Stay of Deportation or Removal.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on June 22, 1998 at 63 FR 33952, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 6, 1998. This process is conducted in accordance with 5 CFR 1320.10.

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 Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, Department of Justice Desk Office, Room 10235, Washington, DC 20530; 202–395–7316.

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 agencies estimate of 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 currently approved collection.

(2) *Title of the Form/Collection:* Application for Stay of Deportation or Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–246. Detention and Deportation 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 the eligibility of an applicant for stay of deportation or removal.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 10,000 responses at 30 minutes (.50) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 5,000 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, 427 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: Ms. Brenda E. Dyer, Deputy 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: September 30, 1998.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–26811 Filed 10–6–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Freedom of Information/ Privacy Act Request.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 9, 1998 at 63 FR 37144, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 6, 1998. This process is conducted in accordance with 5 CFR 1320.10.

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 Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–639. FOIA/PA Section, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primay: Individuals or Households. This form is provides as a convenient means for persons to provide data necessary for identification of a particular record desired under FOIA/PA.

(5) *An estimate of the total number of repsondents and the amount of time estimated for an average respondent to respond:* 25,000 responses at 15 minutes (.25) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6,250 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional, 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: Ms. Brenda E. Dyer, Deputy Clearance Officer, Untied States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: September 30, 1998.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–26812 Filed 10–6–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Notice of Information Collection under Review: Biographic Information.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 9, 1998 at 63 FR 37141, allowing for a 60-day public comment period. One comment was received and addressed by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 6, 1998. This process is conducted in accordance with 5 CFR 1320.10.

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 Information and Regulatory Affairs, Attention: Stuart Sharpio, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Biographic Information.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–325. Adjudications 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. This form is used when it is necessary to check other agency records on applications or petitions submitted by applicants for benefits under the Immigration and Nationality Act. The form is also required for applicants of adjustment to permanent resident status and specific applicants for naturalization.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1,144,994 responses at 15 minutes (.25) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 286,249 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: Ms. Brenda E. Dyer, Deputy 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: September 30, 1998.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–26818 Filed 10–6–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Request for Cancellation of Public Charge Bond.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** on July 10, 1998 at 63 FR 37411, allowing for a 60-day public comment period. No comments were received by the INS on this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until November 6, 1998. This process is conducted in accordance with 5 CFR 1320.10.

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 Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

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 agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of 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) hours 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: Ms. Brenda E. Dyer, Deputy 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: September 30, 1998.

Brenda E. Dyer,

Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 98–26822 Filed 10–6–98; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

October 2, 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 the 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: Bureau of Labor Statistics.

Title: BLS/OSHS Federal/State Cooperative Agreement (Application Package).

OMB Number: 1220–0149 (revision).

Agency Number: BLS–OSHS1; BLS–OSHS2.

Frequency: BLS–OSHS1 Annually; BLS–OSHS Quarterly.

Affected Public: States.

Number of Respondents: 57.

Estimated Time per Respondent: BLS–OSHS1 2 hours; BLS–OSHS2 1 hour.

Total Burden Hours: 342 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The BLS signs cooperative agreements with States, and political subdivisions thereof, to assist them in developing and administering programs that deal with occupational safety and health statistics and to arrange through these agreements for research to further the objectives of the Occupational Safety and Health Act. Cost information by object class and a description of activities are needed to evaluate cost effectiveness and to ensure that program objectives are being met. Data will become part of a ''management information system'' to generate summaries for authorized users.

Agency: Employment and Training Administration.

Title: Labor Condition Application and Requirement for Employers Using Nonimmigrants on H–1B Visas.

OMB Number: 1205–0310 (extension).

Agency Number: ETA 9035.

Frequency: Other.

Affected Public: Individuals or households; State or Local governments; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations.

Number of Respondents: 200,000.

Estimated Time per Respondent: 1 hour and 15 minutes.

Total Burden Hours: 200,050.

Total annualized capital/startup costs: 0.

Total annual costs (operating./maintaining systems or purchasing services): 0.

Description: The application form and other requirements in these regulations for employers seeking to use H–1 nonimmigrants in speciality occupations and as fashion models will permit DOL to meet its statutory responsibilities for program administration, management, and oversight.

Agency: Employment and Training Administration.

Title: Welfare to Work (WtW), Employment & Training Administration, monitoring guide.

OMB Number: 1205–ONEW.

Agency Number: None.

Frequency: Annually.

Affected Public: State, Local, or Tribal Governments; Business or other for-profit; Not-for-profit institutions.

Number of Respondents: 184.

Estimated Time per Respondent: 4 hours.

Total Burden Hours: 828.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The WtW Monitoring and Oversight Guide is solely an instrument developed to assist the Department of Labor in meeting the responsibilities of the Secretary for oversight and monitoring WtW Formula and competitive Grants. This document focuses on WtW program performance, fiscal accountability, and service strategies and coordination with other service providers.

Agency: Employment Training Administration.

Title: Standardized Program Information Reporting for Job Training Partnership Act (JTPA) Titles II and III.

OMB Number: 1205–0321 (revision).

Agency Number: None.

Frequency: Quarterly.

Affected Public: State, Local or Tribal Government.

Number of Respondents: 52.

Total Responses: ETA receives one data set from each of the 52 reporting units. Each of these sets contains one record for each individual who has terminated from participation in JTPA program included in the Standardized Program Information Reporting (SPIR) reporting requirements during the reporting period.

Activity	Affected respondents	Average hours per year	Average burden hours
Currently Authorized	.....	.....	439,365
Change in Record volume	52	310	455,485
Quarterly Reporting	52	30	457,045
New and Revised Data Elements	52	80	461,205
Start-up Requirements for Wage Records	5	100	461,705
Routine Data Gathering for Wage Records	5	50	461,955
Decrease in Burden Associated with Move to Wage	5	−1203	455,940

Total Burden Hours: 454,380.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $7,500.

Description: Selected standardized information pertaining to participants in the Job Training Partnership Act Titles II and III programs will be collected and reported for the purpose of general program oversight/evaluation and performance assessment.

Agency: Occupational Safety and Health Administration.

Title: Fire Brigades (29 CFR 1910.156.

OMB Number: 1218–0075 (extension).

Agency Number: None.

Frequency: On Occasion.

Affected Public: Business or other for-profit; Not for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,670.

Estimated Time per Respondent: Varies from five minutes to two hours.

Total Burden Hours: 172 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

Fighting fires as members of a fire brigade presents a significant risk of harm to employees. In fact, fire fighting continues to be one of the Nations' most hazardous occupations. The mitigate the risks of employees fighting fires, OSHA promulgated a standard for fire brigades in 1980 (29 CFR 1910.156). The Fire Brigade standard does not require the employer to organize a fire brigade. However, if the employer does decide to organize a fire brigade, the provisions of the standard must be met.

There are various types of fire brigades. Some fire brigades merely monitor and assist in evacuation, others perform incipient fire fighting, while others perform interior structural fire fighting. The tasks, responsibility, training, and personal protective equipment needs differ according to the type of fire brigade organized at the workplace. Therefore, 1910.156(b)(1) requires the employer to develop and maintain an organizational statement which defines the type of fire brigade being organized and describes the functions that the employer expects the fire brigade to perform.

The use of personal protective equipment and the level of training is dependent upon the type of fire brigade organized at the workplace. Consequently, the organizational statement is one of the most important provisions of the Fire Brigades standard because it must describe the tasks that the fire brigade members are expected to perform (which in turn determines the personal protective equipment necessary); and because it describes the type, amount, and frequency of training provided to fire brigade members (level of training).

Agency: Occupational Safety and Health Administration.

Title: Construction Crane or Derrick Annual Inspection Record (§ 1926.550(a)(6)).

OMB Number: 1218–0113 (extension).

Agency Number: None.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 32,900.

Estimated Time per Respondent: 3.5 hours.

Total Burden Hours: 115,167 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The construction crane and derrick standard, under § 1926.550(a)(6), requires that employers perform a thorough annual inspection of cranes or derricks used in construction, and to record and maintain the dates and results of the inspections.

Agency: Occupational Safety and Health Administration.

Title: Construction Crane Rating chart Limitations Instructions and Hand Signal Illustrations (§ 1926.550(a)(1) and (2), (4), (16)).

OMB Number: 1218–0115 (extension).

Agency Number: None.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 5,944.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 4,966 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $333.

Description: The construction crane and derrick standard has several provisions that require employers to obtain information and post it on the crane or derrick. The information required under § 1926.550(a)(1), and (2), (4), (16)) is for rating chart limitations instructions and hand-signal illustrations.

Agency: Occupational Safety and Health Administration.

Title: Powered Platforms for Building Maintenance (29 CFR 1910.66).

OMB Number: 1218–0121 (extension).

Agency Number: None.

Frequency: Varies (Initially, Annually, Monthly, On Occasion).

Affected Public: Business or other for-profit; Not for-profit institutions, Federal Government; State, Local or Tribal Government.

Number of Respondents: 51,687.

Estimated Time per Respondent: Varies from 5 minutes to generate, maintain and disclose records to eight hours to prepare plans (average 2 hours).

Total Burden Hours: 129,763.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

One of the information collection requirements is for the employer to develop written work procedures to be used to train employees (§ 1910.66(i)(1)(iv)). The employer would then prepare a certification record to verify that the training has been given (§ 1910.66(i)(1)(iv)). The written work procedures would address the operation, safe use, and inspection of powered platforms.

Another information collection requirement is that employers develop a written emergency action plan for employees who work on powered platforms at different building sites (§ 1910.66(e)(9)). OSHA believes it is necessary for the employer to prepare for emergencies so that employees using powered platforms know what actions are required of them during emergency situations. Employers would also certify that employees had been trained in the emergency action plan.

OSHA also requires employers to conduct inspections and tests (§§ 1910.66(g)(2)(i), (g)(2)(ii), (g)(3)(i), and (g)(5)(iii)) and to certify that these inspections and tests had been conducted (§§ 1910.66(g)(2)(iii), (g)(3)(ii) and (g)(5)(v)). Certification records are required to show inspections: (1) of the building supports (once a year); (2) of the equipment used on the platform—the hoist, control systems, bearings, gears, and governors, for example (as recommended by the manufacturer or supplier, but at least once a year inspection and tested as needed); (3) of the installation of the platform (every 30 days or when used less frequently, before each work cycle); (4) of the wire rope every month or before being used; and (5) to demonstrate employee training.

The final group of information collection requirements in the standard pertains to a number of provisions requiring tags and labels. Section 1910.66(f)(5)(i)(C) requires a load rating plate to be affixed to each suspended unit. Section 1910.66(f)(5)(ii)(N) requires the compartment for an

emergency electric operating device to be labeled with instructions for use. Sections 1910.66(f)(7)(vi), 1910.66(f)(7)(vii), and 1910.66(f)(7)(viii) require the attachment of a tag on a suspension wire rope when it is installed, renewed or resocketed. The information collected would also be used by OSHA compliance officers to ensure that employers are complying with the requirements set forth in 29 CFR 1910.66.

Agency: Occupational Safety and Health Administration.

Title: Accident Prevention Tags (29 CFR 1910.145).

OMB Number: 1218–0132 (extension).

Agency Number: None.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not for profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 112,000.

Estimated Time per Respondent: 3 minutes.

Total Burden Hours: 5,600.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In the standard on Accident Prevention Tags (29 CFR 1910.145), information concerning the degree of hazard associated with a workplace condition is used by the employer to select the type of accident tag (sign) to be used on a workplace hazard. The tag (sign) selected will identify the workplace hazard and convey the severity of hazard and any accident prevention instruction to the employee.

Agency: Occupational Safety and Health Administration.

Title: Construction Oxygen and Toxic Test (§ 1926.550(a)(11)).

OMB Number: 1218–0054 (extension).

Agency Number: None.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 50.

Estimated Time per Respondent: 2 minutes.

Total Burden Hours: 100 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing service): $9,000.

Description: The construction standard (§ 1926.550(a)(11)) requires employers to keep a record of oxygen and toxic gas tests made when internal combustion engines of construction cranes or derricks exhaust into enclosed work spaces.

Agency: Occupational Safety and Health Administration.

Title: Crane or Derrick-Suspended Personal Platforms Used in Construction § 1926.550(g)(4)(ii)(1)).

OMB Number: 1218–0151 (extension).

Agency Number: None.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 2,750.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 229 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services: 0.

Description: The standard for crane or derrick-suspended personnel platforms used in construction (§ 1926.550(g)(4)(ii)(1)) requires that these platforms carry plates or other conspicuous permanent markings indicating the weight of the platform and its related load capacity or maximum intended load.

Agency: Occupational Safety and Health Administration.

Title: Storage of Anhydrous Ammonia (29 CFR 1910.111).

OMB Number: 1218–0208 (extension).

Agency Number: None.

Frequency: On occasion.

Affected Public: Business or other for-profit, Farms; State, Local or Tribal Government.

Number of Respondents: 300.

Estimated Time per Respondent: 5 minutes.

Total Burden Hours: 24.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services: 0.

Description: The standard and Handling of Anhydrous Ammonia standard requires the identification of anhydrous ammonia containers and systems through the use of permanent nameplates. The purpose of the information is to insure that only properly designed and tested anhydrous ammonia containers and systems are used. This will help to prevent any accidental release of (employee exposure to) anhydrous ammonia, which is a highly corrosive and toxic material.

Agency: Occupational Safety and Health Administration.

Title: Logging Operations (29 CFR 1910.266).

OMB Number: 1218–0198 (extension).

Agency Number: None.

Frequency: Varies (Initially, On occasion).

Affected Public: Business or other for-profit; Farm; Not-for-profit institutions; State, Local or Tribal Governments.

Number of Respondents: 79.200.

Estimated Time per Respondent: Varies from two minutes to 1 hour and five minutes.

Total Burden Hours: 9,936.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services: 0.

Description: Section 6(b) of the Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In the standard Logging Operations, § 1910.266(i)(1) requires an employer to provide training for each employee, including supervisors, as soon as possible, but not later than the effective date of this section for initial training for each current and new employee: prior to initial assignment for each new employee; whenever the employee is assigned new work tasks, etc.; and whenever an employee demonstrates unsafe job performance. Section 1910.266(i)(10)(i) requires an employer to verify that employees have been trained in the safe performance of assigned work tasks, first-aid and CPR by preparing written certification records. Section 1910.266(i)(10)(ii) requires an employer to maintain the certification records.

Agency: Occupational Safety and Health Administration.

Title: Welding, Cutting and Brazing (29 CFR part 1910).

OMB Number: 1218–0207 (extension).

Agency Number: None.

Frequency: Annually.

Affected Public: Business or other for-profit; Farms; State, Local or Tribal Government.

Number of Respondents: 35,307.

Estimated Time per Respondent: 10 minutes.

Total Burden Hours: 6,002.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes the promulgation of such health and safety standards as are necessary or appropriate to provide safe or healthful employment and places of employment. The statute specifically authorizes information collection by employers as necessary or appropriate for the enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents.

In 29 CFR part 1910, Welding, Cutting and Brazing, the information to be collected is used by employers and employees whenever resistance welding is performed. The purpose of the information is to ensure that employers evaluate hazards associated with resistance welding and ensure that adequate measures are taken to make the process safe.

Agency: Occupational Safety and Health Administration.

Title: Grain Handling Facilities.

OMB Number: 1218–0206 (extension).

Agency Number: None.

Frequency: Monthly, Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 23,770.

Estimated Time per Respondent: 6 hours.

Total Burden Hours: 138,921.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The requirements are directed toward assuring the safety of employees through the development of a housekeeping plan, emergency action plan, use of tags/locks, hot work permits and permits for entry into grain structures. Certification records are also required after inspections of mechanical and safety control equipment of dryers, processing equipment, dust collection equipment and bucket elevators.

Agency: Occupational Safety and Health Administration.

Title: Construction Posting Requirements—Emergency Numbers and Floor Load Limits (§§ 1926.50(f) and 1926.250(a)(2)).

OMB Number: 1218–0093 (extension).

Agency Number: None.

Frequency: Once.

Affected Public: Business or other for-profit.

Number of Respondents: 187,562.

Estimated Time per Respondent: § 1926.50(f) = 2 minutes; § 1926.250(a)(2) = 5 minutes.

Total Burden Hours: 5.555 hours.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): 0.

Description: The construction standard for medical services and first aid (§ 1926.50(f)) requires that employers post emergency phone numbers for medical services at construction sites. The construction standard for (§ 1926.250(a)(2)) requires the posting of the maximum safe floor load limits and that the limits are not to be exceeded when materials are stored on that floor.

Agency: Occupational Safety and Health Administration.

Title: Design of Cave in Protective Systems (§ 1926.652 (b) and (c)).

OMB Number: 1218–0137 (extension).

Agency Number: None.

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.

Total annualized capital/startup costs: 0.

Total annual costs (operating/maintaining systems or purchasing services): $301,300.

Description: 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.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Alternative Method of Compliance for Certain SEPs pursuant to 29 CFR 2520.104–49.

OMB Number: 1210–0034 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Number of Respondents: 5,533.

Number of Responses : 5,533.

Total Burden Hours: 2,441.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (O&M): $29,303.

Description: Section 110 of the Employee Retirement Income Security Act of 1974 (ERISA) authorizes the Secretary of Labor to prescribe alternative methods of compliance with the reporting and disclosure requirements of Title I of ERISA for pension plans, although simplified employee pensions (SEPs) are established in section 408(k) of the Internal Revenue Code. This regulation provides an alternative method of disclosure for sponsors of certain types of SEPs that is easier to comply with than otherwise required under ERISA.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: ERISA Summary Annual Report Requirement.

OMB Number: 1210–0040 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Number of Respondents: 817,000.

Number of Responses: 235,000,000.

Total Burden Hours: 1,929,620.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (O&M): $127,725,530.

Description: ERISA section 104(b)(3) and regulations at 29 CFR 2520.104b–10 requires employee benefit plans to furnish a summary of the plan's annual report to participants and beneficiaries for purposes of disclosure of basic financial information.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Suspension of Pension Benefits Regulation Pursuant to 29 CFR § 2530.203–3.

OMB Number: 1210–0048 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for profit institutions, Individuals or households.

Number of Respondents: 74,000.

Number of Responses: 75,401.

Total Burden Hours: 14,344.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (O&M): 61,828.

Description: Section 203 (a)(3)(B) of the Employee Retirement Income Security Act (ERISA) and regulations thereunder govern the circumstances under which pension plans may suspend pension benefit payments to retirees that return to work, or of participants that continue to work beyond normal retirement age.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: ERISA Claims Procedure Regulation.

OMB Number: 1210–0053 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit, Not-for-profit Institutions, Individuals or households.
Number of Respondents: 6,690,345.
Number of Responses: 63,317,000.
Total Burden Hours: 496.000.
Total Annual costs (O&M): $53,710,000.
Description: This regulation (29 CFR § 2560.503–1) establishes certain minimum requirements for employee benefit plan procedures pertaining to claims by participants and beneficiaries for plan benefits, consideration of such claims, and review of claim denials.

Agency: Pension and Welfare Benefits Administration (PWBA).
Title: Class Exemption 86–128 for Certain Transactions Involving Employee Benefit Plans and Securities Broker-Dealers.
OMB Number: 1210–0059 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.
Number of Respondents: 165,500.
Number of Responses: 289,625.
Total Burden Hours: 65,510.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (O&M): $211,012.
Description: Class Exemption 81–128 permits persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of employee benefit plans. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts in order to recapture brokerage commissions for benefit of employee benefit plans.

Agency: Pension and Welfare Benefits Administration (PWBA).
Title: Class Exemption 77–4 for Certain transactions between Investment Companies and Employee Benefit Plans.
OMB Number: 1210–0049 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or household.
Number of Respondents: 414.
Number of Responses: 77,633.
Total Burden Hours: 6,676.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (O&M): $0.
Description: Class Exemption 77–4 permits the purchase and sale by an employee benefit plan of shares of an open-end investment company (mutual fund) when a fiduciary with respect to the plan (e.g., investment manager) is also the investment advisor for the investment company. In absence of the exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act (ERISA).

Agency: Pension and Welfare Benefits Administration (PWBA).
Title: Procedure for Application for Exemption from the Prohibited Transaction Provisions of Section 408(a) of the Employee Retirement Income Security Act (ERISA).
OMB Number: 1210–0060 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.
Number of Respondents: 167.
Number of Responses: 167.
Total Burden Hours. 0.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (O&M): $141,892.
Description: Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA) authorizes the Secretary of Labor to grant exemptions from the prohibited transaction provisions of sections 406 and 407(a) of ERISA and directs the Secretary to establish an exemption procedure with respect to such provisions. This regulation provides this procedure which requires applicants for exemption to make certain disclosures to the Department of Labor and participants and beneficiaries.

Agency: Pension and Welfare Benefits Administration (PWBA).
Title: Class Exemption 81–8 for Investment of Plan Assets in Certain Types of Short-Term Investments.
OMB Number: 1210–0061 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.
Number of Respondents: 25,600.
Number of Responses: 128,000.
Total Burden Hours: 21,333.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (O&M): $0.
Description: Class Exemption 81–8 permits the investment of plan assets which involve the purchase or other acquisition, holding, sale, exchange or redemption by or on the behalf of an employee benefit plan of certain types of short-term investments. In absence of the exemption, certain aspects of these transactions might be prohibited by section 406 of the Employee Retirement Income Security Act (ERISA).

Agency: Pension and Welfare Benefits Administration (PWBA).
Title: Class Exemption 82–63.
OMB Number: 1210–0062 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.
Number of Respondents: 25,600.
Number of Responses: 51,200.
Total Burden Hours: 4,267.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (O&M): $0.
Description: Class Exemption 81–8 permits the payment of compensation to fiduciaries for the provision to plans of securities lending services. In the absence of this exemption, certain compensation arrangements would be prohibited under section 406 of the Employee Retirement Income Security Act (ERISA).

Agency: Pension and Welfare Benefits Administration (PWBA).
Title: Prohibited Transaction Class Exemption 92–6.
OMB Number: 1210–0063 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.
Number of Respondents: 7,656.
Number of Responses: 7,656.
Total Burden Hours: 1,276.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (O&M): $0.
Description: This class exemption exempts from the prohibited transaction provisions of the Employee Retirement Income Security Act (ERISA), the sale of individual life insurance or annuity contracts by a plan to participants, relatives of participants, employers, any of whose employees are covered by the plan, other employee benefit plans, owner-employees, or shareholder-employees, for the cash surrender value of the contracts, provided certain conditions set forth in the exemption are met.

Agency: Pension and Welfare Benefits Administration (PWBA).
Title: Prohibited Transaction Class Exemption 81–6.
OMB Number: 1210–0065 (extension).
Frequency: On occasion.
Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.
Number of Respondents: 25,600.
Number of Responses: 51,200.
Total Burden Hours: 4,267.
Total Annualized Capital/Startup Costs: $0.
Total Annual Costs (O&M): $0.
Description: This class exemption permits an employee benefit plan to lend securities to a broker dealer registered under the Securities Act of

1934 or to a bank, provided certain conditions are met. In the absence of this exemption, certain aspects of these transactions might be prohibited under section 406 of the Employee Retirement Income Security Act (ERISA)

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Prohibited Transaction Class Exemption T88–1.

OMB Number: 1210–0074 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Number of Respondents: 1.

Number of Responses: 1.

Total Burden Hours: 1.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (O&M): $0.

Description: Prohibited Transaction Class Exemption T88–1 adopts, for purposes of the prohibited transaction provisions of section 8477(c)(2) of the Federal Employees' Retirement System Act of 1986 (FERSA), certain prohibited transaction class exemptions granted pursuant to section 408(a) of ERISA.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Final Regulation Relating to Loans to Plan Participants and Beneficiaries who are Parties in Interest with Respect to the Plan.

OMB Number: 1210–0076 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Number of Respondents: 1,232.

Number of Responses: 1,232.

Total Burden Hours: 1.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (O&M): $277,200.

Description: This regulation (29 CFR 2550.408b–1) sets out the terms of Section 408(b)(1) of the Employee Retirement Income Security Act (ERISA), under which loans from a plan to participants and beneficiaries who are parties in interest are permitted. For purposes of this information collection the regulation clarifies the ''specific provisions'' regarding such loans that must be set forth in the plan.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Prohibited Transaction Class Exemption 91–55.

OMB Number: 1210–0079 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Number of Respondents: 5.

Number of Responses: 5.

Total Burden Hours: 36,666.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (O&M): $0.

Description: This class exemption permits purchases and sales by certain ''individual retirement accounts,'' of American Eagle bullion coins (Coins) in principal transactions from or to broker-dealers in Coins which are authorized purchasers of coins dealers of Coins in bulk quantities from the U.S. Mint and which are also ''disqualified persons,'' within the meaning of Code section 4975(e) with respect to IRAs.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: ERISA Technical Release 91–1.

OMB Number: 1210–0084 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Number of Respondents: 36.

Number of Responses: 36.

Total Burden Hours: 3,136.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (O&M): $45,880.

Description: ERISA Technical Release 9101 alerts the public to amendments to section 101(e) of ERISA which, among other things, require that a plan provide advance written notification to the Secretaries of Labor and Treasury, as well as participants and beneficiaries, of an intended transfer of excess assets from a defined benefit plan to a retiree health account as otherwise permissible after satisfying the conditions set forth in section 420 of the Internal Revenue Code.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Delinquent Filer Voluntary Compliance Program.

OMB Number: 1210–0089 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Number of Respondents: 3,100.

Number of Responses: 3,100.

Total Burden Hours: 109.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (O&M): $74,384.50.

Description: The Delinquent Filer Voluntary Compliance Program is intended to encourage, through the assessment of reduced civil penalties, delinquent plan administrators to voluntarily comply with their annual reporting obligations under Title I of ERISA.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Regulation Regarding Participant Directed Individual Account Plans (ERISA section 404(c) Plans).

OMB Number: 1210–0090 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Number of Respondents: 165,600.

Number of Responses: 20,000,000.

Total Burden Hours: 79,261.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (O&M): $8,156,344.

Description: ERISA section 404(c) provides that where a pension plan with the individual accounts permits a participant or beneficiary (P or B) to exercise control over assets in his account and the P or B does so, that the P or B will not be deemed to be a fiduciary by such actions, and that no person otherwise a fiduciary shall be liable for any loss or breach which results from this exercise of control, if certain conditions are met.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Prohibited Transaction Class Exemption 94–71.

OMB Number: 1210–0091 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Number of Respondents: 5.

Number of Responses: 5.

Total Burden Hours: 88.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (O&M): $1,000.

Description: Prohibited Transaction Class Exemption 94–71 exempts from the restrictions of sections 406(a)(1)(A)–(D), 406(a)(2), 406(b)(1) and 406(b)(2) of the Employee Retirement Income Security Act (ERISA) (and the taxes imposed by section 4975(c)(1))(A)–(E) of the Internal Revenue Code) a transaction or activity which is authorized, prior to the occurrence of such transaction or activity, by a settlement agreement resulting from an investigation of an employee benefit plan conducted by the Department under the authority of section 504(a) of ERISA.

Agency: Pension and Welfare Benefits Administration (PWBA).

Title: Prohibited Transaction Class Exemption 85–68 to Permit Employee Benefit Plans to Invest in Customer Notes of Employers.

OMB Number: 1210–0094 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Number of Respondents: 1.

Number of Responses: 1.

Total Burden Hours: 1.

Total Annualized Capital/Startup costs: 0.

Total Annual Costs (O&M): 0.

Description: This class exemption exempts from the prohibited transaction provisions of the Employee Retirement Income Security Act (ERISA), certain transactions involving the purchase of customer notes of an employer by an employee benefit plan.

Agency: Department of Labor, Pension and Welfare Benefits Administration (PWBA).

Title: Prohibited Transaction Class Exemption 96–62.

OMB Number: 1210–0098 (extension).

Frequency: On occasion.

Affected Public: Business or other for-profit, Not-for-profit institutions, Individuals or households.

Number of Respondents: 47.

Number of Responses: 1,050.

Total Burden Hours: 1.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (O&M): $69,952.

Description: This class exemption permits a plan to seek approval on an accelerated basis of otherwise prohibited transactions by providing the Department and interested persons with information demonstrating that the proposed transaction is substantially similar to at least two individual exemptions previously granted by the Department, and presents little, if any, opportunity for abuse or risk of loss to a plan's participants and beneficiaries.

Agency: The Office of the Solicitor.

Title: Equal Access to Justice Act.

OMB Number: 1225–0013 (extension).

Frequency: On occasion.

Affected Public: Individuals or households; Business or other for-profit, Not-for-profit institutions, Individuals or households.

Number of Respondents: 10.

Estimated Time per Respondent: 5 hours.

Totlal Burden Hours: 50 hours.

Total Annualized Capital/Startup Costs: 0.

Total Annual Costs (O&M): 0.

Description: The Equal Access to Justice Act provides for payment of fees and expenses to eligible parties who have prevailed against the Department in certain administrative proceedings. In order to obtain an award, the statute and regulations require the filing of an application.

Todd R. Owen,

Departmental Clearance Officer.

[FR Doc. 98–26884 Filed 10–6–98; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Sunshine Act Meeting; The U.S. National Commission on Libraries and Information Science (NCLIS) Sunshine Act Meeting and Open Hearing

TIME, DATE, AND PLACE: NCLIS Business Meeting, November 9, 1998, 2:00–5:00 p.m., Holiday Inn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, VA.

Open Hearing on ''Kids and the Internet: The Promise and the Perils'', November 10, 1998, 9:00–4:00 p.m., The Freedom Forum, Rooftop Center, 1101 Wilson Boulevard, Arlington, VA.

Purpose of the Hearing: The NCLIS hearing is being held for the purpose of producing a report with solid, practical recommendations for front-line library managers to deal with problems arising from public access Internet terminals in libraries where children may use them. Foremost of these problems is the potential for predation by pedophiles, but the hearing will also deal with the concerns parents express about their kids' having access to inappropriate material, generally sexually explicit matter, but also hate language, cult messages, and other troublesome material. Additionally, NCLIS intends to explore the issue of privacy, especially in the case of marketing efforts that entice kids to provide a host of consumer information about themselves and their families.

The issues will be examined in a context of a deep and abiding regard for First Amendment freedoms and the library community's historic aversion to censorship.

This hearing is open by invitation to anyone interested in this topic. Requests for invitation should be received by October 23, 1998. Because of time constraints, participation will be limited. Written testimony will be accepted for those unable to appear in person.

Written requests for invitations must be submitted to NCLIS, Attn: Barbara Whiteleather, 1110 Vermont Avenue, NW., Suite 820, Washington, DC 20005–3522; fax: 202–606–9203; or e-mail: <bw__nclis@inet.ed.gov>

Written comments will be accepted before, during, or up to 30 days after the hearing provided that all such comments are received at the above address no later than the close of business on December 10, 1998.

To request further information or to make special arrangements for physically challenged persons, contact Barbara Whiteleather (202–606–9200) no later than one week in advance of the meeting.

For further information contact Robert Willard, Executive Director (202) 606–9200.

Dated: October 2, 1998.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 98–26993 Filed 10–5–98; 12:08 pm]

BILLING CODE 7527–$$–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

October 2, 1998.

TIME AND DATE: 10:00 a.m., Wednesday, October 14, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor* v. *Arch of Kentucky,* Docket No. KENT 97–197 (Issues include whether the Judge erred in determining that the operator violated 30 CFR § 75.1403–6(b)(3)'s requirement that each track-mounted self-propelled personnel carrier be equipped with properly installed and well-maintained sanding devices, and that the violation was significant and substantial.)

TIME AND DATE: 2:00 p.m., Wednesday, October 14, 1998.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor* v. *Arch of Kentucky,* Docket No. KENT 97–197 (See oral argument listing, *supra,* for issues.)

Any person attending oral argument or an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Sandra G. Farrow,

Acting Chief Docket Clerk.

[FR Doc. 98–26992 Filed 10–5–98; 12:08 pm]

BILLING CODE 6735–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–136]

National Environmental Policy Act; Europa Orbiter Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare an environmental impact statement and conduct scoping for the Europa Orbiter mission.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216 Subpart 1216.3), NASA intends to prepare an Environmental Impact Statement (EIS) for NASA's Europa Orbiter mission. The EIS will address the environmental impacts associated with launching and operating the mission.

The Europa Orbiter mission is currently proposed to launch in November 2003 or December 2004 from Kennedy Space Center, Florida, on an orbital mission around Jupiter's icy moon Europa. The launch date would be affected by the launch date for NASA's proposed Pluto-Kuiper Express mission. Concurrent with the publication of this notice of intent (NOI), NASA is publishing an NOI to prepare an EIS for the Pluto-Kuiper Express mission. Environmental impacts to be considered in the EIS are those impacts associated with a normal launch from Kennedy Space Center, and the potential radiological and non-radiological risks of the mission. The baseline plan for the Europa Orbiter mission would include the use of a Radioisotope Power System (RPS) and approximately 50 Radioisotope Heater Units (RHU's).

DATES: Interested parties are invited to submit written comments to NASA on or before November 23, 1998, to assure full consideration during the scoping process.

ADDRESSES: Written comments should be addressed to Mr. David Lavery, Advanced Technology and Mission Studies Division, Code SM, NASA Headquarters, Washington, DC 20546–0001. While hard copy comments are preferred, comments by electronic mail may be sent to: osseuropa@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. David Lavery, 202–358–1109; electronic mail: osseuropa@hq.nasa.gov.

SUPPLEMENTARY INFORMATION: NASA's Space Science Program seeks to investigate the mysteries of the Universe, explore the Solar System, find planets around other stars, and search for life beyond Earth. The Europa Orbiter mission would cast light on our search for the chemical and biological origins of life, and broaden our knowledge of our Solar System. Hydrothermal zones on Earth have been shown to harbor life and may represent the type of environment in which life might have arisen on Earth. If there is (or once was) an ocean and related volcanism on Europa, as suggested by results from NASA's Galileo Jupiter orbiter mission, then the Europa Orbiter mission may lead to the discovery of life beyond Earth.

The science goals of the Europa Orbiter and Pluto-Kuiper Express missions are independent. The implementation of either mission has no effect on the need for and implementation of the other mission other than logistical timing factors.

The Europa Orbiter spacecraft is currently proposed to launch in November of 2003 or December of 2004 from Kennedy Space Center, Florida, on an orbital mission around Jupiter's icy moon Europa. The currently proposed spacecraft and mission design would probably require the use of the Space Shuttle with an Inertial Upper Stage and one or more additional solid rocket stage(s) to launch the Europa Orbiter. The proposed trajectory would involve a direct flight and not require any planetary gravity assist maneuvers.

If the mission utilizes an RPS, it is anticipated that, due to relatively low spacecraft electrical power requirements and a potential for improved power system efficiency, the spacecraft would carry substantially less radioactive material (plutonium dioxide) than used in a single ''conventional'' radioisotope thermoelectric generator.

If an RPS is used, some of the waste heat from the RPS could warm temperature-critical elements such as propulsion components, the propellant tanks, and electronics in the spacecraft body. However, since the spacecraft would be operating very far from the Sun RPS waste heat alone may not provide adequate heating for all spacecraft components. Therefore, in addition to the RPS, the Europa Orbiter mission is considering the use of approximately 50 RHU's.

Alternatives to be considered in this EIS include, but are not necessarily limited to, the (1) use of alternative sources of on-board power (including solar); (2) alternative launch vehicles and launch sites; (3) alternative trajectories and launch dates; and (4) not undertaking the mission or ''no-action.''

The EIS will consider the potential environmental impacts associated with the normal launch and operation of the spacecraft, and accident situations.

Written public input and comments on environmental impacts and concerns associated with the proposed mission are hereby solicited.

Jeffrey E. Sutton,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 98–26809 Filed 10–6–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 98–137]

National Environmental Policy Act; Pluto-Kuiper Express Mission

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of intent to prepare an environmental impact statement and conduct scoping for the Pluto-Kuiper Express Mission.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321, *et seq.*), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), and NASA policy and procedures (14 CFR Part 1216 Subpart 1216.3), NASA intends to prepare an Environmental Impact Statement (EIS) for NASA's Pluto-Kuiper Express mission. The EIS will address the environmental impacts associated with launching and operating the mission.

The Pluto-Kuiper Express mission is currently proposed to launch from Cape Canaveral Air Station or Kennedy Space Center, Florida in November 2003 or December 2004. The launch date would be affected by the launch date for NASA's proposed Europa Orbiter mission. Concurrent with the publication of this notice of intent (NOI), NASA is publishing an NOI to prepare an EIS for the Europa Orbiter mission. Environmental impacts to be considered in the EIS are those impacts associated with a normal launch from Cape Canaveral Air Station or Kennedy Space Center, and the potential radiological and non-radiological risks of the mission. The baseline plan for the Pluto-Kuiper Express mission would include the use of a Radioisotope Power System (RPS) and approximately 80 Radioisotope Heater Units (RHU's).

DATES: Interested parties are invited to submit written comments to NASA on or before November 23, 1998, to assure full consideration during the scoping process.

ADDRESSES: Written comments should be addressed to Mr. David Lavery, Advanced Technology and Mission Studies Division, Code SM, NASA Headquarters, Washington, DC 20546–0001. While hard copy comments are preferred, comments by electronic mail may be sent to: osspluto@hq.nasa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. David Lavery, 202–358–1109; electronic mail: osspluto@hq.nasa.gov.

SUPPLEMENTARY INFORMATION: NASA's Space Science Program seeks to investigate the mysteries of the Universe, explore the Solar System, find planets around other stars, and search for life beyond Earth. The Pluto-Kuiper Express mission would cast light on our search for the chemical and biological origins of life, and broaden our knowledge of our Solar System. Pluto-Kuiper Express represents the last mission necessary to complete the initial reconnaissance of the known planets in our Solar System. The icy Kuiper Belt Objects beyond Pluto's orbit may represent remnant bodies from which Earth's volatiles, such as water, may have come. If Earth's atmosphere formed from in-falling comets, exploring Pluto, Charon and the Kuiper Belt may guide us in the search for our origins.

The science goals of the Pluto-Kuiper Express and Europa Orbiter missions are independent. The implementation of either mission has no effect on the need for and implementation of the other mission other than logistical timing factors.

The Pluto-Kuiper Express spacecraft is currently proposed to launch in November of 2003 or December of 2004 from Space Launch Complexes at Cape Canaveral Air Station or Kennedy Space Center, Florida. The proposed spacecraft and mission design at this time would probably require the use of the Space Shuttle or an appropriate expendable launch vehicle. The proposed trajectories would involve only one Jupiter gravity assist maneuver.

If the mission utilizes an RPS, it is anticipated that, due to relatively low spacecraft electrical power requirements and a potential for improved power system efficiency, the spacecraft would carry substantially less radioactive material (plutonium dioxide) than used in a single ''conventional'' radioisotope thermoelectric generator.

If an RPS is used, some of the waste heat from the RPS could warm temperature-critical elements such as propulsion components, the propellant tanks, and electronics in the spacecraft body. However, since the spacecraft would be operating very far from the Sun RPS waste heat alone may not provide adequate heating for all spacecraft components so far from the Sun. Therefore, in addition to the RPS, the Pluto-Kuiper Express mission is considering the use of approximately 80 RHU's.

Alternatives to be considered in this EIS include, but are not necessarily limited to, the (1) use of alternative sources of on-board power (including solar); (2) alternative launch vehicles; (3) alternative trajectories and launch dates; and (4) not undertaking the mission or ''no-action.''

The EIS will consider the potential environmental impacts associated with the normal launch and operation of the spacecraft, and accident situations.

Written public input and comments on environmental impacts and concerns associated with the proposed mission are hereby solicited.

Jeffrey E. Sutton,

Associate Administrator for Management Systems and Facilities.

[FR Doc. 98–26810 Filed 10–6–98; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Institute of Museum and Library Services; Proposed Collection, Comment Request

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 1995 (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 Identification and Analysis of Library and Museum Collaborations.

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 December 7, 1998.

IMLS is particularly interested in comments that 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 collocation 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: Dr. Rebecca Danvers, Director of the Office or Research and Technology, Institute of Museum and Library Services, 1100 Pennsylvania Ave., NW., Room 802, Washington, DC 20506. Dr. Danvers can be reached on Telephone: 202–606–2478 Fax: 202–606–1077 or at rdanvers@imls.fed.us.

SUPPLEMENTARY INFORMATION:

I. Background

The Institute of Museum and Library Services is an independent Federal grant-making agency authorized by the Museum and Library Services Act, Pub. L. 104–208. The IMLS provides a variety of grant programs to assist the nation's museums and libraries in improving their operations and enhancing their services to the public. Museums and libraries of all sizes and types may receive support from IMLS programs.

One of the core goals of the Institute of Museum and Library Services, as stated in its strategic plan, is to promote access to museum and library services for a diverse public. A specific objective within that goal is to encourage and enable partnerships between libraries and museums and other organizations, institutions and agencies. Currently, IMLS funding specifically supports collaborative library and museum projects through the National Leadership Grants program. This program made its first round of awards in September 1998. IMLS may also

support library and museum partnerships in other programs, although not as a specific objective.

II. Current Actions

IMLS seeks to collect, analyze and report on basic information about the characteristics of museum and library partnerships as they currently exist in the United States. The project will assist IMLS in understanding the nature, range and scope of museum and library partnerships in representative service areas, particularly including partnerships not receiving IMLS support.

Agency: Institute of Museum and Library Services.

Title: Identification and Analysis of Library and Museum Collaborations.

OMB Number:

Agency Number: 3137.

Frequency: Once.

Affected Public:

Number of Respondents: 250.

Estimated Time Per Respondents: 30 minutes (.5 hours).

Total Burden Hours: 125.

Total Annualized capital/startup costs: 0.

Total Annual costs: 0.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, Director of Public and Legislative Affairs, Institute of Museum and Library Services, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, telephone (202) 606–4648.

Mamie Bittner,

Director of Public and Legislative Affairs.

[FR Doc. 98–26808 Filed 10–6–98; 8:45 am]

BILLING CODE 7036–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–22]

CBS Corporation; Westinghouse Test Reactor; Notice of Issuance of Amendment to Facility License

Notice is hereby given that the Nuclear Regulatory Commission (the Commission) has issued, effective as of date of issuance, Amendment No. 8 to Facility License No. TR–2. The license authorizes CBS Corporation to possess, but not operate, the deactivated Westinghouse Testing Reactor Facility located near Waltz Mill in Westmoreland County Pennsylvania. The amendment approves the decommissioning plan dated July 31, 1997 as supplemented on March 20 and July 10, 1998.

The decommissioning plan covers the removal of the reactor vessel internal controls, the reactor vessel, the biological shield and the disposition of radioactive components. Following completion of the authorized activities and verification by the Commission that acceptable radioactive contamination levels have been achieved, the Commission would issue an order terminating the TR–2 license and relicensing the remaining facility under a Special Nuclear Materials license existing at other parts of the facility at Waltz Mill. Prior to issuance of the order, the Commission will have made the findings required by the Atomic Energy Act of 1954 (the Act), as amended and the Commission's regulations.

Opportunity for a hearing was afforded by a ''Notice of Proposed Issuance of a License Amendment and an Order Authorizing Disposition of Component Parts, Termination of Facility License, and Opportunity for Hearing'' published in the **Federal Register** on October 21, 1997 (62 FR 54656). There were no requests for a hearing.

The Commission has found that the application for amendment complies with the requirements of the Atomic Energy Act of 1954, as amended, and the Commission's regulations published in 10 CFR Chapter I. The Commission has made the findings (relating to its review of the application) which are set forth in the amendment and has concluded that the issuance of this amendment will not be inimical to the common defense and security or to health and safety of the public and does not involve a significant hazards consideration.

For further details with respect to this amendment, see (1) the licensee's application for amendment dated July 31, 1997, as supplemented on March 20 and July 10, 1998, (2) the amendment to Facility License No. TR–2, and (3) the related Safety Evaluation which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555.

Dated at Rockville, Maryland, this 30th day of September 1998.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Reactor Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 98–26850 Filed 10–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–155]

Consumers Energy Company; Big Rock Point Nuclear Plant; Exemption

I

Consumers Energy Company (Consumers or the licensee) is the holder of Facility Operating License No. DPR–6, which authorizes possession of the Big Rock Point Nuclear Plant (BRP). The license provides, among other things, that the facility is subject to all the rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a boiling-water reactor (BWR) located on the licensee's site in Charlevoix County, Michigan. The licensee submitted written certification to the Commission on June 26, 1997, that it had decided to permanently cease operations at BRP and on September 23, 1997, that all fuel had been permanently removed from the reactor vessel. In accordance with 10 CFR 50.82(a)(2), upon docketing of the certifications contained in the letters of June 26 and September 23, 1997, the facility operating license no longer authorizes Consumers to operate the reactor or place or retain fuel in the reactor vessel.

II

Section 50.54(q) of Title 10 of the Code of Federal Regulations (10 CFR 50.54(q)) requires power reactor licensees to follow and maintain in effect emergency plans that meet the standards of Section 50.47(b) and the requirements of Appendix E to 10 CFR Part 50.

Pursuant to 10 CFR 50.12(a), the Commission may, upon application by any interested person or upon its own initiative, grant exemption from the requirements of the regulations that are (1) authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security and (2) present special circumstances. Special circumstances exist when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule (10 CFR 50.12(a)(2)(ii)). The underlying purpose of Section 50.54(q) is to ensure that adequate protective measures can and will be taken in the event of a radiological emergency at a nuclear reactor. Sections 50.47(b) and (c) outline the planning standards and size,

respectively, of the Emergency Planning Zones that are to be considered in emergency plans, and Appendix E to 10 CFR Part 50 identifies the information that must be included in emergency plans.

III

By letter dated September 19, 1997, the licensee requested exemption from certain requirements in 10 CFR 50.47(b) and Appendix E to 10 CFR Part 50. The licensee also submitted and requested approval of its proposed BRP Defueled Emergency Plan (DEP), which was written on the basis of NRC staff approval of the proposed exemption request. The exemption would allow Consumers to discontinue certain aspects of offsite emergency planning and reduce the scope of onsite emergency planning.

Under the provisions of Section 50.54(q), a licensee may make changes to emergency plans without Commission approval only if the changes do not decrease the effectiveness of the plans and if the plans, as changed, continue to meet the standards of Section 50.47(b) and the requirements of Appendix E to 10 CFR Part 50. When the licensee determines that such a change may reduce the effectiveness of the emergency plans, the NRC staff evaluates that change against the bases for commitments made in the plan to determine whether there is a decreased effectiveness. It is not a decrease in effectiveness if the reduction in the commitment is commensurate with a reduction in the basis for that commitment. In this instance, the staff has determined that there has been a reduction in the bases that require offsite emergency planning. The basis for this determination is, in part, that the permanently shutdown and defueled condition of the BRP facility represents a substantially reduced risk to public health and safety.

The NRC reviewed the proposed BRP DEP as submitted, supplemented, and modified by the letters dated September 19, October 29, and November 20, 1997, and March 2, April 29, July 30, and August 28, 1998, during its review of the licensee's exemption request. The requirements of 10 CFR 50.54(q) and the remaining onsite and offsite requirements of 10 CFR 50.47 and Appendix E to 10 CFR Part 50 are addressed in the BRP DEP. Consumers intends to implement the BRP DEP following NRC staff review and approval, as stated by the licensee in its application dated September 19, 1997.

The licensee stated that special circumstances exist at BRP because the plant is permanently shutdown and defueled and the radiological source term at the site is reduced from that associated with reactor power operation. With the reactor power plant permanently shutdown and defueled, the design-basis accidents and transients postulated to occur during reactor operation are no longer possible. In particular, the potential for a release of a large radiological source term to the environment from the high pressure and temperature associated with reactor operation no longer exists. Additionally, due to the radioactive decay of short-lived isotopes, there is a continuing reduction in the potential radiological source term following the BRP plant shutdown on August 30, 1997. Further, the licensee also stated, during a public meeting held at NRC Headquarters on August 13, 1998, that requiring Consumers to comply with the requirements for offsite emergency planning when it is no longer warranted would result in undue financial hardship to BRP, its owners, and their ratepayers.

With the plant in a permanently shutdown and defueled condition, Consumers has stated that following 68 days post-shutdown (November 5, 1997) there are no remaining design-basis accidents at BRP that would result in offsite doses exceeding the U.S. Environmental Protection Agency (EPA) Protective Action Guides (PAGs). The accidents and transients evaluated by Consumers are described in Chapters 9 and 15 of the BRP Final Hazards Summary Report (FHSR), Revision 6, and included the evaluation of gap activity from the spent fuel that is postulated to be released to the environment as a result of fuel handling incidents and heavy load drops on spent fuel.

Subsequently, on February 12, 1998, Consumers submitted Revision 7 to its FHSR, which included revised analyses of postulated accidents at BRP in its permanently shutdown and defueled status. In Revision 7, Consumers reevaluated the accidents described in Revision 6 to the FHSR. Consumers also evaluated other postulated radiological events to gain further assurance that decommissioning activities would not result in unacceptable levels of risk of effects on public health from radiation exposure in an emergency situation and that these events are bounded by the considerations described in the NRC's ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities'' (NUREG–0586). In particular, these other radiological events included but were not limited to the evaluation of (1) fire involving radioactive ion exchange resin; (2) gamma radiation due to a loss of spent fuel pool (SFP) water level; and, (3) self-sustaining oxidation of spent fuel zirconium cladding. With the exception of krypton-85, the noble gas and volatile radioactive nuclides residing within the spent fuel pin gap that contribute to the dose consequences of releases from operating reactors have decayed to negligible amounts. Further, the source term from low-level radioactive waste (including ion exchange resins) temporarily stored at the site is much lower than that of the spent fuel. Additionally, the licensee has demonstrated that the potential dose consequences of a release from a low-level radioactive waste (LLRW) are bounded by accidents involving spent fuel.

By letter dated November 20, 1997, Consumers submitted its evaluation demonstrating the conclusion that a fire involving radioactive resin being stored at the facility and gamma radiation resulting from a complete draindown of the SFP would not exceed the EPA PAGs at the site area boundary. The resin fire is considered a bounding LLRW accident at the site. This fire would involve the ion exchange resin used to process wastes resulting from the reactor coolant system chemical decontamination that was performed at the BRP facility in December 1997. As a postulated scenario, Consumers estimated that the fire consumed resin containing 300 curies, which correlates to the amount of radioactive material that Consumers estimated will be retained in the resins from chemical decontamination. Consumers calculated that this event would result in a total effective dose equivalent (TEDE) and a thyroid committed dose equivalent (CDE) well below EPA PAGs. The staff reviewed the licensee's calculations and methodologies and found them to be acceptable. To provide further assurance that fires involving LLRW do not result in offsite doses exceeding EPA PAGs, the NRC staff assessed the current LLRW situation at BRP. The licensee informed the staff that as of July 28, 1998, five high-integrity containers (HICs) of radioactive resin are being stored in the LLRW storage building located on the BRP site. These HICs are loaded with approximately 100–150 curies of radioactive material from various reactor operating and decommissioning activities and are stored inside a corrugated metal building utilizing a separate concrete vault for each HIC. Manual fire protection and industrial area personnel access controls are associated with this building. Further, the licensee

maintains a fire protection program for its onsite facilities and continually assesses combustible loading to minimize fire potential and consequences. Therefore, the staff finds that a fire involving more than one HIC has a very low probability of occurrence.

Wet storage of spent fuel possesses inherently large safety margins because of the simplicity and robustness of the SFP design. The design basis includes the ability to withstand an earthquake and to retain sufficient water to adequately cool and shield the spent fuel. Specifically, the licensee states in the FHSR that the SFP structure is designed to seismic Class I requirements and is capable of performing its intended safety function under the licensee's design-basis hypothetical earthquake with a 0.05g acceleration. This value was reevaluated by the licensee to a Regulatory Guide 1.60, ''Design Response Spectra for Seismic Design of Nuclear Power Plants,'' value of 0.12g zero-period horizontal acceleration. The SFP structure has a floor and walls of reinforced concrete that vary in thickness from 3 feet 6 inches to 6 feet 9 inches with a 3⁄16-inch stainless steel liner. To add to the robustness of this design, the seismicity of the SFP makeup water supply was designed to 0.12g and the reactor building reinforced-concrete internal structure, support for the reactor enclosure plenum, and equipment were designed to withstand a 0.05g acceleration; these reactor building structures were subsequently reevaluated by Consumers to 0.12g. Geologic investigations at the site and throughout the Lake Michigan basin, as described in the FHSR, have not found any indication of fault movement in the recent geologic past. Further, as described in the FHSR, the materials beneath and around the seismic Class I structures are not likely to liquefy with a ground acceleration of 0.12g, and settlement of structures and stability of slopes at the BRP site during ground acceleration are not a safety concern. Since the analyses used in designing the capability of structures, systems, and components (SSCs) to perform their safety function under a hypothetical earthquake have significant margin in them, it is expected that an SSC built to withstand the hypothetical design-basis earthquake will actually be able to withstand a larger earthquake. Thus, the loss of coolant from the BRP SFP, which partially or completely uncovers the fuel, is a beyond-design-basis event with a very low probability of occurrence.

Despite the robust design of the SFP, Consumers postulated a non-mechanistic loss of all water from the SFP and determined that the resulting gamma radiation from the spent fuel would not result in offsite exposures exceeding EPA PAGs, as documented in the licensee's November 20, 1997, letter to the staff. For this scenario, Consumers calculated an offsite dose of 1.10 mrem TEDE at the closest site area boundary, which is significantly below EPA PAGs. The NRC staff reviewed the licensee's calculational methods and assumptions supporting Consumers' gamma shine analysis and found them to be acceptable.

In a letter dated April 29, 1998, Consumers submitted an analysis for a complete loss of water inventory in the SFP. The analysis was based on the actual spent fuel decay heat generation rates, actual spent fuel and SFP configuration and engineering assumptions including a pin peaking factor and no credit for forced-ventilation cooling. Consumers determined that as of April 6, 1998 (220 days after permanent reactor shutdown), air cooling of spent fuel would be sufficient to maintain the spent fuel clad temperature below 565 °C. The staff reviewed the licensee's actual SFP conditions and concluded that they appropriately characterized its conditions. Further, the staff notes that additional margin is provided in the Consumers calculation due to the continuing reduction of decay heat in the spent fuel. In addition, the staff evaluated a bounding scenario where the active fuel is totally uncovered and water is blocking the assembly lower inlet so that no natural circulation flow path exists. The staff calculated it would take approximately 14 hours for the hottest location in the highest power fuel assembly to reach 900 °C. The heat up time was calculated assuming an adiabatic heat up of a fuel rod and using conservative decay heat assumptions. An adiabatic heat up is defined as one in which all heat generated is retained in the system, with no heat loss to the surroundings. This definition corresponds to a physical condition in which the SFP water is lost and the fuel is surrounded by a perfect heat transfer insulator. The staff considers this scenario to be bounding for any loss of inventory scenario since any other scenario would have some heat removal from the assembly thereby resulting in a longer heat up time. The staff determined that in view of the low likelihood of the bounding scenario and the time elapsed since the shutdown of the facility, there would be sufficient time for mitigative actions and, if necessary, offsite measures after a postulated loss of water and before a postulated release of radioactive material occurs from spent fuel overheating.

In the event that SFP water is lost gradually, plant personnel have various methods of detecting SFP water loss and restoring SFP water level. As described in the FHSR and licensee procedures, detection includes remote reading level instrumentation, surge tank sight tank, and local level observation. The SFP level instrumentation can be powered by a diesel generator in the event of a loss of offsite power. The staff also notes that gross SFP level can also be interpreted from installed temperature and radiation detection instrumentation. SFP water level restoration can be accomplished by treated radioactive waste or demineralizer water through the SFP cooling system and by the installed makeup line. The emergency water sources are fire water and water from Lake Michigan via a portable and fully tested skid-mounted pump; the staff considers the skid-mounted pump as a last-resort makeup water source providing defense-in-depth. Each source of water can supply at least 30 gallons per minute, which is the flow rate determined by the licensee to maintain the bulk pool water less than the design temperature of 150 °F (66 °C) and maintain adequate SFP water inventory taking into consideration evaporation at 150 °F (66 °C). As described in the FHSR, the installed makeup water supply and fire water systems are designed to seismic Class 1 requirements.

The SFP has been and continues to be leaktight with no measurable loss of water detected by the leak-detection system. There is no SFP drain and a concrete weir and siphon protection features prevent any piping failure from draining or siphoning the SFP water level below 20 feet above the top of the spent fuel assemblies. On the basis of the installed instrumentation, operator tours of the SFP, the engineered features associated with the SFP SSCs, and the availability of the makeup water sources to restore a gradual loss of SFP water, the staff finds it highly unlikely to expect that the fuel will uncover as a result of a gradual loss of coolant scenario. In addition, Consumers evaluated the loss of spent fuel cooling and concluded that it does not represent a safety concern, in part, because spent fuel decay heat rate has markedly decreased since the final reactor shutdown. On August 30, 1997, when the plant conducted its final shutdown following months of reactor operation, the spent fuel decay heat (assuming a fully off-loaded reactor core) was

approximately 3.7E6 Btu/hr. On December 5, 1997, with a decay heat rate of 0.7E6 Btu/hr and no SFP cooling, the licensee determined that it would take 72 hours for the SFP to heat up to 150 °F (66 °C) from an initial temperature of 80 °F (27 °C) . Since this determination, the decay heat rate has decreased by a factor of two to approximately 0.3E6 Btu/hr. Further, the evaporation rate of SFP water at 150 °F (66 °C) is approximately 11 gpm, well within the 30 gpm capacity of the SFP makeup water supplies.

The staff concludes that the licensee's request for an exemption from certain requirements of 10 CFR 50.47(b) and Appendix E to 10 CFR Part 50 is acceptable in view of the greatly reduced offsite radiological consequences associated with the current plant status. The staff finds that the postulated dose to the general public from any reasonably conceivable accident would not exceed EPA PAGs and, for the bounding accident, the length of time available gives confidence that mitigative actions and, if necessary, offsite measures for the public could be taken without preplanning. Therefore, the staff concludes that the requirement in 10 CFR 50.54(q) that emergency plans meet all the requirements of 10 CFR 50.47(b) and all the requirements of Appendix E to 10 CFR Part 50 is not now warranted at BRP, and an exemption from some of the onsite and offsite emergency planning standards and requirements is acceptable.

IV

The NRC staff has completed its review of the licensee's request for an exemption from the requirements of 10 CFR 50.54(q) that emergency plans must meet all of the standards of 10 CFR 50.47(b) and from the requirements of Appendix E to 10 CFR Part 50. This exemption includes partial exemption from the standards of 10 CFR 50.47(b)(3) through (7), and (9) and the requirements of 10 CFR Part 50, Appendix E, IV, ''Content of Emergency Plans;'' A.4; B; C; D.1 and 3; E.9.a and d; and F.1, 2, and 2.e. Further, this exemption covers all of the standards of 10 CFR 50.47(b)(10) and the requirements of 10 CFR Part 50, Appendix E, IV, A.3, 5, and 8; D.2; E.8 and 9.c; and F.2.c, d, and f. On the basis of its review, the NRC staff finds that the postulated dose to the general public from any reasonably conceivable accident would not exceed EPA PAGs and, for the bounding accident, the length of time available provides confidence that mitigative actions and, if necessary, offsite protective measures for the public could be taken without preplanning. The analyses submitted by the licensee are consistent with the statements made in its FHSR and proposed DEP, which state that any decommissioning activity will be bounded by the analyses presented therein and the considerations and assessments in the NRC's ''Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities'' (NUREG–0586). Consumers will continue to maintain and implement an onsite emergency preparedness organization capable of responding to and mitigating the consequences of radiological events still possible at the site and will continue to coordinate, as necessary, with offsite organizations to ensure effective emergency response to onsite situations, if needed. The staff finds the exemption from two requirements, 10 CFR 50.47(b)(9) and 10 CFR 50, Appendix E.IV.A.4, acceptable on the basis of the licensee's commitment to continue to maintain capabilities for dose assessment and personnel necessary to determine the potential impact of a radiological emergency on the general public. Thus, the underlying purpose of the regulations will not be adversely affected by eliminating offsite emergency planning activities and reducing the scope of onsite emergency planning.

For the foregoing reasons, the Commission has determined that, pursuant to 10 CFR 50.12, elimination of offsite emergency planning activities will not present undue risk to public health and safety, and is consistent with the common defense and security. Further, special circumstances are present as stated in 10 CFR 50.12(a)(2)(ii). Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (63 FR 50930).

This exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of September 1998.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–26852 Filed 10–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 14, 1998, through September 25, 1998. The last biweekly notice was published on September 23, 1998 (63 FR 50932).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period.

However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By November 6, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: October 28, 1997, as supplemented March 26, May 20, July 29, and August 13, 1998.

Description of amendment request: The proposed amendments would revise the current Technical Specifications (CTS) of each unit to conform with NUREG–1430, ''Standard Technical Specifications—Babcock and Wilcox Plants.'' The Commission had previously issued a Notice of Consideration of Issuance of Amendments published in the **Federal Register** on December 5, 1997 (62 FR 64405), covering all of the proposed Improved Technical Specification (ITS) changes that were within the scope of NUREG–1430 for the Oconee Nuclear Station. However, the submittals also contained proposed changes that are beyond the scope of NUREG–1430, which were not included in the staff's December 5, 1997, notice. The following descriptions and proposed no significant hazards analyses cover only the beyond-scope changes. Associated with each proposed change are administrative/editorial changes such that the new or revised requirements would fit into the format of NUREG–1430. Some changes are ''Less Restrictive'' (meaning that the new requirements being incorporated into the ITS are less restrictive than the CTS requirements) and some are ''More Restrictive.'' The basis for the no significant hazards determination is identical for all of the more restrictive items and is presented at the end of the following list of more restrictive beyond-scope items:

A. Certain NUREG and CTS Sections 3.1.3.5, 3.5.2.4.a, 3.5.2.5.b, 3.5.2.5.c, and 3.5.2.6, specify that they are applicable ''except during Mode 1 physics testing.'' The exception would not be included in the ITS and, therefore, the Mode 1 requirement would be applicable during the tests. The proposed change is more conservative since no exceptions would be allowed for physics tests conducted in Mode 1.

B. CTS 3.1.3.2 requires reactor coolant temperature to be greater than the criticality values of specified heatup limitation curves. This requirement would not be retained in the ITS. ITS 3.1.8, Limiting Condition for Operation (LCO) Part e, would be added to provide a restriction for loop average temperature to be greater than or equal to 520 °F when performing physics tests in Mode 2. ITS LCO 3.1.8 would permit suspending the requirements of ITS LCO 3.4.2, ''RCS (reactor coolant system) Minimum Temperature for Criticality,'' during physics tests initiated in Mode 2. Associated Actions and a surveillance requirement (SR) would be added to provide an appropriate required action when outside the limit and to verify operation within the limit periodically.

C. CTS Table 3.5.1–1 presently requires that the operator place the plant in hot shutdown (ITS equivalent of Mode 3) within 12 hours when the minimum channels Operable requirement is not met. The proposed change to the ITS would provide an equivalent requirement and add a requirement to open all control rod drive (CRD) trip breakers within 12 hours. ITS 3.3.3 Action B, and ITS 3.3.4 Action D, would be added to require that the unit be in Mode 3 in 12 hours with all CRD trip breakers open or that power be removed from all CRD trip breakers when the required action and associated completion time is not met in Mode 1, 2, or 3. For ITS 3.3.3, Action B would also apply when two or more reactor trip modules are inoperable in Mode 1, 2, or 3. The CTS presently requires entry into TS 3.0, which requires that the reactor be in hot shutdown (equivalent to ITS Mode 3) in 12 hours.

D. Note c would be added to ITS Table 3.3.8–1, Post Accident Monitoring Instrumentation, and referenced to Item No. 8, Containment Isolation Valve Position, to specify that position indication requirements apply only to the Containment Isolation Valves that are electrically controlled.

E. The applicability of Table 3.5.1–1 would be expanded to require wide range instruments to be operable in Mode 2, plus Modes 3, 4, and 5, with any control rod drive trip breaker in the closed position and the control rod drive system capable of rod withdrawal. In addition, a Note would define the upper limit of the applicable Modes for the required wide range instrument channels as being 10 percent indicated neutron power.

F. The applicability of ITS 3.3.14 would be expanded to include Mode 4 when the steam generator is relied upon for heat removal, which then would be consistent with the applicability of ITS LCO 3.7.5 for the emergency feedwater (EFW) system. ITS Specifications 3.3.14 and 3.3.15 would be added to address EFW system initiation circuitry and main steamline break and main feedwater isolation instrumentation separately. The specification titles, LCOs, actions, and SRs would be modified to reflect Oconee-specific terminology and design requirements. Where appropriate, ITS-required actions would be based on similar NUREG-required actions. EFW pump initiation circuitry operable requirement would be changed from 250 °F to greater than or equal to 246 °F.

G. ITS LCO 3.4.1, Departure from Nucleate Boiling Ratio (DNBR) Limits, are specified in the core operating limits report rather than in the LCO and SRs since they are subject to change with fuel cycle designs. The ITS LCO 3.4.1 actions would require restoring DNBR parameters to within limits within 2 hours or exiting the applicability for the specification within 12 additional hours. ITS SR 3.4.1.1, SR 3.4.1.2, and SR 3.4.1.3 would require verification that each DNBR parameter is within the limit at a 12-hour frequency. ITS SR 3.4.1.4 would require verification by measurement that total RCS flow is within limit at an 18-month frequency. Specification 3.4.1 would ensure that limits on RCS pressure, temperature, and flow rate are met to ensure that the core operates within the limits assumed for the plant safety analyses. These changes are more restrictive.

H. The NUREG allowed time to complete the SR after addition to core flood tank (CFT) of 6 hours would be changed to 12 hours. ITS SR 3.5.1.4 would require CFT boron concentration be sampled every 31 days or once within 12 hours after each solution volume increase greater than or equal to 80 gallons that is not the result of addition from a borated water source that meets CFT boron concentration requirements. Since the CTS does not specify the time limit following addition, the proposed ITS change is a more restrictive limit.

I. ITS 3.5.3 LCO Note 3 would be added to explicitly require that the low pressure injection (LPI) discharge header crossover valves be operable and capable of being opened manually when in Modes 1, 2, and 3. ITS 3.5.3 Action B would require that the LPI discharge header crossover valves be restored to operable status within 72 hours of being discovered incapable of being manually opened when in Modes 1, 2, and 3. ITS 3.5.3 Action D would require LCO 3.0.3 be entered immediately when one LPI train is inoperable in Modes 1, 2, and 3 concurrent with discovery that the LPI discharge header crossover valves are incapable of being opened manually in Modes 1, 2, and 3.

J. ITS 3.5.3 would require the LPI system to be operable in Modes 1, 2, 3, and 4. LCO Note 1 would be added to specify that only one LPI train is required to be operable in Mode 4. LCO Note 2 would be added to allow an LPI train to be considered operable during

alignment, when aligned, or when operating if capable of being manually realigned to the LPI mode of operation. Action E would be added to require action be initiated immediately to restore the required LPI train to operable status and to require the reactor to be placed in Mode 5 within 24 hours when the required LPI train cannot be restored to OPERABLE status (provided a decay heat removal loop is available).

K. SR 3.9.4.1 would be modified to eliminate verification of a specific decay heat removal flow rate to verification every 12 hours that one decay heat removal loop is in operation.

L. Main feeder bus monitoring panel requirements and allowed outage time would be added to the ITS.

M. TS Section 3.7 would be revised to include the actual trip setpoint and/or allowable values for the loss of power sensing relays.

N. Battery performance discharge testing as related to battery operability would be added.

O. Battery charger testing, cell-to-cell resistance measurements, and battery discharge and overcharge conditions, surveillances would be added to ITS Section 3.8.

P. High Pressure Injection System discharge pressure allowable value in ITS Table 3.3.5–1 would be changed from 1500 pounds per square inch gauge (psig) to 1590 psig.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration for the More Restrictive Items listed above, as follows:

In accordance with the criteria set forth in 10 CFR 50.92, Duke Energy has evaluated these proposed Technical Specification changes and determined that they do not represent a significant hazards consideration. The following is provided in support of this consideration.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes provide more stringent requirements than previously existed in the Technical Specifications. These more stringent requirements do not result in operation that will increase the probability of initiating an analyzed event. If anything the new requirements may decrease the probability or consequences of an analyzed event by incorporating the more restrictive changes. The changes do not alter assumptions relative to mitigation of an accident or transient event. The more restrictive requirements continue to ensure process variables, structures, systems, and components are maintained consistent with the safety analyses and licensing basis. Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from the accidents previously evaluated?

The proposed changes provide more stringent requirements than previously existed in the Technical Specifications. The changes do not alter the plant configuration (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. The changes do impose different requirements. However, these changes are consistent with the assumptions in the safety analyses and licensing basis. Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed changes provide more stringent requirements than previously existed in the Technical Specifications. Adding more restrictive requirements either increases or has no impact on the margin of safety. The changes, by definition, provide additional restrictions to enhance plant safety. The changes maintain requirements within the safety analyses and licensing basis. As such, no question of safety is involved. Therefore, the changes do not involve a significant reduction in a margin of safety.

For the less restrictive beyond-scope items, the basis for the no significant hazards consideration is unique for each item. The beyond-scope item and the licensee's basis supporting its determination that the proposed changes do not represent a significant hazards consideration follow:

A. A proposed change to the Note for ITS SR 3.1.4.3 would provide the additional flexibility for testing control rod drop times with reactor coolant flow conditions other than full flow, but with at least one reactor coolant pump (RCP) pump running. This would ensure that the testing is bounding by restricting operation of the unit to the RCP combination used during control rod drop testing and represents adoption of the NUREG rather than the CTS.

Basis for proposed no significant hazards consideration determination:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The control rods are used to support mitigation of the consequences of an accident; however, the control rod drop time variations are not considered the initiator of any previously analyzed accident. As such the proposed change in the method of performing the control rod drop time testing will not increase the probability of any accident previously evaluated. The proposed changes allow for testing the control rod drop times with less than a full complement of reactor coolant pumps operating. However, the operation of the plant is restricted to the pump combinations providing maximum flow less than or equal to the pump flow used for the testing. Therefore, the drop times verified during testing will remain valid for mitigating the consequences of any accident previously evaluated. Therefore, this change does not involve an increase in the consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from the accidents previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will continue to ensure that the control rods are available for insertion of reactivity in the time frames consistent with the safety analysis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The margin of safety provided in the acceptable control rod drop times continues to be provided since these drop times have not been changed. The surveillance methodology is revised to allow testing with one, two, or three pumps operating. However, the operation of the plant is restricted to the reactor coolant pump combinations which maintain the margin of safety, i.e., those pump combinations providing maximum flow less than or equal to the pump flow used for the testing. Therefore, this change does not involve a significant reduction in a margin of safety.

B. Required Action B.2.2 of ITS 3.3.11, 12, and 13, would be added to provide the option of closing the main feedwater control valves (MFCVs) and startup feedwater control valves (SFCVs) in lieu of reducing main steam header pressure to less than 700 psig. Applicability would be changed to Modes 1 and 2, plus Mode 3 when the main steam header pressure is greater than 700 psig except when all MFCVs and SFCVs are closed.

Basis for proposed no significant hazards consideration determination:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The MSLB (main steamline break) and MFW (main feedwater) Isolation circuitry is not an initiator of analyzed events. Therefore, the probability of an accident is independent of the status of the MSLB and MFW Isolation circuitry. As such the proposed change does not involve a significant increase in the probability of an accident previously evaluated. The proposed change eliminates the requirement for MSLB and MFW Isolation circuitry OPERABILITY when all the MFCVs and SFCVs are closed. When the MFCVs and SFCVs are closed the MSLB and MFW Isolation circuitry has no safety function since its function is to close the MFCVs and SFCVs when conditions indicate [an] MSLB. Therefore, the change does not involve a significant increase in the

consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from the accidents previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Since MSLB and MFW Isolation circuitry requirements continue to require OPERABILITY when the reactor is in a condition that requires their function, the proposed change does not involve a significant reduction in a margin of safety.

C. ITS 3.3.15 Action A.1 would be added to allow 1 hour to declare the turbine stop valves (TSVs) inoperable prior to requiring that the unit shut down when one or more TSV closure channels is inoperable. ITS Specifications 3.3.14 and 3.3.15 would be added to address the emergency feedwater system initiation circuitry and main steamline break and main feedwater isolation instrumentation separately. The NUREG specification combines the emergency feedwater system initiation, main steamline isolation, and main feedwater isolation functions into one specification. The specification titles, LCOs, actions, and SRs would be modified to reflect Oconee-specific terminology and design requirements. Where appropriate, ITS-required actions would be based on similar NUREG-required actions.

Basis for proposed no significant hazards consideration determination:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change establishes a 1 hour Completion Time during which the unit may continue operation with MSLB and MFW Isolation instrumentation inoperable. This change provides an opportunity to repair the inoperable instrumentation channel(s) prior to declaring the equipment supported by it inoperable. The addition of this allowed condition with a short Completion Time does not result in any hardware changes. The allowed condition also does not significantly increase the probability of occurrence for initiation of any analyzed event since the function of the equipment does not change (and therefore any initiation scenarios are not changed). Further, the consequences of an accident are the same during the additional one hour time period allowed for instrument channel restoration as it is during the time period currently allowed for restoring TSVs to OPERABLE status. Therefore, the change does not significantly increase the probability of occurrence of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from the accidents previously evaluated?

The change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The change continues to ensure prompt restoration of compliance with the limiting condition for operation, or prompt and appropriate compensatory actions are taken. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Prompt and appropriate Required Actions have been determined based on the safety analysis functions to be maintained. The allowed condition has been determined appropriate based on a combination of the time required to perform the action, the relative importance of the function or parameter to be restored, and engineering judgment. Therefore, this new allowed condition does not involve a significant reduction in the margin of safety.

D. CTS 3.8.10 and 4.4.4.5 frequency would be changed from ''* * * immediately prior to refueling operation'' to ''Once each refueling outage prior to CORE ALTERATIONS or movement of irradiated fuel assemblies within containment'' in ITS SR 3.3.16.2 for testing frequency of the radiation monitor associated with the purge system valve isolation and ITS SR 3.9.3.2 for testing isolation function of the reactor building purge supply and exhaust valves.

Basis for proposed no significant hazards consideration determination:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The isolation function of the radiation monitor associated with the purge system valves is not assumed to be an initiator of any analyzed event. As a result, the probability of an accident occurring is independent of the status of testing the isolation function of the radiation monitor associated with the purge system valves. This change eliminates the requirement for testing of this isolation function immediately prior to refueling operations. The change continues to require the isolation function to be OPERABLE and continues to ensure that this function is verified within a reasonable interval prior to irradiated fuel assembly handling within containment. This provides reasonable assurance the isolation function of the radiation monitor associated with the purge system valves remains OPERABLE. Therefore the consequence of an accident previously evaluated are not significantly increased.

The proposed change does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The isolation function of the Reactor Building Purge supply and exhaust valves is not assumed to be an initiator of any analyzed event. As a result, the probability of an accident occurring is independent of the status of testing the isolation function of the Reactor Building Purge supply and exhaust valves. This change eliminates the requirement for testing of the isolation function of the Reactor Building Purge supply and exhaust valves immediately prior to refueling operations. The change continues to require the isolation function of the Reactor Building Purge supply and exhaust valves train to be OPERABLE and continues to ensure that this function is verified within a reasonable interval prior to irradiated fuel assembly handling within containment. This continues to provide reasonable assurance the isolation function of the Reactor Building Purge supply and exhaust valves remains OPERABLE. Therefore the consequence of an accident previously evaluated are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from the accidents previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will still require the isolation function of the radiation monitor associated with the purge system valves be OPERABLE. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will still require the isolation function of the Reactor Building Purge supply and exhaust valves be OPERABLE. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The isolation function of the radiation monitor associated with the purge system valves is still required to be OPERABLE. This change continues to ensure that this function is verified within a reasonable interval prior to irradiated fuel assembly handling within containment. Therefore the margin of safety has not been significantly reduced.

The isolation function of the Reactor Building Purge supply and exhaust valves is still required to be OPERABLE. This change continues to ensure that this function is verified within a reasonable interval prior to irradiated fuel assembly handling within containment. Therefore the margin of safety has not been significantly reduced.

E. CTS 3.7.6 and 3.7.7 both require an inoperable voltage sensing relay to be restored within 72 hours. ITS 3.3.19 Required Action A.1 and ITS 3.3.20 Required Action A.1 would be

incorporated to require that the inoperable channel be placed in trip within 72 hours. This change allows operation to continue indefinitely when the channel is placed in trip and continues to allow 72 hours to restore an inoperable channel that cannot be placed in trip.

Basis for proposed no significant hazards consideration determination:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change allows indefinite continued operation with one voltage sensing channel inoperable, provided the inoperable voltage sensing channel is placed in trip within 72 hours. This action leaves the system in a one-out-of-two condition for actuation. Thus, if another channel were to fail, the DGVP (degraded grid voltage protection) instrumentation can still perform its function. This change does not significantly increase the probability of occurrence for initiation of any analyzed event since the function of the DGVP instrumentation does not change (and therefore any initiation scenarios are not changed). Also, the change does not change the assumed response of the equipment in performing its specified function from that originally considered. Therefore, the changes do not significantly increase the consequences of an accident.

2. Does the change create the possibility of a new or different kind of accident from the accidents previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The change ensures proper availability for the required DGVP function. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety? This change to the DGVP instrumentation requirements does not involve a change in setpoints and cannot affect any margin of safety associated with the response to a design basis accident. The change does not prevent the DGVP instrumentation from performing their function since the action places the DGVP instrumentation in a one-out-of-two condition for actuation versus the normal two-out-of-three logic. Thus, if another channel were to fail, the DGVP instrumentation could still perform its initiation functions. Therefore, this change to allow the DGVP initiation functions to operate indefinitely with one required DGVP instrument channel inoperable provided the channel is placed in the tripped condition within 72 hours, is not considered to involve a significant reduction in the margin of safety.

F. CTS Table 4.1–3 requires that CFT boron concentration be sampled monthly and after each makeup. ITS SR 3.5.1.4 requires it be sampled every 31 days and once within 12 hours after each solution increase greater than or equal to 80 gallons that is not the result of addition from a borated water source that meets CFT boron concentration requirements. Therefore, the ITS frequency is less restrictive than current requirements because sampling will be required once within 12 hours following the volume increase and source requirement. Also, the source of makeup would be changed from the ''borated water storage tank'' to ''a source that meets CFT boron concentration requirements.''

Basis for proposed no significant hazards consideration determination:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

A less frequent performance of a Surveillance Requirement does not result in any hardware changes. The Frequency of performance also does not significantly increase the probability of occurrence for initiation of any analyzed event since the function of the equipment does not change (and therefore any initiation scenarios are not changed) and the proposed Frequency has been determined to be adequate to demonstrate the tank inventory is within the required parameter limits. Further, the Frequency of performance of a surveillance does not significantly increase the consequences of an accident because a change in Frequency does not change the assumed response of the equipment in performing its specified mitigation functions from that considered with the original Frequency. The core flood tank boron concentration change resulting from volume addition from a source of known concentration is a readily calculated quantity and hence, a sample and analysis is not required to be assured of adequate boron concentration. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from the accidents previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The proposed change will still ensure proper surveillances are required for equipment considered in the safety analysis. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change continues to provide assurance of acceptable boron concentration since addition from a source of known concentration results in a readily identifiable resulting concentration. Therefore, a change in the Surveillance Frequency does not involve a significant reduction in the margin of safety.

G. The proposed change would specify actions to be taken for Borated Water Storage Tank (BWST) level, boron concentration, or temperature not being within specifications. Proposed ITS 3.5.4 Required Action C.1 would allow 12 hours to reach Mode 3 (i.e., an additional 6 hours over what is currently allowed by CTS 3.2.2) under such conditions.

Basis for proposed no significant hazards consideration determination:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. The time to be in MODE 3 is not assumed to be the initiator of any analyzed events. As a result, the probability of an analyzed event is independent of the time permitted to be in MODE 3. The consequences of an accident occurring during the 12 hours permitted to be in MODE 3 are no greater than the consequences of an accident occurring during the 6 hours currently permitted to place the unit in Hot Shutdown. Therefore, the probability and consequence of an accident previously evaluated are not significantly increased.

2. Does the change create the possibility of a new or different kind of accident from the accidents previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The time to place the unit in MODE 5 is appropriately limited. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

The extended time to place the unit in MODE 3 is not significantly greater than the time currently permitted to place the unit in Hot Shutdown and represents a reasonable time to accomplish the shutdown. Therefore, the extended time to place the unit in MODE 3 does not involve a significant reduction in the margin of safety.

H. CTS 3.3.4.b requires the BWST minimum boron concentration to be within the limit specified in the core operating limits report at a minimum temperature of 50 °F and would be changed to 45 °F in ITS SR 3.5.4.1. BWST maximum temperature would be changed from 100 °F to 115 °F.

Basis for proposed no significant hazards consideration determination:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components, changes in parameters governing normal plant operation, or methods of operation. BWST water temperature and volume are not

assumed to be the initiators of any analyzed events. As a result, the probability of an analyzed event is independent of these values. The proposed change from allowable values based on the uncertainties associated with the instrument channel to an analytical limit for the parameter being measured continues to ensure that the limits on volume and pressure are maintained within analyzed values. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from the accidents previously evaluated?

The proposed change does not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in parameters governing normal plant operation. The analytical limits of variables established by the safety analysis have not been changed. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does this change involve a significant reduction in a margin of safety?

Changing the limits from an allowable value based on the uncertainties associated with the instrument channel to an analytical limit for the parameter being measured does not involve a significant reduction in the margin of safety since the actual pressure and volume assumed in the safety analyses are not changed.

Based on this analysis, it appears that the three standards of 10 CFR 50.92(c) are satisfied for each of the proposed changes. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina.

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW, Washington, DC.

NRC Project Director: Herbert N. Berkow.

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: July 31, 1998.

Description of amendment request: The proposed amendment would clarify requirements for diesel generator start voltage and frequency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Analyzed events are initiated by the failure of certain plant structures, systems or components. The proposed changes to the Clinton Power Stations (CPS) Technical Specifications revise the acceptance criteria for Surveillance Requirements (SRs) pertaining to the diesel generators (DGs). The DGs are not considered as initiators of any analyzed event. Thus, these changes do not increase the probability of any accident previously evaluated.

The consequences of analyzed events involving the diesel generators are dependent on the successful functioning of the diesel generator(s) to mitigate such events when a concurrent loss of offsite power is postulated. The proposed change in the acceptance criteria for testing of the DGs per the affected SRs accounts for DG governor performance in response to a fast start. Notwithstanding, the revised SRs will continue to ensure that minimum frequency and voltage are attained within the required time, thus satisfying permissive conditions required for closure of the DG output breaker. The SRs will also continue to ensure that proper steady-state voltage and frequency are attained consistent with proper DG governor and voltage regulator performance. Additionally, verification that permanently connected loads are energized within the required time (in response to a loss of offsite power or in response to a loss of coolant accident (LOCA) concurrent with a loss of offsite power) will continue to be performed pursuant to SRs not affected by the proposed changes. Thus, there is no impact on the capability of the DGs to perform their required safety function.

Based on the above, IP (Illinois Power Co.) has concluded that the proposed changes will not result in a significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed changes do not involve a physical alteration of the plant. No new or different equipment is being installed, and no installed equipment is being operated in a new or different manner. There is no alteration to the parameters within which the plant is normally operated or in the set points that initiate protective or mitigative actions. As a result, no new failure modes are being introduced.

Additionally, there are no changes in the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered.

Based on the above, IP has concluded that the proposed changes will not create the possibility of a new or different kind of accident not previously evaluated.

(3) As noted previously, the proposed changes to the acceptance criteria for testing of the DGs per the affected SRs accounts for the characteristics of the DG governor during a fast start, but they do not impact the effectiveness of such testing to provide assurance of DG operability. Thus, the proposed changes do not impact expected DG performance, including the capability for each DG to attain and maintain required voltage and frequency for accepting and supporting plant safety loads within the required time, as assumed in the plant safety analyses.

Margins of safety are established through the design of the plant structures, systems and components, the parameters within which the plant is operated, and the establishment of set points for the actuation of equipment relied upon to respond to an event. With respect to any margins of safety associated with the diesel generators, and as noted previously, the proposed changes do not impact diesel generator performance. That is, the SRs as revised will continue to ensure that proper voltage and frequency are attained for closure of the DG output breaker, and for steady-state conditions consistent with proper DG governor and voltage regulator performance. In addition, the proposed changes involve no changes to any setpoints or settings associated with the diesel generators. On this basis, the proposed changes do not involve any changes to any assumptions of the plant safety analyses with regard to the function of the diesel generators. Thus, no margins of safety are impacted by the proposed changes.

Based on the above, IP has concluded that the proposed change will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, IL 62525.

NRC Project Director: Ronald R. Bellamy (acting).

Illinois Power Company, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of amendment request: August 17, 1998.

Description of amendment request: The proposed amendment would reduce the load at which the diesel generators are tested.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Analyzed events (or events bounded by analyzed events) are initiated by the failure of certain plant structures, systems or components. The scope of the proposed changes is limited only to the revision of several Surveillance Requirements (SRs) for testing of the standby emergency diesel generators (DGs). The DGs are not considered as initiators of any analyzed event. Thus, the proposed changes do not impact the probability of any accident previously evaluated.

The consequences of analyzed events are dependent on the successful functioning of

credited equipment to mitigate such events. With respect to the proposed changes, there is no impact on the capability of credited equipment, i.e., the diesel generators, to perform as required (in the event of a loss of coolant accident concurrent with a loss of offsite power). Testing at reduced load levels reduces stress and wear on the diesel generators, while still ensuring that the DGs are adequately challenged at operating temperatures to confirm operability. In addition, reducing the minimum required load levels reduces time when, or the probability that, the short-term rating of any diesel generators is exceeded during testing. The resultant reduction in stress and wear increases DG availability.

Based on the above, IP (Illinois Power Co.) has concluded that the proposed changes will not result in a significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed changes do not involve a physical alteration of the plant. No new or different equipment is being installed, and no installed equipment is being operated in a new or different manner. There is no alteration to the parameters within which the plant is normally operated or in the set points that initiate protective or mitigative actions. As a result, no new failure modes are being introduced.

Based on the above, IP has concluded that the proposed changes will not create the possibility of a new or different kind of accident not previously evaluated.

(3) The revised Surveillance Requirements are consistent with the recommendations of RG [Regulatory Guide] 1.9, Revision 3. Testing at reduced load levels reduces stress and wear on the diesel generators, while still ensuring that the DGs are adequately challenged at operating temperatures to confirm operability. In addition, reducing the minimum required load levels reduces time when, or the probability that, the short-term rating of any diesel generators is exceeded during testing. The resultant reduction in stress and wear increases DG availability.

Margins of safety are established through the design of plant structures, systems and components, the parameters within which the plant is operated, and the establishment of set points for the actuation of equipment relied upon to respond to an event. With respect to any margins of safety associated with the diesel generators, the proposed changes do not impact diesel generator performance, and involve no changes to any setpoints or settings associated with the diesel generators, nor do the proposed changes involve any changes to any assumptions of the plant safety analyses with regard to the function of the diesel generators. Thus, no margins of safety are impacted by the proposed changes.

Based on the above, IP has concluded that the proposed changes will not result in a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, IL 61727.

Attorney for licensee: Leah Manning Stetzner, Vice President, General Counsel, and Corporate Secretary, 500 South 27th Street, Decatur, IL 62525.

NRC Project Director: Ronald R. Bellamy (Acting).

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of amendment request: August 28, 1998.

Description of amendment request: The proposed amendment would grant relief from the steam generator inspection surveillance requirement described in technical specification No. 4.4.5.3. The relief would allow the inspection to be deferred from April 8, 1999, until the next refueling outage for Donald C. Cook Nuclear Plant , Unit 1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with CFR 50.92, the proposed amendment will not involve a significant hazards consideration if the changes do not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed;

2. Create the possibility of a new or different kind of accident from any accident previously analyzed or evaluated; or

3. Involve a significant reduction in a margin of safety.

Criterion 1

The last unit 1 surveillance was completed in the spring of 1997 and was the most thorough evaluation of the steam generators to date. Both standard and enhanced eddy current inspection techniques were employed to inspect the steam generator tubing. Additionally, a series of in situ pressure tests were performed to verify tubing integrity. Tube repairs consisting of hot leg tube end re-rolling and plugging were performed. Pre- and post-tube bundle pressure tests were conducted to verify the integrity of the repairs. A tube pull was also conducted to verify continued comformance with generic letter 95–05 requirements. The tube pull data did not identify any unexpected conditions or areas of concern. During the 1997 inspection, select secondary side visual and eddy current inspections were also performed to provide assurance of continued secondary side internals integrity.

Following the inspection, a condition monitoring and operational assessment, using data gathered during the steam generator inspections and tests, was made to determine whether steam generator leakage and structural integrity could be maintained throughout the upcoming cycle (cycle 16).

The unit was subsequently restarted and the steam generators operated without incident when a unit shutdown occurred in September of 1997.

Throughout the cycle 16 operating period, a relatively low reactor coolant temperature was maintained. By maintaining a T-hot temperature of approximately 586 °F during the operating period, corrosion impact on the steam generator tubes was minimized.

Throughout the operating period, steam generator primary-to-secondary leakrate monitoring was performed to assure conformance with T/S requirements. Historically, Unit 1 has not experienced a forced shutdown because of leakrate concerns.

During the shutdown period, the steam generators have been maintained under lay-up conditions, which comply with or exceed the industry standard practice. These practices are designed to mitigate the corrosive environment within the steam generators.

The previous cycle 16 integrity assessment has been re-visited to provide reasonable assurance conclusions made remain valid given the extended shutdown period. This re-assessment considered the initial cycle runtime, the shutdown period and subsequent operation through the end of the current fuel cycle. These results confirm the findings of the initial evaluation (i.e., that adequate steam generator integrity will be maintained throughout the current cycle).

The proposed change will not affect the scope, methodology, acceptance limit, or corrective measures of the existing steam generator examination program. As adequate integrity will be maintained, the probability and consequences of an accident previously analyzed due to leaking or degraded tubes is not increased by the proposed change.

Criterion 2

We have determined that this extension will not result in a change in plant configuration or operation. Plant systems and components will not be operated in a different manner as a result of this change. No plant modifications or changes in methods of operation will result from this change. Therefore, the extension will not create the possibility of a new or different kind of accident from what has been previously evaluated or analyzed.

Criterion 3

We have determined that the proposed extension request will not involve a significant reduction in a margin of safety. Re-assessment of the cycle 16 steam generator operational assessment report, which indicates structural and leakage integrity will be maintained throughout the cycle, has shown that the shutdown period will not adversely impact overall steam generator integrity.

This assessment concluded that when the reactor is shut down and the reactor coolant system is at a reduced temperature, the steam

generators are not subject to conditions that lead to tube degradation. The actual number of days that the steam generators will be subjected to an environment conducive to tube degradation is not being increased under this request. Therefore, this request is judged not to involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Ronald R. Bellamy (Acting).

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: August 12, 1998.

Description of amendment request: The proposed amendment would change the Technical Specifications (TS) by updating the list of documents specified in TS 6.9.1.8b that describe the analytical methods used to determine the core operating limits. The changes can be categorized as: (1) The analysis methodology is unchanged, but the reference has been clarified by identifying the specific revision, supplements, and dates for the revision; (2) the analysis methodology is unchanged and the reference is being added for completeness and; (3) the analysis methodology is being changed. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change in reference 4 of Technical Specification Section 6.9.1.8b revises the steam line break analysis methodology to be applied to Millstone Unit No. 2 and clarifies the references to the Siemens topical reports. The other changes are clarifications or additions for completeness and do not represent a change in the approved methodology for Millstone Unit No. 2. The change in methodology is associated with the interference between XTGPWR, the neutronics code, and XCOBRA–IIIC, the thermal hydraulics code. It has no impact on plant equipment operation. Since the change only affects the analysis of the events, it cannot affect the likelihood or consequences of these events. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

The sentence on page 6–19, starting with ''The acceptable Millstone 2 * * *.'' and ending with ''* * * dated October, 1988,'' references the document ANF–88–126, ''Millstone Unit 2 Cycle 10 Safety Analysis Report,'' which has been outdated because of the above mentioned changes in the methodology. The removal of this sentence is necessary to be consistent with methodology changes. Therefore, this change will not significantly increase the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change in reference 4 of Technical Specification Section 6.9.1.8b revises the steam line break analysis methodology to be applied to Millstone Unit No. 2 and clarifies the references to the Siemens topical reports. The other changes are clarifications or additions for completeness and do not represent a change in the approved methodology for Millstone Unit No. 2. The proposed change in reference 4 of Technical Specification Section 6.9.1.8b will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. It does not alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated.

The sentence on page 6–19, starting with ''The acceptable Millstone 2 * * *.'' and ending with ''* * * dated October, 1988,'' references an outdated document. The removal of this sentence is necessary to be consistent with methodology changes. The change does not alter the way any structure, system, or component functions and does not alter the manner in which the plant is operated.

The changes do not introduce any new failure modes. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change in reference 4 of Technical Specification Section 6.9.1.8b revises the steam line break analysis methodology to be applied to Millstone Unit No. 2 and clarifies the references to the Siemens topical reports. The other changes are clarifications or additions for completeness and do not represent a change in the approved methodology for Millstone Unit No. 2. The change in steam line break methodology is associated with the interface between XTGPWR, the neutronics code, and XCOBRA–IIIC, the thermal hydraulics code. The change will result in a better correlation between the two computer codes, which is the intent of the iteration process. This will result in more accurate results while still maintaining a conservative modeling of the event. The most significant impact is on the low RCS [reactor coolant system] flow cases associated with loss of offsite power. These cases are not limiting when compared to the offsite power available cases. The improved references will clearly identify the approved Siemens Topical Reports applicable to Millstone Unit No. 2 and will ensure that methodology changes will be identified and submitted to the NRC for approval as required. The sentence on page 6–19, starting with ''The acceptable Millstone 2 * * *.'' and ending with ''* * * dated October, 1988,'' references an outdated document. The removal of this sentence is necessary to be consistent with methodology changes.

Therefore, the proposed changes will not result in a significant reduction in the margin of safety as defined in the Bases for Technical Specifications covered in this License Amendment Request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, PO Box 270, Hartford, Connecticut.

NRC Project Director: William M. Dean.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: August 15, 1996, as supplemented March 19, 1998.

Description of amendment request: The proposed amendment revises the Technical Specifications so that either 8 or 12 hour shifts will be considered ''normal'' and 40 hours will be considered a ''nominal'' week, changes the wording for surveillances required ''once per shift'' to ''once per 12 hours,'' clarifies the ''once per hour'' wording related to fire watch patrols, and makes a number of other typographical corrections and clarifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

consideration, which is presented below:

(1) The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

(With respect to shift definition and editorial changes:) This change does not affect the physical configuration of the plant or how it is operated, as such, it is not the initiator of any plant event. Working a ''normal'' 12-hour shift is no different from working a ''normal'' 8-hour shift with 4-hours of overtime which has been an accepted and approved practice for years. Therefore, the proposed changes will not result in any increase in the probability of an accident occurring. The intent is still that operators will not work excessive overtime either on a daily, or weekly basis.

The typographical errors, clarifications and title changes do not involve technical issues and as such do not involve safety issues, and therefore do not effect [sic] the chances or consequences of an accident.

(With respect to surveillance and fire watch patrol interval:) This change does not affect the physical configuration of the plant or how it is operated. As such, it is not the initiator of any plant event. This change clarifies the intervals in which Sensor Checks, Surveillances, and fire watch patrols must be completed. As described above [in the supplement], the 12-hour interval has been determined acceptable for the specified Sensor Checks and Surveillances based on Monticello and industry experience which demonstrates instrumentation and channel failures are rare. This change conforms the Monticello TS (Technical Specifications) to NUREG–1433 and clarifies the intervals in which checks must be completed.

Completing fire watch patrols on a one hour +25% interval will require patrols on an hourly basis, while providing flexibility to complete the patrols within a 15 minute window. In addition to the Technical Specification required fire watches, additional individuals are often in the plant proper, so the required hourly fire watch patrols are only part of the entire program for fire detection.

Therefore, the proposed changes will not result in a significant increase in the probability of an accident occurring.

(2) The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

(With respect to shift definition and editorial changes:) This change does not affect the physical configuration of the plant or how it is operated. Therefore, revising the length of a ''normal'' shift or correcting minor errors does not create the possibility of a new or different kind of accident from any previously evaluated. As such, it is not the initiator of any plant event.

(With respect to surveillance and fire watch patrol interval:) Revising the wording to ''once per 12 hours'' or ''once per hour (+25%)'' does not create the possibility of a new or different kind of accident from any previously evaluated. No new or different surveillance activities are proposed, nor are any being deleted. As such, it is not the initiator of any plant event.

(3) The proposed amendment will not involve a significant reduction in the margin of safety.

(With respect to shift definition and editorial changes:) This change does not affect the physical configuration of the plant or how it is operated. The level of expertise on shift will not be diminished or changed as a result of this change. Therefore, this change will not reduce the margin of safety.

(With respect to surveillance and fire watch patrol interval:) This change does not affect the physical configuration of the plant or how it is operated. The level of expertise on shift will not be diminished or changed, nor will it reduce the functionality of plant equipment. This change requires Sensor Checks, surveillances, and fire watch patrols be completed within industry guidelines.

The 12 hour interval has been determined acceptable based on industry experience which demonstrates channel failure is rare. The one hour interval for fire watch patrols has also been an accepted industry standard. In addition to the Technical Specification required fire watches, additional individuals are often in the plant proper, so the required hourly fire watch patrols are only part of the entire program for fire detection. The proposed change simply defines the acceptable interval during which the task must be performed. Therefore, this change does not constitute a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Project Director: Cynthia A. Carpenter.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: January 14, 1998, as supplemented by letter dated May 19, 1998.

Description of amendment request: The proposed amendment would approve a modification to the Diablo Canyon Power Plant, Unit Nos. 1 and 2, 230 kV transmission system. The modifications include installation of new 230/12kV startup transformers with automatic load tap changers, along with installation of shunt capacitor banks. The transformers will assure that voltage on the plant 12 kV and 4 kV buses is maintained within limits, while the capacitor banks assure adequate VAR support.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The replacement of the startup transformers (SUTs) with new transformers equipped with load tap changers (LTCs) for voltage control does not alter the original configuration of the electrical distribution system and hence, will not increase the probability of occurrence of an accident previously evaluated.

The replacement of the SUTs with new transformers equipped with LTCs will enhance the capability of the 12 kV and 4 kV electrical distribution systems to maintain sufficient voltage for successful transfer of the plant auxiliary loads to the startup source following a unit trip. This change eliminates the potential for ''double sequencing'' (starting loads from the 230 kV system, subsequent voltage degradation causes load shedding and restarting from the diesel generators) of the 4 kV vital loads during an accident by providing adequate voltage to the 4 kV vital buses from the 230 kV source. The maintenance of adequate voltage at the 4 kV vital buses prevents the second level undervoltage relay (SLUR) action. The LTC will automatically maintain adequate voltage at the terminals of the vital equipment under design basis accident conditions. Therefore, engineered safety feature equipment will function as previously evaluated.

The manual operation of the Unit 2 LTC while in a standby mode will not increase the probability of an accident since normally none of the plant loads are energized from the 230 kV system. Plant loads are only powered from the 230 kV system during short periods of unit startup and shutdown. Loss of the 230 kV system while the operating plant loads are fed from the 25/500 kV system cannot initiate an accident since the system is not connected to plant equipment if the loads are supplied by the 25/500 kV system. Therefore, the proposed modifications will not increase the probability of an accident previously evaluated. The manual operation of the Unit 2 LTC assures adequate voltage is supplied to Unit 2 safety equipment in the event of an accident. Therefore, the proposed modification will not increase the consequences of an accident.

The installation of the shunt capacitors at the Diablo Canyon Power Plant switchyard and Mesa Substation to replace the VAR support from Morro Bay Power Plant (MBPP), assuming no MBPP generation, does not alter the capability or availability of the offsite

power source. Since shunt capacitors are considered more reliable than generators, it adds to the reliability of the 230 kV system and will not increase the probability of an accident previously evaluated.

Even if 230 kV voltage were lost or became degraded, the first or second level undervoltage relays will initiate transfer to the diesel generators should there be a loss or degraded 230 kV system while feeding the vital loads from the 230 kV system. This scenario is evaluated in Final Safety Analysis Report (FSAR) Update Section 15.2.9.1 ''Loss of Offsite Power to the Station Auxiliaries.''

Therefore, the changes will not increase the consequences of an accident previously evaluated since the safety-related loads will function as required.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change does not result in a change in operation, maintenance, physical change, or procedural change that could create the possibility of an accident that is of a new or different type than previously evaluated.

The replacement SUTs and the installation of the shunt capacitors to replace MBPP serves the same function as the original design and do not create the possibility of a new or different type of accident. Should there be a loss of offsite power, the onsite power source (diesel generators) will provide power to the loads. The FSAR already includes an evaluation for station blackout if there is a total loss of both onsite and offsite power.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The replacement transformers and the installation of the shunt capacitors will not cause a reduction in the margin of safety as defined in the basis for any Technical Specification (TS). The minimum voltage required for safe shutdown is defined in TS Table 3.3.4, Functional Unit 7.b, ''Second Level Undervoltage Relay (SLUR) setting.'' By replacing the existing SUTs with automatic LTC transformers, the vital 4 kV bus voltage will be automatically maintained at a sufficiently higher value during normal operation such that during an accident, the minimum 4 kV vital bus voltages after the bus transfer will be adequate to prevent SLUR actuation. The installation of the shunt capacitors will assure adequate VAR support that was previously provided by operation of the MBPP in the Los Padres Region of PG&E's service territory for present peak load and future peak load growth under worse case line outage conditions.

During the interim period between January and February 1998, when manual control of the Unit 2 SUT LTC will be utilized to maintain adequate voltage at the 12 kV and 4 kV buses, the margin of safety is not reduced since the adjustment of the LTC will assure stable voltage for the vital buses.

Therefore, there is no reduction in a margin of safety as defined in the basis for any TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room Location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for Licensee: Christopher J. Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: William H. Bateman.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of amendment request: March 18, 1998.

Description of amendment request: The proposed amendment would approve a change in the way passive failures in the auxiliary saltwater (ASW) and component cooling water (CCW) systems are mitigated during the long-term recovery period following a loss-of-coolant accident (LOCA). Specifically, plant procedures would no longer require ASW and CCW system train separation after the transfer to hot leg recirculation following a LOCA.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes revise the way passive failures are mitigated in the auxiliary saltwater (ASW) and component cooling water (CCW) systems. Specifically, plant procedures would no longer require ASW and CCW train separation after transfer to hot leg recirculation following a loss-of-coolant accident. The decision to separate trains would be made by the Technical Support Center (TSC) after evaluation of plant conditions. Operation of the ASW and CCW systems during this period is required to mitigate the accident, therefore, the change in plant operation would not affect the probability of that accident occurring.

The change ensures the ASW and CCW systems will be able to mitigate an active or passive failure without the loss of safety function during the long-term (beginning 24 hours after the accident) period of recovery following an accident. Since the ASW and CCW systems will continue to perform their safety function, overall system performance is not affected, assumptions previously made in evaluating the consequences of the accident are not altered, and the consequences of the accident are not increased as a result of the change in plant operation.

Therefore, the changes will not increase the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The ASW and CCW systems function to mitigate the consequences of an accident. The change in operation ensures these system will be able to mitigate an active or passive failure without loss of safety function during the long-term (beginning 24 hours after the accident) period of recovery following an accident. Operation of the ASW and CCW systems in accordance with plant procedures, and the guidance on train separation provided to the TSC, ensure the design basis requirements for the ASW and CCW systems will continue to be met. Therefore, the ability of the ASW and CCW systems to mitigate the accident is not degraded. Required operator actions are similar to other operator actions specified in the FSAR that are considered acceptable by the NRC.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The change ensures the ASW and CCW systems will be able to mitigate an active or passive failure without loss of safety function during the long-term (beginning 24 hours after the accident) period of recovery following an accident. Since the ASW and CCW systems will continue to perform their safety function, there is no impact on any acceptance limits for ASW and CCW system operation assumed in the safety analysis, or on any Technical Specification (TS).

Therefore, the change does not involve a significant reduction in a margin of safety as defined in the basis for any TS.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room Location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for Licensee: Christopher J. Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: William H. Bateman.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos.1 and 2, San Luis Obispo County, California

Date of amendment request: August 10, 1998,

Description of amendment request: The proposed amendments would revise the combined Technical Specifications (TS) for the Diablo Canyon Power Plant, Unit Nos. 1 and 2 to revise TS 3/4.3.2, Table 3.3–5, ''Engineered Safety Features Response Times,'' to add the response times for closure of the main feedwater regulating valves (MFRVs) and MFRV bypass valves, and trip of the main feedwater pumps (MFWPs). The change would also revise TS 3/4.7.1.7 to add a limiting condition for operation (LCO), actions, and surveillance requirements for the MFWP turbine stop valves, and would revise the actions and surveillance requirements for the MFRVs, MFRV bypass valves, and main feedwater isolation valves (MFIVs) to be consistent with the NUREG–1431 requirements. Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the Technical Specifications (TS) to add response time requirements for the main feedwater regulating valve (MFRV) and associated bypass valves and the main feedwater pump (MFWP) trip provide more restrictive TS requirements that are consistent with current plant practice. They do not change the function or operation of any plant equipment or affect the response of that equipment if it is called upon to operate. These more restrictive requirements are imposed to ensure the affected components are maintained consistent with the safety analyses and licensing bases.

The proposed changes to: (1) Revise the actions to apply to one or more main feedwater isolation valves (MFIVs), and MFRVs and associated bypass valves, (2) extend the action completion time from 4 hours to 72 hours, (3) provide actions when two valves affecting the feedwater isolation capability for a flow path are inoperable, (4) add actions for an inoperable MFWP turbine stop valve, and (5) allow separate action entry for each inoperable valve unless the feedwater isolation capability for a flow path is affected, do not change the function or operation of any plant equipment or affect the response of that equipment if it is called on to operate. The actions account for the redundancy provided by the remaining valves and the MFWP trip, and the low probability of an event occurring during this time period that would require isolation of the main feedwater flow path. A probabilistic risk assessment, performed to assess the increase in annual core damage frequency (CDF) associated with the increase in allowable outage time, determined the increase in annual CDF to be approximately 1.5 percent. That increase in annual CDF is considered non-risk significant per the Electric Power Research Institute ''PSA Application Guide.''

The addition of the limiting condition for operation, actions, and surveillance requirements for the MFWP turbine stop valves, and the addition of the surveillance requirement for the MFIVs, MFRVs, and MFRV bypass valves are more restrictive requirements that ensure these components are operable and capable of performing their safety function. They do not change the function or operation of any plant equipment or affect the response of that equipment if it is called on to operate. The proposed surveillance intervals are supported by the operating, maintenance, and surveillance histories of the valves.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not necessitate a physical alteration of the plant (no new or different type of equipment will be installed) or changes in the parameters governing normal plant operation. The changes imposed are consistent with the assumptions made in the accident analyses and licensing basis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes to the TS impose requirements consistent with the assumptions in the safety analyses and current licensing bases, and reflect current plant practice. They do not alter the margins of safety established in previous accident and transient analysis.

Therefore, none of the proposed changes involves a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room Location: California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Attorney for Licensee: Christopher J. Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120.

NRC Project Director: William H. Bateman.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: September 8, 1998.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Appendix C, ''Additional Conditions,'' to authorize the use of non-Class 1E single cell battery chargers, with proper electrical isolation, for charging connected cells in OPERABLE Class 1E batteries. The single cell chargers would be used to restore individual cell float voltage to the normal limit specified in TS Table 4.8.2.1–1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change permits the use of an industry accepted method to restore a battery cell to its design basis from an OPERABLE but degraded condition or to prevent a cell from becoming degraded. IEEE Std 450–1995, ''IEEE Recommended Practice for Maintenance, Testing, and Replacement of Vented Lead Storage Batteries for Stationary Applications,'' states that single cell charging is an acceptable method of correcting low cell voltage or low specific gravity conditions for a single cell or for a small number of cells.

At least two class 1E fuses in series will be used on both the positive and negative leads between the battery and the charger to protect the battery if a fault should develop in the charger. The battery charger design includes diodes, a power transformer and control circuitry to prevent draining the connected cells in the event of a short circuit in the 120 Volt ac source or a loss of charger input or output voltage. Charger output is controlled automatically to prevent overcharging the connected cells.

In the event of a controller failure resulting in charger overvoltage, procedural controls governing the use of the charger ensure the condition is detected and corrected before failure of a connected cell occurs. While the single cell charger is connected, procedures will require periodic checks to verify proper charger operation and to measure electrolyte level, temperature and specific gravity for the cells being charged. Monitoring will be

performed at least once every eight hours, a frequency sufficient to ensure compliance with the ACTION requirements of Technical Specification 3.8.2.1.

An insulating material will be used to minimize the possibility of shorting leads or clips at the battery. Administrative controls governing the use and storage of transient loads are sufficient to ensure the use of single cell battery chargers does not create a potential missile hazard to safety related systems, structures and components.

The Class 1E dc system is not an accident initiator. It supports the operation of safety related equipment required for the safe shutdown of the plant and for the mitigation of accident conditions. Therefore, the proposed change does not increase the probability of an accident previously evaluated.

The station's dc systems will be operable to mitigate the consequences of an accident previously evaluated. Single cell charging would be limited to one OPERABLE class 1E battery bank at a time. Therefore, failure of a class 1E battery as a result of single cell charging would be limited to a single channel and would not reduce the number of OPERABLE dc sources below that required to safely shutdown the plant. Administrative controls would also prohibit the use of single cell charging for an OPERABLE class 1E battery if less than the minimum number of class 1E batteries required by Technical Specifications are OPERABLE.

The proposed change does not cause the capability of the class 1E dc system to be degraded below the level assumed for any accident described in the (safety analysis report) SAR. It would enhance the availability of safety related equipment required for the safe shutdown of the plant and for the mitigation of accident conditions. Therefore the radiological consequences of an accident will remain inside the design basis while single cell charging is performed on an OPERABLE battery.

(2) The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The potential to adversely affect the Class 1E batteries is minimized by the use of Class 1E fuses and by appropriate administrative controls. Failure modes associated with the proposed change are bounded by the loss of a Class 1E battery bank which was previously evaluated. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed change does not involve a significant reduction in a margin of safety.

The proposed change permits the use of non-Class 1E single cell battery chargers, with proper electrical isolation, for charging connected cells in OPERABLE class 1E batteries. This would allow parameters for an individual cell or for a small number of cells to be restored to the normal values specified in Technical Specifications without affecting the remainder of the cells in the battery. Increased cell monitoring after single cell charging, together with PSE&G's corrective action program which requires degraded and non-conforming conditions to be documented and evaluated, provides assurance that the use of single cell charging will not cause long-term cell degradation to go undetected. Since all battery cells are required to be maintained within the allowable values specified in Technical Specifications, and since the use of the single cell charger will not adversely affect battery capacity or capability, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Project Director: Robert A. Capra.

South Carolina Electric & Gas Company (SCE&G), South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1

Fairfield County, South Carolina.

Date of amendment request: July 1, 1998.

Description of amendment request: The proposed amendment would revise Virgil C. Summer Nuclear Station (VCSNS) Technical Specifications (TS) Surveillance Requirement 4.7.7.e to remove the ''during shutdown'' condition from the specified test interval. Removing the ''during shutdown'' wording from the TS would allow VCSNS to perform on-line snubber testing, and would make the up to 25 percent allowable interval extension in Surveillance Requirement 4.0.2 apply to the specified snubber surveillance interval. The proposed amendment would also make administrative changes to Surveillance Requirement 4.7.7.g and BASES 3/4.2.2 and 3/4.2.3 to correct typographical errors.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability or consequences of an accident previously evaluated is not significantly increased.

The proposed change will not affect system operation or performance, nor do they affect any Engineered Safety Features actuation setpoints or accident mitigation capabilities. NUREG/CR–6027 supports the determination that piping failure due to a snubber single failure is considered low. Therefore, the proposed changes will not significantly increase the consequences of an accident or malfunction of equipment important to safety previously evaluated in the FSAR.

2. The possibility of an accident or a malfunction of a different type than any previously evaluated is not created.

The changes to the situational testing requirements will not affect the method of operation of any system to which a snubber is attached. The proposed changes only address the plant mode at which a surveillance activity may be performed. No new or different accident scenarios, transient precursors, failure mechanisms, or limiting single failures will be introduced as a result of these changes. Therefore, the possibility of a new or different kind of accident other than those already evaluated will not be created by this change.

3. The margin of safety has not been significantly reduced.

This proposed change will not have an impact on the overall reliability of the snubber population. This is due, in part, to the fact that the snubber test plans are self correcting. As functional test failures are identified, additional snubbers are required to be tested. Thus, the reliability of the snubber population is maintained. The proposed change does not alter the intent or method by which the surveillances are conducted, does not involve any physical changes to the plant, does not alter the way any structure, system, or component functions, and does not modify the manner in which the plant is operated. Therefore the proposed change will not degrade the ability of the snubbers to perform their safety function or significantly decrease the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Attorney for licensee: Randolph R. Mahan, South Carolina Electric & Gas Company, Post Office Box 764, Columbia, South Carolina 29218

NRC Acting Project Director: P. T. Kuo.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: June 26, 1998, as supplemented by letter dated September 18, 1998.

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) as follows: (1) The applicability of

Limiting Condition for Operation (LCO) 3.3.6 would be revised to refer to TS Tables 3.3.6–1 and 3.3.6–1; the TS Tables would be revised to add a column entitled ''APPLICABLE MODES OR OTHER SPECIFIED CONDITIONS.'' Then, the applicable modes for Manual Initiation, Automatic Actuation Logic and Actuation Relays, and Safety Injection functions would be revised to include *only* Modes 1, 2, 3, and 4. Consistent with this proposed change, LCO 3.3.6, Condition C and Required Action C.2 would be revised to reflect that system level manual initiation and automatic actuation would not be required during core alterations and/or during movement of irradiated fuel assemblies within containment. Appropriate Bases changes are included to reflect the proposed changes; (2) LCO 3.9.4 would be revised to allow the equipment hatch and the emergency air locks to be open during core alterations and/or during movement of irradiated fuel assemblies within containment. In addition, the LCO statement would be revised to reflect that containment ventilation isolation (CVI) would be accomplished by manually closing the individual CVI valves as opposed to a system level manual or automatic initiation, consistent with the proposed changes to LCO 3.3.6. The surveillance requirements (SRs) would be revised to reflect the proposed change to the CVI and to reflect that the equipment hatch would be allowed to be open. Appropriate Bases changes are included to reflect the proposed changes; (3) LCO 3.7.6a, ''Condensate Storage Tank (CST)—(Non-redundant CSTs),'' would be deleted. This LCO was created to address a design condition that rendered the CSTs nonredundant. A note was added stating that this LCO was only applicable to the unit(s) that have not completed design modifications required for redundant CSTs and that the LCO would no longer be required when both units completed the design modifications. These design modifications have been completed; therefore, LCO 3.7.6a is no longer applicable, and LCO 3.7.6, ''Condensate Storage Tank (CST)—(Redundant CSTs),'' would be revised to delete the words ''(Redundant CSTs)'' from the title. Appropriate Bases changes are included to reflect the proposed changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes would revise the VEGP [Vogtle Electric Generating Plant] Unit I and Unit 2 TS by removing requirements for automatic and system level manual containment ventilation isolation, and allow the emergency air lock and the equipment hatch to be open during core alterations and movement of Irradiated fuel assemblies inside containment. The containment penetrations affected by the proposed changes are not initiators for any accident previously evaluated. Allowing these penetrations to be open under the conditions specified will not affect the probability of any accident previously evaluated.

The existing VEGP TS allow the personnel air look doors to be open during core alterations and movement of irradiated fuel assemblies inside containment. The radiological consequences of a fuel handling accident inside containment have been determined to be below the Standard Review Plan (SRP) section 15.7.4 criteria and General Design Criteria (GDC) 19 criteria with the personnel air lock doors open. The proposed changes will not alter these previously determined consequences. The existing dose analysis bounds the proposed changes. Therefore, the proposed changes will not increase the consequences of any accident previously evaluated.

The proposed deletion of LCO 3.7.6a is an administrative change only. The requirements of LCO 3.7.6a applied only during the time that the condensate storage tanks (CSTs) were not redundant. Due to the implementation of design changes which make the CSTs redundant for each unit, the requirements of LCO 3.7.6a are no longer applicable. The CSTs (redundant or not) are not initiators for any accident previously evaluated. Now that the CSTs are redundant, the requirements of LCO 3.7.6a are no longer necessary to ensure the capability of the auxiliary feedwater system to perform its safety function. Therefore, the proposed deletion of LCO 3.7.6a will not affect the probability or consequences of any accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change does not create any new failure modes for any system or component, nor does it adversely affect plant operation. The previously determined radiological consequences of a fuel handling accident inside containment with the personnel air lock doors open remain bounding for operation under the proposed changes. No new single failure scenarios are created, and the proposed changes do not introduce any new challenges to components and systems that could result in a new or different kind of accident from any previously evaluated.

The proposed deletion of LCO 3.7.6a is an administrative change only. The requirements of LCO 3.7.6a applied only during the time that the condensate storage tanks (CSTs) were not redundant. Due to the implementation of design changes which make the CSTs redundant for each unit, the requirements of LCO 3.7.6a are no longer applicable. Now that the CSTs are redundant, the requirements of LCO 3.7.6a are no longer necessary to ensure the capability of the auxiliary feedwater system to perform its safety function. No new single failure scenarios are created, and the proposed changes do not introduce any new challenges to components and systems that could result in a new or different kind of accident from any previously evaluated. Therefore, the proposed deletion of LCO 3.7.6a will not create a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

No. The margin of safety for fission product release is 300 rem thyroid and 25 rem whole body as defined by 10 CFR (Part) 100. The previously determined radiological dose consequences for a fuel handling accident inside containment with the personnel air lock doors open remain bounding for operation under the proposed changes. These previously determined dose consequences were determined to be well within the limits of 10 CFR (Part) 100 by virtue of the fact that they meet SRP Section 15.7.4 and GDC 19 acceptance criteria. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The proposed deletion of LCO 3.7.6a is an administrative change only. The requirements of LCO 3.7.6a applied only during the time that the condensate storage tanks (CSTs) were not redundant. Due to the implementation of design changes which make the CSTs redundant for each unit, the requirements of LCO 3.7.6a are no longer applicable. Now that the CSTs are redundant, the requirements of LCO 3.7.6a are no longer necessary to ensure the capability of the auxiliary feedwater system to perform its safety function. Therefore, LCO 3.7.6a is not necessary to maintain margin of safety and the proposed change will not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia.

NRC Project Director: Herbert N. Berkow.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: July 13, 1998

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 1.1 Definitions for ''Engineered Safety Feature (ESF) Response Time'' and ''Reactor Trip System (RTS) Response Time'' to provide for verification of response time for selected components provided that the components and the methodology for verification have been previously reviewed and approved by the NRC. Changes to the TS Bases have also been proposed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This change to the Technical Specifications does not result in a condition where the design, material, and construction standards that were applicable prior to the change are altered. The same RTS [reactor trip system] and ESFAS [engineered safety features actuation system] instrumentation is being used; the time response allocations/modeling assumptions in the Chapter 15 analyses are still the same; only the method of verifying time response is changed. The proposed change will not modify any system interface and could not increase the likelihood of an accident since these events are independent of this change. The proposed activity will not change, degrade or prevent actions or alter any assumptions previously made in evaluating the radiological consequences of an accident described in the SAR [safety analysis report]. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not alter the performance of the pressure and differential pressure transmitters and switches, Process Protection racks, Nuclear Instrumentation, and Logic Systems used in the plant protection systems. Applicable sensors, Process Protection racks, Nuclear Instrumentation, and Logic Systems will still have response time verified by test before placing the equipment into operational service and after any maintenance that could affect the response time. Changing the method of periodically verifying instrument response times for certain equipment (assuring equipment operability) from time response testing to calibration and channel checks will not create any new accident initiators or scenarios. Periodic surveillance of these instruments will detect significant degradation in the equipment response time characteristics. Implementation of the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) The proposed license amendment does not involve a significant reduction in margin of safety.

This change does not affect the total system response time assumed in the safety analysis. The periodic system response time verification method for selected pressure and differential pressure sensors and for Process Protection racks, Nuclear Instrumentation, and Logic Systems is modified to allow use of actual test data or engineering data. The method of verification still provides assurance that the total system response time is within that assumed in the safety analysis, since calibration tests will detect any degradation which might significantly affect equipment response time. Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia.

NRC Project Director: Herbert N. Berkow.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: September 3, 1998.

Description of amendment request: The proposed amendments would change the Technical Specifications (TS) to: (1) Support the replacement of the Nuclear Instrumentation System Source Range and Intermediate Range Channels and Post-Accident Neutron Flux Monitoring System; and (2) delete the requirement for performing response time testing of the source range channels and power range detector plateau voltage determinations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The power range low trip, the intermediate range trip, and the source range trip are designed to provide protection against power excursions during reactor startup or low-power operation. The source and intermediate range trips provide redundant protection during reactor startup or low-power operation. The changes to the source range and intermediate range instrumentation and setpoints, as well as the deletion of source range response time testing, do not affect any safety analysis conclusions because the source range and intermediate range trips are not explicitly credited in any design basis accident. Only the power range low trip setpoint is assumed to actuate to mitigate the uncontrolled rod cluster control assembly withdrawal accident. The high flux at shutdown alarm function during a boron dilution event will continue to be provided by the new source range detector system. No changes have been made to the setpoint assumed in the safety analyses. The new detector system is qualified in compliance with Regulatory Guide 1.97 and will also be used to provide post-accident monitoring. The functional and operability requirements for the power range channels are not affected by deleting the requirement for determining detector voltage plateaus.

Therefore, based on the conclusions of the above evaluation, the proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The functional and operability requirements for the new detector system are the same as for the existing system as defined by the Technical Specifications. No credit is taken for the source and intermediate range trips in any of the design basis accidents. The high flux at shutdown alarm and post-accident monitoring functions continue to be met. The functional and operability requirements for the power range channels are not affected by deleting the requirement for determining detector voltage plateaus.

Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The functional and operability requirements for the new detector system are the same as for the existing system. The functional and operability requirements for the power range channels are not affected by deleting the requirement for determining detector voltage plateaus. The margin of safety provided by the previous Technical Specifications is not significantly affected because the proposed changes are based on the same accident analysis acceptance limits.

Therefore, the proposed changes in this license amendment will not result in a significant reduction in the plant's margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia.

NRC Project Director: Herbert N. Berkow.

Tennessee Valley Authority, Docket No. 50–260 Browns Ferry Nuclear Plant Unit 2 Limestone County, Alabama

Date of amendment request: September 8, 1998.

Description of amendment request: The proposed amendment would revise the Browns Ferry Nuclear Plant (BFN) Unit 2 technical specifications (TS) to include provisions for enabling the Oscillation Power Range Monitor (OPRM) Upscale trip function in the Average Power Range Monitor (APRM). The APRM is part of the Power Range Neutron Monitoring (PRNM) system. The OPRM Upscale trip function provides protection from exceeding the fuel Minimum Critical Power Ratio (MCPR) safety limit in the event of thermal-hydraulic power oscillations, and thereby, provides compliance with Title 10 Code of Federal Regulations, Part 50, Appendix A, General Design Criteria (GDC) 10 and 12.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment is to enable the OPRM Upscale trip function which is contained in the previously installed PRNM equipment. Enabling the OPRM hardware provides the long term stability solution required by Generic Letter 94–02.

This hardware incorporates the Option III detect and suppress solution reviewed and approved by the NRC in NEDO–31960, ''BWROG [Boiling Water Reactor Owners Group] Long Term Stability Solutions Licensing Methodology.'' The OPRM is designed to meet all requirements of GDC 10 and 12 by automatically detecting and suppressing design basis thermal-hydraulic power oscillations prior to violating the fuel MCPR Safety Limit. The OPRM system provides this protection in the region of the power-to-flow map where instabilities can occur, including the region where ICAs (interim corrective actions) restricted operation because of stability concerns. Thus, the ICA restrictions on plant operations are deleted from the TS, including region avoidance and the requirement for the operator to manually scram the reactor with no recirculation loops operating. Operation at high core powers with low core flows may cause a slight, but not significant, increase in the probability that an instability can occur. This slight increase is acceptable because subsequent to the automatic detection of a design basis instability, the OPRM Upscale trip provides an automatic scram signal to the RPS [reactor protection system] which is faster protection than the operator-initiated manual scram required by the current ICAs. Because of this rapid automatic action, the consequences of an instability event are not increased as a result of the installation of the OPRM system because it eliminates dependence on operator actions.

Based on the above discussion, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment permits BFN to enable the OPRM power oscillation detect and suppress function provided in previously installed PRNM hardware, and it simultaneously deletes certain restrictions which preclude operation in regions of the power-to-flow map where oscillations potentially may occur. Enabling the OPRM Upscale trip function does not create any new system hardware interfaces nor create any new system interactions. Potential failures of the OPRM Upscale trip result either in failure to perform a mitigation action or in spurious initiation of a reactor scram. These failures would not create the possibility of a new or different kind of accident. Based on the above discussion, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The OPRM Upscale trip function implements BWROG Stability Option III, which was developed to meet the requirements of GDC 10 and GDC 12 by providing a hardware system that detects the presence of thermal-hydraulic instabilities and automatically initiates the necessary actions to suppress the oscillations prior to violating the MCPR Safety Limit. The NRC has reviewed and accepted the Option III methodology described in Licensing Topical Report NEDO–31960 and concluded this solution will provide the intended protection. Therefore, it is concluded that there will be no reduction in the margin of safety as defined in TS as a result of enabling the OPRM Upscale trip function and simultaneously removing the operating restrictions previously imposed by the ICAs.

Based on the above discussion, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on its review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, 405 E. South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET l0H, Knoxville, Tennessee 37902.

NRC Project Director: Frederick J. Hebdon.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: August 27, 1996, and as supplemented on July 22, 1998.

Description of amendment request: The amendment request removes the Technical Specification requirements for the Main Steam Isolation Valve Leakage Control System, and increases the allowable leak rate specified for the main steam lines. The Perry facility is a pilot plant in the collaborative efforts of the Nuclear Regulatory Commission, the Nuclear Energy Institute, and the Electric Power Research Institute for implementation of the NRC research documented in NUREG–1465, ''Accident Source Terms for Light-Water Nuclear Power Plants.'' The proposed changes are based on reanalysis of the design basis Loss of Coolant Accident using the revised accident source term from NUREG–1465 and the NEI document entitled ''Generic Framework for Application of Revised Accident Source Term to Operating Plants.''

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change removes the Technical Specification requirements for the Main Steam Isolation Valve Leakage Control System (MSIV–LCS), and increases the allowable leak rate specified for the main steam lines. Although the requirements for the MSIV–LCS are being removed (since credit is no longer taken for the system as part of the design basis accident analysis), OPERABILITY requirements on the Main Steam Shutoff Valves are being retained since the valves meet Criterion 3 of 10 CFR 50.36(c)(2)(ii). Removing the Technical Specification requirements of the MSIV–LCS and increasing main steam line allowable leakage rates has been addressed in the Loss of Coolant Accident (LOCA) reanalysis and does not adversely affect operation of other equipment or systems important to safety. These changes do not affect the precursors for accidents or transients analyzed in Chapter 15 of the Perry Nuclear Power Plant (PNPP) Updated Safety Analysis Report (USAR). Therefore, there is no increase in the probability of accidents previously evaluated.

The spectrum of LOCAs was considered to determine which would be most limiting with respect to radiological consequences. The worst case LOCA (i.e., main steam line break upstream of the inboard MSIV) off-site and Control Room doses have been reanalyzed using the revised design basis accident (DBA) source term (from NUREG–1465 and the Nuclear Energy Institute (NEI) document ''Generic Framework for Application of Revised Accident Source Term to Operating Plants'') in order to assess the radiological consequences of the increased main steam line leak rates, and not taking credit for the MSIV–LCS. The radiological analysis used conservative assumptions and analytical techniques. These conservatisms in the LOCA reanalysis have been determined to be comparable to the conservatisms utilized in the original analyses.

The results of the off-site and Control Room dose reanalysis are provided below.

DOSE RESULTS (REM)

	Proposed USAR dose*	Existing USAR dose	Regulatory limit **	
Control Room	Whole Body	0.1	0.4	5
	Thyroid	16.2	29.2	30
	Skin	4.8	2.5	30
EAB	Whole Body	1.9	3.6	25
	Thyroid	157.9	140.8	300
LPZ	Whole Body	1.7	1.9	25
	Thyroid	130.3	144.7	300

*Rounded to nearest tenth.

** Exclusion Area Boundary (EAB) and Low Population Zone (LPZ) dose limits are per 10 CFR 100.11. Control Room dose limits are per 10 CFR part 50 Appendix A, General Design Criterion (GDC) 19 and NUREG 0800 Standard Review Plan (SRP) Section 6.4.

As noted in the NEI Generic Framework Document (''Generic Framework for Application of Revised Accident Source Term to Operating Plants,'' EPRI TR-105909, Interim Report, November 1995), the acceptability of applications utilizing the revised accident source terms ''may be judged by the same licensing acceptance limits (e.g., dose limits in 10 CFR part 100) in use with the TID–14844 source term. That is, the licensee would show that the revised design basis, with either selective or essentially complete application of NUREG–1465 together with the plant changes under evaluation, results in doses no greater than these licensing acceptance limits.'' The off-site dose licensing acceptance limit for PNPP is 10 CFR part 100.11 (see Question 3 for details on the source of this PNPP licensing acceptance limit). The newly calculated radiological doses were lower for six of the seven factors evaluated. For the one factor which was higher, i.e., at the EAB for thyroid dose (from 140.8 REM to 157.9 REM), the dose remained significantly below the 10 CFR part 100 limit of 300 REM to the thyroid. This analysis demonstrated that the resulting off-site and Control Room doses were well below the regulatory limits contained in 10 CFR part 100, Reactor Site Criteria, and 10 CFR part 50, Appendix A, General Design Criterion (GDC) 19, Control Room. Therefore, the proposed changes do not involve a significant increase in the consequences of previously evaluated accidents.

2. The proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change removes the Technical Specification requirements for the MSIV–LCS, retains the Technical Specification requirements for the Main Steam Shutoff Valves, and increases the allowable leak rate specified for the main steam lines.

Removing the Technical Specification requirements for the MSIV–LCS is based on reanalysis of off-site and Control Room doses, where the MSIV–LCS is not credited in the calculation. As noted above, the reanalysis utilizes the revised design basis accident (DBA) source terms. The limiting reanalysis case assumes that main steam line leakage is attenuated in the main steam line from the reactor vessel out to the outboard MSIV. This is the limiting scenario since the worst case single failure, and hence the most limiting analysis case, involves a failure to close the valve downstream of the outboard MSIV in each main steam line, i.e., the Main Steam Shutoff Valves (1N11F0020A,B,C AND D). Although this most limiting analysis case assumes a failure to close the Main Steam Shutoff Valves, retention of OPERABILITY requirements on these valves is appropriate to ensure the single failure analysis remains valid.

Not crediting the MSIV–LCS in the design basis accident analysis is consistent with the approach taken by several BWR licensees, which have applied for NRC approval of this change using an approach developed by the Boiling Water Reactor Owners Group (BWROG). The BWROG methodology involves seismically qualifying the main steam lines out to and including the non-safety related, non-seismic drain line and main condenser, and then using that volume to attenuate leakage past the MSIVs. At PNPP, the existence of safety related, seismically qualified piping leading to the safety related, Class 1E powered Main Steam Shutoff Valves (downstream of the outboard MSIV), together with the characteristics of the revised accident source term (i.e., predominantly aerosol which is largely retained in the drywell, containment and main steam lines) provides the option of taking credit only for the volume within the main steam lines for leakage attenuation.

Knowledge of the more physically correct source term timing and chemical form permits use of more appropriate mitigation techniques. Specifically, natural forces such as gravitational settling of aerosol (particulates) has been credited inside the drywell and in portions of the main steam lines, which significantly reduces the amount of radionuclides that could escape from the containment and into the environment. Also, based on a high radiation signal in the Control Room, the Containment Spray system would be operated post-LOCA for up to 24 hours (previous analyses assumed 6 hours of spray operation), in order to scrub released radionuclides from the containment atmosphere and into the suppression pool, and thus reduce the post-LOCA off-site and Control Room dose. Once the containment sprays have been successful in sweeping the iodine to the suppression pool, the iodine must be retained in the water. To achieve this, the pH level of the suppression pool will now be raised to 7 or above following the accident, and then maintained at 7 or above. This prevents significant fractions of the dissolved iodine from being converted to elemental iodine and then re-evolving to the containment atmosphere. During the course of the accident the pH of the suppression pool can decrease due to radiolysis of reactor coolant and chloride-bearing electrical insulation, which would create acids. The

method for pH control will use the existing Standby Liquid Control (SLC) system for raising (and maintaining) long-term post-accident pH levels to 7 or above. Calculations have shown that the contents of one tank of the Standby Liquid Control solution will be effective in raising and maintaining pH levels for 30 days following the DBA.

Post-accident operator actions are minimized. The operator action associated with initiating the Containment Spray system does not change. Containment Spray is initiated via a push button in the Control Room. The previously required manual initiation of the MSIV–LCS involved multiple operator actions to open and close numerous valves and start the blowers, which will no longer be required. Replacing these actions, the new analysis simply assumes the operator closes the Main Steam Shutoff Valves (which was previously one of the steps in manually initiating the MSIV–LCS system), and based on post-accident pH samples of the suppression pool, initiates the Standby Liquid Control system, which is accomplished via two key lock switches in the Control Room. These operator actions are less complex than those previously required, and minimize the probability of an error.

Other accidents, as described in USAR 15, were reviewed. The original methodology, input parameters and overall conclusions contained within these accident evaluations were found to be unaffected by the changes proposed by this activity. Removing the Technical Specification requirements of the MSIV–LCS and increasing MSIV allowable leakage rates has been addressed in the LOCA reanalysis and does not adversely affect operation of other equipment or systems important to safety. This activity does not alter or impact plant systems, structures or components which were not appropriately addressed in the LOCA reanalysis. No new accident initiator or failure mode is introduced. The physical isolation of the MSIV–LCS from the Main Steam system will eliminate leakage pathways. This modification will be performed as part of the PNPP design change process.

With respect to the change in main steam line leakage limits, the BWROG has concluded, based on an in-depth evaluation of MSIV leakage (as discussed in NEDC–31858 ''BWROG Report for Increasing MSIV Leakage Rate Limits and Elimination of Leakage Control Systems,'' Revision 2, and summarized in NUREG-1169 ''Technical Findings Related to Generic Issue C–8; Boiling Water Reactor Main Steam Isolation Valve and Leakage Treatment Methods''), that leakage rates of up to 500 scfh are not indicative of substantial mechanical defects in the valves which would challenge the capability of the valves to fulfill their safety function of isolating the steam lines. Therefore, as demonstrated in the design basis LOCA radiological reanalysis, the proposed increased allowable MSIV leakage rate (i.e., each line less than or equal to 100 scfh and total leakage less than or equal to 250 scfh when tested at Pa) will not affect each MSIV's isolation function capability. Additionally, no new operator actions or errors are introduced as a result of the increased main steam line leakage limits, other than those addressed above.

Based on the above discussions, the proposed change would not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change will not involve a significant reduction in the margin of safety.

The worst case LOCA (i.e., a main steam line break upstream of the inboard MSIV) has been reanalyzed using the revised DBA source term (NUREG–1465 and the NEI generic framework document) in order to assess the radiological consequences of the increased MSIV leak rate, and not taking credit for MSIV–LCS. The radiological analyses used conservative assumptions and analytical techniques. The results of the revised DBA source term dose calculations should be determined acceptable using the current licensing basis acceptance limits (those that were used for initial plant licensing).

As noted in the NEI Generic Framework Document (''Generic Framework for Application of Revised Accident Source Term to Operating Plants,'' EPRI TR–105909, Interim Report, November 1995), ''to demonstrate that an adequate margin of safety is maintained, the licensee may show that the doses associated with the revised design basis (resulting from the revised source term together with the plant change under evaluation) are less than the licensing acceptance limits for the plant.''

The licensing acceptance limits for off-site dose are discussed in Supplement 8 to the NRC Safety Evaluation Report (SER) for PNPP, Section 15.3, ''Radiological Consequences of Design Basis Accidents.'' The licensing acceptance limits are the guideline values of 10 CFR 100.11, ''Reactor Site Criteria.'' The SER states ''The doses computed for this accident are less than the guideline values of 10 CFR 100.11 and the staff concludes that the Perry plant is adequately designed to mitigate the off-site consequences arising from a LOCA.'' For Control Room doses, the licensing acceptance limit is discussed in Supplement 10 to the NRC SER, Section 6.4, ''Control Room Habitability.'' The licensing acceptance limits are as stated therein, i.e., ''The staff's LOCA analysis indicates that the Control Room doses are within the guidelines of General Design Criterion (GDC) 19 of Appendix A to 10 CFR part 50 and of Section 6.4 of the Standard Review Plan (SRP, NUREG–0800).''

The revised PNPP design basis calculations (i.e., the revised DBA source term coupled with the plant changes under evaluation) demonstrated that the resulting off-site and Control Room doses were below the licensing acceptance limits contained in 10 CFR part 100, 10 CFR part 50, Appendix A, General Design Criterion 19, and SRP Section 6.4. An acceptable margin of safety is inherent in these licensing acceptance limits. The improvement in the technical knowledge base and in the analytical techniques that are part of the revised accident source term, and the modeling of the increased MSIV leakages without taking credit for MSIV–LCS, do not alter the acceptability of the margin. Therefore, the resulting calculated Control Room and off-site doses, which are well within regulatory limits, ensure that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Acting Project Director: Ronald R. Bellamy.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440, Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of amendment request: September 3, 1998.

Description of amendment request: The proposed license amendment increases the present Division 3 Diesel Generator (High Pressure Core Spray System) fuel level requirements to account for (1) a rounding error in the calculation, and (2) the unusable volume due to vortex formation at the eductor nozzles located in the fuel oil storage tank.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change revises the Division 3 Diesel Generator (DG) 7-day fuel oil supply requirement and the 6-day fuel oil supply requirement due to a rounding error in the calculation and due to the consideration of vortex formation near the eductor suction nozzle located near the bottom of the fuel oil storage tank. The proposed change ensures a sufficient DG fuel oil volume to maintain submergence of the eductor suction nozzle so that a vortex formation does not occur. Eliminating the concerns of a vortex formation will provide assurance that the DG fuel oil system will perform its intended function. Analyzed events are initiated by the failure of plant structures, systems, or components. The DGs are not considered as initiators of any analyzed event. The proposed change does not have a detrimental

impact on the integrity of any plant structure, system, or component that initiates an analyzed event. The proposed change will not alter the operation of, or otherwise increase its failure probability of any plant equipment that initiates an analyzed event. As such, the probability of occurrence for a previously analyzed accident is not significantly increased.

The consequences of a previously analyzed event are dependent on the initial conditions assumed for the analysis, the availability and successful functioning of the equipment assumed to operate in response to the analyzed event, and the setpoints at which these actions are initiated. The proposed change ensures a sufficient DG fuel oil volume to maintain submergence of the eductor suction nozzle so that a vortex formation does not occur. The proposed change continues to ensure that the DG fuel oil system will adequately support the design basis performance and mitigative function of the DG. The proposed change does not affect the performance of any credited equipment. As a result, no analyses assumptions are violated and there are no adverse effects on the factors that contribute to offsite or onsite dose as the result of an accident. The proposed change does not affect setpoints that initiate protective or mitigative actions. The proposed change ensures that plant structures, systems, or components are maintained consistent with the safety analysis and licensing bases. Based on this evaluation, there is no significant increase in the consequences of a previously analyzed event.

Therefore, this change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

(2) The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change revises the Division 3 DG 7-day fuel oil supply requirement and the 6-day fuel oil supply requirement due to a rounding error in the calculation and due to the consideration of vortex formation near the eductor suction nozzle located near the bottom of the fuel oil storage tank. The proposed change ensures a sufficient DG fuel oil volume to maintain submergence of the eductor suction nozzle so that a vortex formation does not occur. Eliminating the concerns of a vortex formation will provide assurance that the DG fuel oil system will perform its intended function. The proposed change does not involve a physical change to the DG fuel oil system or tank, nor does it change the operating characteristics or the safety function of the DG. The proposed change does not involve a physical alteration of the plant. No new or different equipment is being installed and no installed equipment, which might initiate a new or different kind of accident, is being operated in a different manner. The proposed change does not impact core reactivity or the manipulation of fuel bundles. The DG performs a mitigative function. There is no alteration to the parameters within which the plant is normally operated or in the setpoints that initiate protective or mitigative actions. As a result no new failure modes are being introduced. There are no changes in the methods governing normal plant operation, nor are the methods utilized to respond to plant transients altered.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed change will not involve a significant reduction in the margin of safety.

The margin of safety is established through the design of the plant structures, systems, and components, the parameters within which the plant is operated, and the establishment of the setpoints for the actuation of equipment relied upon to respond to an event. The proposed change revises the Division 3 DG 7-day fuel oil supply requirement and the 6-day fuel oil supply requirement due to rounding error in the calculation and due to the consideration of vortex formation near the eductor suction nozzle located near the bottom of the fuel oil storage tank. The margin of safety is being maintained by the proposed change from the margin of safety established by the original design. The proposed change ensures a sufficient DG fuel oil volume to maintain submergence of the eductor suction nozzle so that vortex formation does not occur. Eliminating the concerns of a vortex formation will provide assurance that the DG fuel oil system will perform its intended function. The proposed change does not significantly impact the condition or performance of structures, systems, and components relied upon for accident mitigation. The proposed change, in fact, provides assurance of the DG's ability to perform its intended function as previously evaluated. The proposed change does not significantly impact any safety analysis assumptions or results.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Acting Project Director: Ronald R. Bellamy.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: September 8, 1998.

Description of amendment request: The proposed amendment would change Technical Specification (TS) Section 5.3.1, ''Design Features—Reactor Core—Fuel Assemblies.'' A different type of fuel rod cladding would be added. The associated bases would also be changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because it has been demonstrated that the material properties of the M5 alloy are not significantly different from those of Zircaloy-4. Further, there are no evaluated accidents in which the fuel cladding or fuel assembly structural components are assumed to arbitrarily fail as an accident initiator. The fuel handling accident assumes that the cladding does, in fact, fail as a result of an undefined fuel handling event. However, the probability of that undefined initiating event is independent of the properties of the fuel rod cladding.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because it has been demonstrated that the material properties of the M5 alloy are not significantly different from those of Zircaloy-4. Therefore, in both non-LOCA and LOCA accident scenarios, there will be no significant increase in cladding failure or fission product release.

2. Not create the possibility of a new or different kind of accident from any accident previously evaluated because it has been demonstrated that the material properties of the M5 alloy are not significantly different from those of Zircaloy-4. Therefore, M5 fuel cladding and fuel assembly structural components will perform similarly to those fabricated from Zircaloy-4, thus precluding the possibility of the fuel becoming an accident initiator and causing a new or different kind of accident.

3. Not involve a significant reduction in a margin of safety because it has been demonstrated that the material properties of the M5 alloy are not significantly different from those of Zircaloy-4. The M5 alloy is expected to perform similarly to Zircaloy-4 for all normal operating and accident scenarios, including both non-LOCA and LOCA scenarios. For LOCA scenarios, where the slight differences in M5 material properties relative to Zircaloy-4 could have

some impact on the overall accident scenario, plant-specific LOCA analyses will be performed prior to the use of batch quantities of fuel assemblies containing either fuel rod cladding, fuel rod end plugs, or fuel assembly structural components fabricated from M5. These plant-specific LOCA analyses, required by TS 6.9.1.7, ''Core Operating Limit Report,'' will either demonstrate that all current, applicable, and appropriate margins of safety will be maintained during the use of the M5 alloy or their results will be submitted for NRC review and approval prior to use of the M5 alloy.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Acting Project Director: Ronald R. Bellamy.

Yankee Atomic Electric Company, Docket No. 50–029, Yankee Nuclear Power Station, Franklin County, Massachusetts

Date of amendment request: August 20, 1998.

Description of amendment request: By letter dated August 20, 1998, the licensee submitted a License Amendment request related to three Technical Specification (TS) administrative changes. The first is to remove a definition from the DEFINITIONS section of the TS that is provided in 10 CFR part 20. The second change is to transfer the site map from Section 5.0 of the TS to the Final Safety Analysis Report and to replace the map with a textual description of the site location. Lastly, to delete TS 5.1.1—EXCLUSION AREA.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes are administrative in nature and in no way affect the safety of the Yankee Nuclear Power Station (YNPS). The proposed deletion of the definition for SITE BOUNDARY in no way reduces or eliminates any regulatory requirement which Yankee Atomic Electric Company must currently satisfy. Likewise, the relocation of the YNPS site map from the YNPS Technical Specifications to the YNPS Final Safety Analysis Report is devoid of any safety implications. Therefore, the proposed changes will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The administrative nature of the changes will not affect safety related systems or components and, therefore, involve no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different accident from any previously evaluated. The proposed changes do not modify any plant systems or components and, therefore, do not create the possibility of a new or different accident from any previously evaluated.

3. Involve a significant reduction in the margin of safety. The proposed changes do not involve any physical changes to the plant nor any changes in plant procedures. Therefore, there will be no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Attorney for licensee: Thomas Dignan, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110–2624.

NRC Project Director: Seymour H. Weiss.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: August 27, 1998.

Brief description of amendment request: The amendment revises Technical Specifications 3.0.4 and 4.0.4 to be consistent with the guidance provided in Generic Letter 87–09 dated June 4, 1987.

Date of publication of individual notice in **Federal Register**: September 8, 1998 (63 FR 47529).

Expiration date of individual notice: October 8, 1998.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

GPU Nuclear, Inc. et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: August 21, 1998.

Description of amendment request: The amendment would remove the requirement for the Automatic Depressurization System function of the Electromatic Relief Valves to be operable during Reactor Vessel Pressure Testing. Additionally, note h of Table 3.1.1 will be corrected due to a typographical error introduced in the issuance of Amendment 75.

Date of publication of individual notice in **Federal Register**: September 10, 1998 (63 FR 48527).

Expiration date of individual notice: October 13, 1998.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, NJ 08753.

Wisconsin Public Service Corporation, Wisconsin Power and Light Company and Madison Gas and Electric Company, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, WI

Date of application for amendment: April 8, 1998, modified by letter dated August 27, 1998.

Brief description of amendment request: The proposed amendment would reduce the maximum allowable level of reactor coolant system activity (dose equivalent 1–131) to provide a means of accepting higher projected leak rates for steam generator tubes while still meeting offsite and control room dose criteria. Also included is a change to the secondary coolant activity level for which an increased sampling frequency applies.

Date of publication of individual notice in **Federal Register**: September 14, 1998 (63 FR 49137).

Expiration date of individual notice: October 14, 1998.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: March 12, 1998, as supplemented August 14, 1998. The August 14, 1998, supplemental letter provided clarifying information only, and did not change the initial no significant hazards consideration determination.

Brief description of amendment: This amendment deletes Technical Specification surveillance requirement 4.9.12.d.4, which requires verification at least once every 18 months that the Fuel Handling Building Emergency Exhaust System filter cooling bypass valve is locked in the balanced position.

Date of issuance: September 11, 1998.

Effective date: September 11, 1998.

Amendment No: 82.

Facility Operating License No. NPF–63: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: April 8, 1998 (63 FR 17222).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 11, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: January 28, 1998 (NRC–98–0003) as supplemented March 10, 1998

Brief description of amendment: The amendment revises technical specification (TS) 3.4.10, TS Figure 3.4.10–1, and the associated bases by changing the prohibited and restricted operating region associated with core thermal-hydraulic stability. Also, TS 3.4.1.4, TS Figure 3.4.1.4–1, and the associated bases are revised to reflect stability-related improvements in operating restrictions for idle recirculation loop startup. Finally, in an unrelated change, TS Tables 3.3.7.5–1 and 4.3.7.5–1 are revised to delete neutron flux from the list of accident monitoring instrumentation in TS 3.3.7.5.

Date of issuance: September 16, 1998

Effective date: September 16, 1998, with full implementation within 90 days.

Amendment No.: 128.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: February 25, 1998 (63 FR 9598). The March 10, 1998, letter provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: June 5, 1998 (NRC–98–0067), as supplemented August 24, 1998.

Brief description of amendment: The amendment revises Technical Specification (TS) 2.1.2, ''Thermal Power, High Pressure and High Flow,'' by changing the values for the safety limit minimum critical power ratio from 1.09 to 1.11 for two recirculation loop operation and from 1.11 to 1.13 for single recirculation loop operation for Cycle 7. The amendment also revises the footnote to TS 2.1.2 to indicate that these revised values are applicable for Cycle 7 operation only.

Date of issuance: September 21, 1998.

Effective date: September 21, 1998, with full implementation prior to restart from the sixth refueling outage.

Amendment No.: 129.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register**: July 1, 1998 (63 FR 35988). The August 24, 1998, letter provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards considerations determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 21, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, Ellis Reference and Information Center, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: May 8, 1998.

Brief description of amendments: The amendments revise the Power Range Neutron Flux Trip setponts in the event of inoperable main steam safety valves.

Also, the amendments delete the reference to three-loop operation. These changes are consistent with the proposed Improved Standard Technical Specifications submitted by the licensee on May 27, 1997.

Date of issuance: September 17, 1998.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—181; Unit 2—163.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 29, 1998 (63 FR 40554).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: October 6, 1998, as supplemented by letter dated August 24, 1998.

Brief description of amendments: The amendments delete all references to the steamline low pressure safety injection function.

Date of issuance: September 22, 1998.

Effective date: As of the date of issuance to be implemented in the refueling outage associated with the plants' hardware modifications.

Amendment Nos.: Unit 1—182; Unit 2—164.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: November 19, 1997 (62 FR 61841).

The August 24, 1998, submittal provided clarifying information that did not change the scope of the original **Federal Register** notice, and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 22, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: J. Murrey Atkins Library, University of North Carolina at Charlotte, 9201 University City Boulevard, Charlotte, North Carolina.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: October 2, 1996, as supplemented by the letter dated June 18, 1997.

Brief description of amendments: The amendments relocate the Radiological Effluents Technical Specifications (RETS) to the Offsite Dose Calculation Manual and the Process Control Program. The NRC provided guidance to all power reactors licensees and applicants on the proposed TS changes in Generic Letter 89–01, ''Implementation of Programmatic Controls for Radiological Effluent Technical Specifications in the Administrative Controls Section of the Technical Specifications and the Relocation of Procedural Details of RETS to the Offsite Dose Calculation Manual or to the Process Control Program,'' dated January 31, 1989.

Date of issuance: September 23, 1998.

Effective date: September 23, 1998.

Amendment Nos.: Unit 1; 193 and Unit 2; 193.

Facility Operating License Nos. DPR–51 and NPF–6: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: January 15, 1997 (62 FR 2188).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: March 3, 1998.

Brief description of amendments: The amendments modify surveillance requirement 4.6.4.2.b.4 for Unit 1 and the Technical Specification bases 3/4.6.4 for Unit 1 and 2.

Date of issuance: September 17, 1998.

Effective date: September 19, 1998, with full implementation within 45 days.

Amendment Nos.: 223 and 207.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 1, 1998 (63 FR 35990).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 17, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, MI 49085.

Niagara Mohawk Power Corporation, Docket No. 50–220 Nine Mile Point Nuclear Station Unit No. 1, Oswego County, New York

Date of application for amendment: July 16, 1998, as supplemented September 3, 1998. The application dated July 16, 1998, supersedes a July 2, 1997, application in its entirety.

Brief description of amendment: The amendment changes Technical Specification 3/4.2.3 regarding reactor coolant chemistry in accordance with a report by Electrical Power Research Institute, Inc., TR–103515–R1, ''BWR Water Chemistry Guidelines, 1996 Revision.''

Date of issuance: September 18, 1998.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 163.

Facility Operating License Nos. DPR–63 and NPF–69: Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register**: August 13, 1998 (63 FR 43432).

The September 3, 1998, submittal contained clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 18, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Project Director: S. Singh Bajwa.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: August 23, 1995.

Brief description of amendment: The amendment extends the Technical Specification (TS) Allowed Outage Time (AOT) for an inoperable Safety Injection Tank (SIT) from 1 hour to 24 hours, unless the SIT is inoperable due to

either boron concentration not within its limits or an inoperable water level or nitrogen cover pressure instrument. The proposed change, for these two special cases, extends the AOT for an inoperable SIT to 72 hours. In addition, the completion times and conditions for action statements and the criteria for surveillance requirements are changed. The TS Bases are also updated to reflect the changes.

Date of issuance: September 3, 1998.

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 220 Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: September 13, 1995 (60 FR 47621).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 3, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: August 6, 1998, as supplemented September 3 and 21, 1998.

Brief description of amendment: The latest Millstone Unit 3 steam generator tube inspection began on September 24, 1996, and was completed on October 1, 1996. The inspection results placed the steam generators in Category C–2. Technical Specification Surveillance Requirement 4.4.5.3.a establishes an allowable inspection interval of 24 calendar months for this category. Without an extension of the interval, Millstone Unit 3 must shut down prior to September 24, 1998, to perform the necessary inspections. The amendment allows a one-time extension to the surveillance interval until the next refueling outage or July 1, 1999, whichever date is earlier.

Date of issuance: September 23, 1998.
Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 163.

Facility Operating License No. NPF–49: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: August 17, 1998 (63 FR 43964).

The September 3 and 21, 1998, letters provided clarifying information that did not change the scope of the August 6, 1998, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: July 26, 1996, as supplemented September 5, 1997, as revised December 4, 1997, and as supplemented March 6, March 26, April 8, April 17, April 22, May 5, May 12, May 29, June 15, July 1, July 20, and July 30, 1998.

Brief description of amendment: The amendment revises the operating license and the Technical Specifications to allow increase of the maximum reactor core thermal power level from 1670 megawatts-thermal (MWt) to 1775 MWt.

Date of issuance: September 16, 1998.

Effective date: September 16, 1998. Full implementation within 90 days of issuance.

Amendment No.: 102.

Facility Operating License No. DPR–22. Amendment revised the License and the Technical Specifications.

Date of publication of individual notice in **Federal Register**: February 25, 1998 (63 FR 9606).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 16, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: February 27, 1998, as supplemented July 14, 1998.

Brief description of amendments: The amendments allow a design modification of the existing Anticipated Transient Without Scram (ATWS) Mitigation System Actuation Circuitry (AMSAC). The design modification installs a Diverse Scram System (DSS) designed to meet the requirements of a DSS described by 10 CFR 50.62 (ATWS Rule) for non-Westinghouse designed plants and make major modifications to the existing AMSAC.

Date of issuance: September 22, 1998.
Effective date: September 22, 1998, with full implementation by the completion of the next scheduled refueling outage.

Amendment Nos.: 138 and 129.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the license to authorize a design modification of the existing Anticipated Transient Without Scram (ATWS) Mitigation System Actuation Circuitry (AMSAC).

Date of initial notice in **Federal Register**: August 17, 1998 (63 FR 43965).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 22, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Philadelphia Electric Company, Docket No. 50–171, Peach Bottom Atomic Power Station, Unit 1, York County, Pennsylvania

Date of amendment request: March 2, 1998.

Brief description of amendment: This amendment will revise the Peach Bottom Atomic Power Station, Unit 1, Technical Specifications (TS) to include requirements for control of effluents and annual reporting in accordance with the requirements of 10 CFR 50.36a.

Date of issuance: September 14, 1998.

Effective date: As of the date of its issuance and must be fully implemented no later than 30 days from the date of issuance.

Amendment No.: 9.

Facility Operating License No. DPR–12: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 1, 1998 (61 FR 35994). The NRC's related evaluation of the amendment is contained in a Safety Evaluation dated September 14, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 28, 1998.

Brief description of amendments: The amendments modified TS 4.0.5 to state that the inservice testing requirement for exercise testing in the closed direction for specified Unit 1 containment isolation valves shall not be required until the next plant shutdown to Mode 5 of sufficient duration to allow the testing or until the next refueling outage scheduled in March 1999.

Date of issuance: September 24, 1998.

Effective date: September 24, 1998, to be implemented within 7 days.

Amendment Nos.: Unit 1—Amendment No. 95; Unit 2—Amendment No. 82.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (63 FR 48254). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 8, 1998, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendments.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated September 24, 1998.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: February 16, 1998, as supplemented April 2, July 15, and August 13, 1998.

Brief description of amendments: The amendments revised TS 3/4.4.5, ''Steam Generators,'' and its Bases to allow the implementation of 1-volt voltage-based repair criteria for the steam generator tube support plate-to-tube intersections for Unit 2 in accordance with Generic Letter 95–05, and made related Unit 1 administrative changes for consistency of wording (the Nuclear Regulatory Commission (NRC) had previously approved a similar 1-volt voltage-based repair criteria application for Unit 1). In addition, the amendments made an administrative change to Bases 3/4.4.6.2, ''Operational Leakage,'' to clarify that the allowable steam generator leakage specification applies to both Unit 1 and Unit 2.

Date of issuance: September 24, 1998.

Effective date: September 24, 1998, to be implemented within 30 days.

Amendment Nos.: Unit 1—Amendment No. 96; Unit 2—Amendment No. 83.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register**: May 20, 1998 (63 FR 27765).

The additional information contained in the supplemental letters dated July 15 and August 13, 1998, were clarifying in nature and thus, within the scope of the initial notice and did not affect the staff's proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 24, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, OES Nuclear, Inc., Pennsylvania Power Company, Toledo Edison Company, Docket No. 50–440 Perry Nuclear Power Plant, Unit 1, Lake County, Ohio

Date of application for amendment: August 29, 1995, supplemented June 25, 1998

Brief description of amendment: This amendment revises Technical Specification Tables 3.3.5.1–1, ''Emergency Core Cooling System Instrumentation,'' and 3.3.6.1–1, ''Primary Containment and Drywell Isolation Instrumentation,'' by revising allowable values for selected plant process instrumentation in accordance with Instrument Setpoint Methodology Group and GE Topical Report NEDC–31336, ''General Electric Instrument Setpoint Methodology,'' dated October 1986.

Date of issuance: September 15, 1998.

Effective date: September 15, 1998.

Amendment No.: 93.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: December 6, 1995 (60 FR 62496)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 15, 1998.

No significant hazards consideration comments received: No.

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, OH 44081.

Wisconsin Public Service Corporation, Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: June 1, 1998, supplemented July 14, 1998

Brief description of amendment: The changes revise the F* and elevated F* (EF*) criteria used to disposition indications in the roll expansion joint of degraded steam generator (SG) tubes within the tubesheet.

Date of issuance: September 22, 1998.

Effective date: September 22, 1998.

Amendment No.: 138.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: July 1, 1998 (63 FR 35996)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 22, 1998. .

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin, Cofrin Library, 2420 Nicolet Drive, Green Bay, WI 54311–7001

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of no Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Ch. I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By November 6, 1998, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner

must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Entergy Operations Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 18, 1998, as superseded by letter dated September 23, 1998.

Description of amendment request: The amendment changes the Appendix A TSs by revising Note ''1'' in Table 2.2–1, ''Reactor Protective Instrumentation Trip Setpoint Limits'' and Note ''a'' in Table 3.3–1, ''Reactor Protective Instrumentation,'' both applicable to high logarithmic power reactor trip instrumentation. Additionally, the requested changes clarify the terms RATED THERMAL POWER and THERMAL POWER used in Tables 2.2–1, 3.3–1 and 4.3–1. A Bases change is made to support these changes.

Date of issuance: September 24, 1998.

Effective date: September 24, 1998.

Amendment No: 145.

Facility Operating License No. NPF–38: Amendment revises the Technical Specifications Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 24, 1998.

Local Public Document Room Location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, LA 70122.

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street NW., Washington, D.C. 20005–3502.

NRC Project Director: John N. Hannon.

Southern California Edison Company, et al., Docket No. 50–361, San Onofre Nuclear Generating Station, Unit No. 2, San Diego County, California

Date of application for amendment: September 22, 1998.

Brief description of amendment: The amendment revises the technical specifications (TS) to change the operative parameter for setting and removing the operating bypass bistables for Logarithmic Power Level—High, Reactor Coolant Flow—Low, Local Power Density—High, and Departure from Nucleate Boiling Ratio—Low trips. The operative parameter specified in the TS is being changed from ''THERMAL POWER'' to logarithmic power.

Date of issuance: September 25, 1998.

Effective date: September 25, 1998.

Amendment No.: 142.

Facility Operating License No. NPF–10: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendments, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated September 25, 1998.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, P.O. Box 800, Rosemead, California 91770.

Local Public Document Room location: Main Library, University of California, Irvine, California 92713

Dated at Rockville, Maryland, this 30th day of September 1998.

For the Nuclear Regulatory Commission.

John N. Hannon,

Acting Director, Division of Reactor Projects—III/IV, Office of Nuclear Reactor Regulation.

[FR Doc. 98–26746 Filed 10–6–98; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Issuance of Revised NRC Form 3; Notice to Employees

The Nuclear Regulatory Commission has issued a revised NRC Form 3, ''Notice to Employees'', dated September 1998, effective October 7, 1998. The Form has been revised to reflect the closure of the NRC field office located in Walnut Creek, California, effective close of business, September 30, 1998. Individuals who have been reporting concerns to the Walnut Creek field office should now report their concerns to the NRC's Region IV office located in Arlington, Texas. The toll-free number for the Arlington, Texas office is (800) 952–9677.

A copy of NRC Form 3 has been placed in the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW. (Lower Level), Washington, DC 20037, for review and copying by interested persons.

Dated at Rockville, Maryland, this 1st day of October 1998.

For the Nuclear Regulatory Commission.

Edward T. Baker, III,

Agency Allegation Advisor, Office of the Director, Office of Nuclear Reactor Regulation.

[FR Doc. 98–26851 Filed 10–6–98; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Extension; Comment Request

Upon Written Request, Copy Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, D.C. 20549

Extension:

Form S–6—File No. 270–181—OMB Control No. 3235–0184

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*], the Securities and Exchange Commission

(''Commission'') is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form S–6—For Registration under the Securities Act of 1933 of Securities of Unit Investment Trusts Registered on Form N–8B–2. Unit investment trusts offering their securities to the public are required by two separate statutes to file registration statements with the Commission. They are required to register their securities under the Securities Act of 1933 (''1933 Act''), and to register as investment companies under the Investment Company Act of 1940 (''1940 Act'').

Form S–6 is used for registration under the 1933 Act of the securities of any unit investment trust registered under the 1940 Act on Form N–8B–2.[1] A separate registration statement under the 1933 Act must be filed for each series of units issued by the trust. Form S–6 consists of two parts. Part I contains the prospectus and Part II consists of a list of exhibits and financial information and contains other information required in the registration statement but not required to appear in the prospectus.

Section 10(a)(3) of the 1933 Act [15 U.S.C. 77j(a)(3)] provides that when a prospectus is used more than nine months after the effective date of the registration statement, the information therein shall be as of a date not more than sixteen months prior to such use. Unit investment trusts file post-effective amendments to their registration statements on Form S–6 in order to update their prospectuses. As a result, most unit investment trusts update their registration statements on Form S–6 on an annual basis in order that their sponsors may continue to maintain a secondary market in the units.

The purpose of the registration statement on Form S–6 is to provide disclosure of financial and other information that investors may use to make informed decisions regarding the merits of the securities offered for sale. To that end, unit investment trusts must furnish to investors a prospectus containing pertinent information set forth in the registration statement. Without the registration requirement, this material information would not necessarily be available to investors. The Commission reviews registration statements filed on Form S–6 to ensure adequate disclosure is made to investors.

Each year approximately 3,600 investment companies file a Form S–6. The Commission estimates that preparing Form S–6 requires a unit investment trust to spend approximately 35 hours so that the total burden of preparing Form S–6 for all affected investment companies is 126,000 hours. Estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act, and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

Written 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 will 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 collected; and (d) ways to minimize the burden of the collection of information on respondents, including through use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Dated: September 30, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–26865 Filed 10–6–98; 8:45 am]

BILLING CODE 8010–01–M

[1] Form N–8B–2 is the form used for registration statements filed by unit investment trusts under the 1940 Act. The form requires that certain material information about the trust, its sponsor, its trustees, and its operation be disclosed. The registration on Form N–8B–2 is a one-time filing that applies to the first series of the unit investment trust as well as any subsequent series that is issued by the sponsor.

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Form 3—SEC File No. 270–125, OMB Control No. 3235–0104;

Form 4—SEC File No. 270–126, OMB Control No. 3235–0287;

Form 5—SEC File No. 270–323; OMB Control No. 3235–0362.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) the Securities and Exchange Commission (''Commission'') has submitted to the Office of Management and Budget requests for extension of the previously approved collections of information discussed below. Exchange Act Forms 3, 4 and 5 are filed by insiders of public companies that have a class of securities registered under Section 12 of the Exchange Act. Form 3 is an initial statement of beneficial ownership, Form 4 is a statement of changes of beneficial ownership of securities and Form 5 is an annual statement of beneficial ownership of securities. Approximately 7,538 respondents file Form 3 annually for a total annual burden of 3,769 hours. Approximately 62,704 respondents file Form 4 annually for a total annual burden of 31,352 hours. Approximately 37,075 respondents file Form 5 annually for a total annual burden of 37,075 hours.

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

Written comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: September 30, 1998.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–26817 Filed 10–6–98; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following open meeting during the week of October 12, 1998.

An open meeting will be held on Wednesday, October 14, 1998, at 10 a.m.

The subject matter of the open meeting scheduled for Wednesday, October 14, 1998, at 10 a.m., will be:

(1) Consideration of whether to propose new rules and amendments to modernize and clarify the structure of the regulatory system for offerings under the Securities Act of 1933. **FOR FURTHER INFORMATION CONTACT:** Anita Klein at (202) 942–2980 or Julie Hoffman at (202) 942–1817.

(2) Consideration of whether to propose new rules and amendments intended to update, harmonize and simplify the regulation of tender offers, mergers, and similar extraordinary transactions. **FOR FURTHER INFORMATION CONTACT:** James J. Moloney at (202) 942–2920 or P.J. Himelfarb at (202) 942–1888.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: October 5, 1998.

Jonathan G. Katz,

Secretary.

[FR Doc. 98–27062 Filed 10–5–98; 3:48 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40515; File No. SR–OCC–98–07]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Regarding the Short Option Adjustment As Applied to Non-Equity Options

September 30, 1998.

On July 10, 1998, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change (File No. SR–OCC–98–07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'').[1] Notice of the proposal was published in the **Federal Register** on August 17, 1998.[2] No comment letters were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The rule change amends OCC Rule 602 to modify the ''short option adjustment'' as it applies to non-equity options. The short option adjustment is a component of the additional margin calculation in OCC's margin system, the ''theoretical intermarket margin system'' (''TIMS or NEO TIMS''), that imposes a minimum margin amount on deep out of the money short options.[3]

A. Additional Margin Calculation

OCC requires its clearing members to adjust their margin deposits with OCC in the morning of every business day based on OCC's overnight calculations. OCC imposes a margin requirement on short positions and gives margin credit for unsegregated long positions.[4] Under TIMS, margin for positions in a class group are based on premium levels at the close of trading on the preceding day and are increased or decreased by the additional margin amount for that class group.[5]

TIMS calculates additional margin amounts using options price theory. TIMS first calculates the theoretical liquidating value for the positions in each class group by assuming either an increase or decrease in the market value of the underlying asset in an amount equal to the applicable margin interval. The margin interval is the maximum one day price movement in the value of the underlying asset that OCC wants to protect against.[6] Margin intervals are determined separately for each underlying interest to reflect the volatility in the price of the underlying interest.

TIMS then selects the theoretical liquidating value that represents the greatest decrease (where the actual liquidating value is positive) or increase (where the actual liquidating value is negative) in liquidating value compared with the actual liquidating value based on the premium levels at the close of trading on the preceding day. The difference between that theoretical liquidating value and the actual liquidating value is the additional margin amount for that class group unless the class group is subject to the short option adjustment.

B. Short Option Adjustment

For net short positions in deep out of the money options, little or no change in value would be predicted given a change in value of the underlying interest equal to the applicable margin interval.[7] As a result, TIMS would calculate additional margin amounts of zero or close to zero for deep out of the money options. However, volatile markets could cause such positions to become near to or in the money and thereby could create increased risk to OCC. OCC protects against this risk with an adjustment to the additional margin calculation known as the short option adjustment.[8]

Originally, the short option adjustment calculated a minimum additional margin amount for all net short positions in an options series for which the ordinary calculation of the additional margin requirement was less than twenty-five percent of the applicable margin interval. The original methodology applied the short option adjustment to all such short option positions and did not attempt to match or pair net short positions with net long positions which could have reduced the risk of such net short positions.

In 1992, OCC modified the short option adjustment so that it applied only to unpaired net short positions in deep out of the money options.[9] Currently, the term *unpaired* is defined to mean that a net short position is not offset by a net long position on the same underlying interest.[10] However, Interpretation .06 to OCC Rule 602 provides that a net short position is unpaired unless the position is offset by

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 40317 (August 11, 1998), 63 FR 43980.

[3] *TIMS* refers to OCC's margin system as it applies to stock options and *NEO TIMS* refers to OCC's margin system as it applies to non-equity options. For a detailed description of NE TIMS, refer to Securities Exchange Act Release No. 23167 (April 30, 1986), 51 FR 16127 [File No. SR–OCC–85–21] (order approving proposed rule change).

[4] A long position is unsegregated for OCC's purposes if OCC has a lien on the position (*i.e.*, it has recourse to the value of the position in the event that the clearing member does not perform an obligation to OCC). Long positions in firm accounts and market-maker accounts are unsegregated. Long positions in the clearing member's customers' accounts are unsegregated only if the clearing member submits instructions to that effect in accordance with Rule 611.

[5] For purposes of NEO TIMS, a class group consists of all put and call options, certain market baskets, and commodity options and futures covering the same underlying asset that are subject to margin at OCC because of a cross-margining program with a commodity clearing organization. A class group may also contain stock loan baskets and stock borrow baskets.

[6] Some combinations of positions can present a greater net theoretical liquidating value at an intermediate value than at either of the endpoint values. As a result, TIMS also calculates the theoretical liquidating value for the positions in each class group assuming intermediate market values of the underlying asset.

[7] A net position in an option series in an account is the position resulting from offsetting the gross unsegregated long position in that series against the gross short position in that series. After netting, an account will reflect a net short position or a net long position for each series of options held in the account.

[8] The short option adjustment for non-equity options is described in OCC Rule 602(c)(1)(ii)(C)(1).

[9] Securities Exchange Act Release No. 31682 (December 31, 1992) 58 FR 3318 [File No. SR–OCC–91–12].

[10] The term unpaired is defined in Interpretation .04 to Rule 601 for equity options and Interpretation .06 to Rule 602 for non-equity options.

a net long position in the same class group (*i.e.*, the net short and long positions have the same underlying interest). Therefore, Interpretation .06 currently treats a net short position as unpaired even if the net short position is offset by a net long position in a highly correlated class group. For example, Interpretation .06 treats a net short position in an index option that is offset by a net long position in a highly correlated but different index option as unpaired for purposes of the short option adjustment.

The rule change modifies the short option adjustment logic of NEO TIMS so that it recognizes spreads between net long and short positions on underlying interests that exhibit price correlation of seventy percent or greater in addition to spreads between net long and short positions on the same underlying interests. The rule change amends Rule 602 to provide that NEO TIMS (1) will continue to pair all net short contracts on a particular underlying interest against all net long contracts on the same underlying interest and (2) will then pair any remaining net short positions against any net long positions that remain in other class groups that exhibit seventy percent or greater price correlation.[11] Any short contracts remaining unpaired after this pairing process will be subject to the short option adjustment.[12]

Interpretation .06 currently states that those short contracts having the lowest premium margin values will be deemed to be unpaired. Premium margin value is an important criterion used by OCC to identify those excess short contracts which it will deem unpaired, but it is not the only criterion. Other criterion may include identifying contracts that are farthest from expiration, that have the highest exercise price (in the case of calls) or the lowest exercise price (in the case of puts), or that have been assigned the largest margin interval. The rule change amends Interpretation .06 to provide that OCC will identify which of the excess short contracts will be deemed unpaired and therefore will be subject to margin requirements using the short option adjustment.

[11] The class groups in OCC's stock index and currency option produce groups satisfy the requirement for seventy percent or greater price correlation.

[12] Commodity options and futures held in cross-margin accounts, market baskets, and stock loan and borrow baskets also will be included in the pairing process. Long calls, futures, commodity calls, market baskets, and stock loan baskets will be netted against short calls and commodity calls. Long puts, commodity puts, short futures, market baskets, and stock borrow baskets will be netted against short puts and commodity puts.

II. Discussion

Section 17A(b)(3)(F) of the Act[13] requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. The Commission believes that the rule change is consistent with OCC's obligation under Section 17A(b)(3)(F) because it should reduce overcollateralization of OCC's clearing members' positions without impairing OCC's overall protection against member default.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the requirements of the Act and in particular with Section 17A of the Act[14] and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (File No. SR–OCC–98–07) be and hereby is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 98–26864 Filed 10–6–98; 8:45 am]

BILLING CODE 8010–01–M

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 15 U.S.C. 78q–1.

[15] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3134]

Commonwealth of Puerto Rico

As a result of the President's major disaster declaration on September 24, 1998, I find that all 78 Municipalities in the Commonwealth of Puerto Rico constitute a disaster area due to damages caused by Hurricane Georges that occurred on September 20–22, 1998. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on November 23, 1998, and for loans for economic injury until the close of business on June 24, 1999 at the address listed below or other locally announced locations: Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd. South, 3rd Floor, Niagara Falls, NY 14303.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
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 313408, and for economic injury the number is 9A1600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: September 28, 1998.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 98–26848 Filed 10–6–98; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

1998–99 Allocation of the Tariff-Rate Quota for Raw Cane Sugar, Allocation of 27,954 Metric Tons of Refined Sugar to Mexico, Allocation of 10,330 Metric Tons of Refined Sugar and 59,250 Metric Tons of Sugar Containing Products to Canada and Globalization of the Remaining Refined Sugar TRQ

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: The Office of the United States Trade Representative (USTR) is providing notice of the country-by-country allocation of the in-quota quantity of the tariff-rate quota for imported raw cane sugar, and allocation of 27,954 metric tons refined sugar to Mexico, of which 25,000 may be raw or refined sugar, and allocation of 10,300 metric tons refined sugar and 59,250 metric tons of sugar containing products to Canada and globalization of the remaining refined sugar tariff-rate quota (which includes specialty sugars) for the period that begins October 1, 1998 and ends September 30, 1999.

EFFECTIVE DATE: October 1, 1998.

ADDRESSES: Inquiries may be mailed or delivered to Elizabeth Jones, Agricultural Economist, Office of Agricultural Affairs (Room 421), Office

of the Untied States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Elizabeth Jones, Office of Agricultural Affairs, 202–395–6127.

SUPPLEMENTARY INFORMATION: Pursuant to Additional U.S. Note 5 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS), the United States maintains tariff-rate quotas for imports of raw cane and refined sugar. The in-quota quantity of the raw cane tariff-rate quota for the period October 1, 1998–September 30, 1999, has been established by the Secretary of Agriculture at 1,164,937 metric tons, raw value (1,284,123 short tons).

Section 404(d)(3) of the Uruguay Round Agreements Act (19 U.S.C. 3601(d)(3)) authorizes the President to allocate the in-quota quantity of a tariff-rate quota for any agricultural product among supplying countries or customs areas. The President delegated this authority to the United States Trade representative under paragraph (3)) of Presidential Proclamation No. 6763 (60 FR 1007).

Accordingly, the 1,164,937 metric tons for a raw cane sugar are being allocated to the following countries in metric tons, raw value:

Country	FY1999 allocation
Argentina	46,581
Australia	89,912
Barbados	7,583
Belize	11,916
Bolivia	8,666
Brazil	157,076
Colombia	25,999
Congo	7,258
Cote d'Ivoire	7,258
Costa Rica	16,249
Dominican Republic	190,657
Ecuador	11,916
El Salvador	28,165
Fiji	9,750
Gabon	7,258
Guatemala	51,997
Guyana	12,999
Haiti	7,258
Honduras	10,833
India	8,666
Jamaica	11,916
Madagascar	7,258
Malawi	10,833
Mauritius	12,999
Mexico	25,000
Mozambique	14,083
Nicaragua	22,749
Panama	31,415
Papua New Guinea	7,258
Paraguay	7,258
Peru	44,415
Philippines	146,243
South Africa	24,915
St. Kitts & Nevis	7,258
Swaziland	17,332
Taiwan	12,999
Thailand	15,166
Trinidad-Tobago	7,583
Uruguay	7,258
Zimbabwe	12,999
Total	1,164,937

This allocation includes the following minimum quota-holding countries: Congo, Cote d'Ivoire, Gabon, Haiti, Madagascar, Papua New Guinea, Paraguay, St. Kitts & Nevis, and Uruguay.

The in-quota quantity of the tariff-rate quota for refined sugar for the period October 1, 1998–September 30, 1999, has been established by the Secretary of Agriculture at 50,000 metric tons, raw value (55, 116 short tons). A total of 7,090 metric tons (7,815 short tons) of this tariff-rate quota will be available for refined sugar and 4,656 metric tons (5,132 short tons) will be available for specialty sugars on a globalized basis, that is, these amounts will be available on a first-come, first-serve basis. A total of 10,300 metric tons (11,354 short tons) to refined sugar and 59,250 metric tons (65,312 short tons) of sugar containing products (of the tariff-rate quota maintained under additional U.S. Note 8 to chapter 17 of the Harmonized tariff Schedule) will be allocated to Canada. Separately, an additional 2,954 metric tons (3,256 short tons) of refined sugar will be allocated to Mexico. The remaining 25,000 metric tons (27,558 short tons) of the refined sugar tariff-rate quota is being allocated to Mexico to fulfill obligations pursuant to the North American Free Trade Agreement (NAFTA). Under the NAFTA, the United States is to provide total access for raw and refined sugar from Mexico of 25,000 metric tons, raw value, for this quota period in conjunction with Mexico's net surplus producer status. This allocation is subject to the condition that the total imports of raw and refined sugar from Mexico, combined, is not to exceed 25,000 metric tons raw value.

Richard W. Fisher,

Acting United States Trade Representative.

[FR Doc. 98–26889 Filed 10–6–98; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Partnership Council; Notice of Meeting

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of meeting.

SUMMARY: The Department of Transportation (DOT) announces a meeting of the DOT Partnership Council (the Council). Notice of this meeting is required under the Federal Advisory Committee Act.

Time and Place: The Council will meet on Wednesday, October 21, 1998, at 10:00 a.m., at the Department of Transportation, Nassif Building, room 10214, 400 Seventh Street, SW., Washington, DC 20590. The room is located on the 10th floor.

Type of Meeting: These meetings will be open to the public. Seating will be available on a first-come, first-served basis. Handicapped individuals wishing to attend should contact DOT to obtain appropriate accommodations.

Point of Contact: John E. Budnik or Jean B. Lenderking, Corporate Human Resource Leadership Division, M–13, Department of Transportation, Nassif Building, 400 Seventh Street, SW., Room 7411, Washington, DC 20590, (202) 366–9439 or (202) 366–8085, respectively.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to finalize plans for the Life with Cancer Signature Project in memory of the late American Federation of Government Employees (AFGE) President John Sturdivant.

PUBLIC PARTICIPATION: We invite interested persons and organizations to submit comments. Mail or deliver your comments or recommendations to Ms. Jean Lenderking at the address shown above. Comments should be received by October 6, 1998 in order to be considered at the October 21 meeting.

Issued in Washington, DC, on September 25, 1998.

For the Department of Transportation.

John E. Budnik,

Associate Director, Corporate Human Resource Leadership Division.

[FR Doc. 98–26820 Filed 10–6–98; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[Docket No. USCG–1998–4525]

National Boating Safety Activities: Funding for National Nonprofit Public Service Organizations

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: The Coast Guard seeks applications for grants and cooperative agreements from national

nongovernmental, nonprofit, public service organizations. These grants and cooperative agreements would be used to fund projects on various subjects promoting boating safety on the national level. This notice provides information about the grant and cooperative agreement application process and some of the subjects of particular interest to the Coast Guard.

DATES: Application packages may be obtained on or after October 7, 1998. Proposals for the Fiscal Year 1999 grant cycle must be received before 4:30 p.m. eastern time January 15, 1999.

ADDRESSES: Application packages may be obtained by calling the Coast Guard Infoline at 800–368–5647. Submit proposals to: Commandant (G–OPB–1) U.S. Coast Guard Headquarters, 2100 Second Street, SW., Room 3100, Washington, DC 20593–0001. This notice is available from the Coast Guard Infoline and on the Internet at http://dms.dot.gov or at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org.

FOR FURTHER INFORMATION CONTACT: Mr. Albert Marmo, Office of Boating Safety, U.S. Coast Guard (G–OPB–1/room 3100), 2100 Second Street, SW, Washington, DC 20593–0001; 202–267–0950. For questions on viewing, or submitting material to, the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, 202–366–9329.

SUPPLEMENTARY INFORMATION: Title 26, United States Code, section 9504, establishes the Boat Safety Account of the Aquatic Resources Trust Fund. From this trust fund, the majority of funds are allocated to the States, and up to 5% of these funds may be distributed by the Coast Guard for grants and cooperative agreements to national, nonprofit, public service organizations for national boating safety activities. It is anticipated that $2,950,000 will be available for fiscal year 1999. Twenty-two awards totaling $2,750,000 were made in fiscal year 1998 ranging from $9,000 to $438,000. Nothing in this announcement should be construed as committing the Coast Guard to dividing available funds among qualified applicants or awarding any specified amount.

It is anticipated that several awards will be made by the Director of Operations Policy, U.S. Coast Guard. Applicants must be national, nongovernmental, nonprofit, public service organizations and must establish that their activities are, in fact, national in scope. An application package may be obtained by writing or calling the point of contact listed in **ADDRESSES** on or after October 7, 1998. The application package contains all necessary forms, an explanation of how the grant program is administered, and a checklist for submitting a grant application. Specific information on organization eligibility, proposal requirements, award procedures, and financial administration procedures may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.**

New procedures allow prospective grantees to propose up to a five-year grant with the twelve month (fiscal year) increments. In effect, an award would be made for the first year and thereafter renewal is optional. Each annual increment would not be guaranteed. Under a continuation (multi-year) grant type of award the Coast Guard agrees to support a grant project at a specific level of effort for a specified period of time, with a statement of intention to provide certain additional future support, provided funds become available, the achieved results warrant further support, and are in support of the needs of the government. Award of continuation grants will be made on a strict case by case basis to assist planning certain large scale projects and ensure continuity. New procedures have also been established to implement awarding noncompetitive grants or cooperative agreements on a case by case basis. This authority will be judiciously used to fund recurring annual projects or events which can only be carried out by one organization, and projects that present targets of opportunity for timely action on new or emerging program requirements or issues. The following list includes items of specific interest to the Coast Guard, however, potential applicants should not be constrained by the list. Any initiative which can help to reduce recreational boating deaths, injuries or property damage is welcomed. Of high interest are initiatives which focus on recreational fishermen, canoeists, kayakers, and/or personal watercraft operators. Some projects area of continuing and particular interest for grant funding include the following:

1. Develop and Conduct a National Annual Safe Boating Campaign. The Coast Guard seeks a grantee to develop and conduct the year 2000 National Annual Safe Boating Campaign that targets specific boater market segments and recreational boating safety topics. This year-round campaign must support the organizational objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents and associated health care costs, as well as support the nationwide grassroots activity of the many volunteer groups who coordinate local media events, education programs, and public awareness activities. Products must include, but are not limited to: situation analysis, post campaign component evaluation processes, measures of effectiveness, marketing strategy, distribution plan, and final report. All print, audio and video material must be designed to emphasize multiple year-round boating safety and accident prevention messages. Highlights of the calendar year 2000 national campaign will be special select materials and activities to support National Safe Boating Week and other selected national boating safety events. The major focus of the campaign will be to affect the behavior of all boaters to increase wearing of Personal Flotation Devices (PFDs) [with special emphasis on use by children and recreational anglers] and the dangers of boating while under the influence (BUI) of alcohol or drugs. The recreational angler component should reflect the statistical risks associated with fishing activities, falls overboard, cold water immersion, and failure to wear a PFD. An established portion of allocated grants funds must support a National Boating Accident Reporting Awareness Program that is designed to reach all boaters with a message on the importance of reporting boating accidents. Efforts will also be coordinated, year-around, with other national transportation safety activities and special media events, in particular those which focus on the prevention of operating a boat under the influence of alcohol or drugs. Point of Contact: Ms. Jo Calkin, 202–267–0994.

2. Evaluation of the National Safe Boating Campaign. The Coast Guard seeks a grantee to develop and conduct an objective and systematic evaluation of the National Safe Boating Campaign. This evaluation is to determine the effectiveness of the campaign in modifying on the water behavior, and thus meeting the objectives of the Recreational Boating Safety Program to save lives, reduce the number of boating accidents and associated health care costs. (Grantees or partners of grantees of previous National Safe Boating Campaigns will not be considered.) Point of Contact: Ms. J. Calkin, 202–267–0994.

3. Develop and Conduct a National Recreational Boating Safety Outreach and Awareness Conference. The Coast Guard seeks a grantee to plan, implement, and conduct a National Recreational Boating Safety Outreach and Awareness Conference. This conference must support the organizational objectives of the Recreational Boating Safety Program to

save lives, reduce the number of boating accidents, and lower associated health care costs. The overall conference focus should have promotional strategies which address the following specific targeted audiences: paddlers, anglers and hunters, and personal watercraft users. The conference should be scheduled to be conducted during the spring of 2000 and be held concurrent or consecutively with additional major national recreational and/or boating safety and aquatic symposiums. The design of the conference should enhance the awareness and development of paid and volunteer professionals; national, state, and local boating safety program organization leaders; waterway managers and industry specialists. It should provide a unifying link between local or regional programs and those on the national level. The conference should be a collaborative effort of national organizations interested in the betterment of boating and equatic safety and should include, but not be limited to, plenary sessions, hands-on workshops, and the distribution of a post conference report (publication) describing the activities of the conference. Products should include, but are not limited to, specific program tasks, evaluation processes, measures of effectiveness, marketing strategy, and final report, Point of Contact. Ms. Jo Calkin, 202–267–0994.

4. State/Federal/Boating Organizations Cooperative Partnering Efforts. The Coast Guard seeks grantees to provide programs to encourage greater participation and uniformity in boating safety efforts. Applicants would provide a forum to encourage greater uniformity of boating laws and regulations, reciprocity among jurisdictions, and closer cooperation and assistance in developing, administering, and enforcing Federal and state laws and regulations pertaining to boating safety. Point of Contact: Ms. Sandy Brown, 202–267–6010.

5. Voluntary Standards Development Support. The Coast Guard seeks a grantee to carry out a program to encourage active participation by members of the public and other qualified persons in the development of technically sound voluntary boating safety standards. Point of Contact: Mr. Peter Eikenberry, 202–267–6984.

6. Conduct Technical Seminars on Boating Safety Standards and Compliance. The Coast Guard seeks a grantee to develop, provide instructional materials for, and conduct training courses for recreational boat manufacturers nationwide on compliance with recreational boating Federal safety standards. Point of Contact: Mr. Gary Larimer, 202–267–0986.

7. Develop and Conduct Boating Accident Seminars. The Coast Guard seeks a grantee to develop, provide instructional material, and conduct training courses nationwide for boating accident investigators, including three courses at the Coast Guard Reserve Training Center in Yorktown, Virginia. Point of Contact: Mr. Gary Larimer, 202–267–0986.

8. Video Support for Accident Seminars. The Coast Guard seeks a grantee to record new video segments of laboratory demonstrations central to the instructional curriculum used in the accident investigation seminars. These segments include fuel vapor explosions, gas tank leak tests, stray current corrosion demonstrations, overheated electrical component tests and other laboratory demonstrations instructive in accident investigations. Point of Contact: Mr. Gary Larimer, 202–267–0986.

9. Staged Boat Collisions. The Coast Guard seeks a grantee to develop and produce a series of staged boating collisions using a variety of typical recreational watercraft including contemporary fishing boats and personal watercraft, among others. The purpose of the staged collisions is two-fold. First, the crashed boats resulting from the staged collisions will be used to form the first of three pools of watercraft to be used in the accident investigation training program nationwide. Second, film footage and technical data recorded and gathered during the staged collisions will be used to enhance understanding of the crash dynamics of recreational vessels under controlled conditions. Point of Contact: Mr. Gary Larimer, 202–267–0986.

10. National Estimate of Personal Flotation Devices (PFDs) Wear Rate. The Coast Guard seeks a grantee to develop a statistically valid national estimate and evaluation of wear rates of PFDs by recreational boaters. Wear rate should be determined by actual observation of boaters rather than other means such as surveys. Special emphasis should be placed on identifying inland fishermen. Point of Contact: LCDR Rick Sparacino, 202–267–0976.

11. Understanding and Awareness of Personal Flotation Device (PFD) Types and Capabilities. The Coast Guard seeks a grantee to evaluate current methods of informing and educating boaters on performance, selection, use and care of PFDs. The grantee is to make recommendations for improvement. The evaluation is to include review of PFD labels, the required PFD information pamphlet, and manuals for their effectiveness, including readability, understandability and information retention. The goal is to make changes which will improve each of these factors and perhaps introduce new ways of reaching boaters so that they are able to readily make informed choices of the type of PFD which best meets individual needs and to fully understand the risks associated with use and failure to use the different PFD types under various operating and water conditions. The grantee is to also review existing outreach methods regarding PFD types and their capabilities, and make recommendations regarding effectiveness and ways to improve boater understanding before, at, and after the point of purchase. Point of Contact: Mr. Rick Gipe, 202–267–0985.

12. Improvement of Navigation Light Visibility and Display. The Coast Guard seeks a grantee to investigate the safety aspects of navigation light lens size for lights constructed in accordance with the Navigation Rule specifications. The grantee shall determine the minimum lens size necessary to effect a safe level of navigation light discernment when viewed at close range against a background of lights and in inclement weather. Point of Contact: Mr. Randolph J. Doubt, 202–267–6810.

13. Human Factors and Risk Management in Recreational Boating Applications. The Coast Guard seeks a grantee to apply risk analysis and risk management techniques in the recreational boating arena to identify and characterize the human factors and risk involved with the recreational boating experience, including operator controlled factors, boat characteristics, safety equipment, and operator safety awareness. The grantee shall identify operator and/or equipment interventions and develop methodology to eliminate or mitigate risk factors. Point of Contact: Mr. Phil Cappel, 202–267–0988.

14. Personal Watercraft Operation Safety Interventions. The Coast Guard seeks a grantee to review personal watercraft accident report and investigation data and to interview emergency room personnel in areas with large numbers of personal watercraft (PWC) accidents. The grantee shall analyze data and information gathered and make recommendations for effective PWC safety interventions. Point of Contact: Mr. Bruce Schmidt, 202–267–0955.

15. Angler/Hunter Safety Interventions. The Coast Guard seeks a grantee to conduct literature and reference research and develop a

position paper (with resource references) on a national strategy on prevention of angler and hunter drowning fatalities involving use of small boats. This research is to include canvassing national small boat, angler and hunter organizations. The result will be a recommendation for a nationally focused outreach campaign targeted to this audience. Point of Contact: CWO2 Tim Duff, 202–267–1263.

16. Education Course Testing in Remote Areas When Proctoring is Required. The Coast Guard seeks a grantee for a research project to determine the nature and types of educational programs that currently utilize remote testing when proctoring is required. Preliminary evidence suggests that there are examples in other disciplines that could illuminate methodologies, systems, and technologies that could be emulated in the area of boating safety education and testing. Point of Contact: Ms. Tami Levitas, 202–267–0848.

17. Boating Safety Futures Forum. The Coast Guard seeks a grantee to plan and conduct a national forum on the future of recreational boating and boating safety in the new millennium. The audience for the boating futures forum would include top-level leaders of industry, nonprofit organizations, and federal, state and local boating agencies for a strategic information sharing and planning conference to guide the development of recreational boating and boating safety priorities in the new century. The forum would include targeted sessions on demographic changes impacting recreational boating, the identification of trends in marine technology, exploration of resource needs and sources, and social, environmental and economic conditions that will be brought to bear on the recreational boating industry and the regulatory community. Point of Contact: Ms. Audrey Pickup, 202–267–0872.

18. Recreational Boating Electronic Accident Reporting System. The Coast Guard seeks a grantee to develop an electronic means for the public to submit recreational boating accident reports. Point of Contact: Mr. Phil Cappel, 202–267–0988.

19. National Boating Survey. The Coast Guard seeks a grantee to conduct a comprehensive national boating survey. This survey would update information collected in prior surveys. The purpose of these surveys was to obtain statistical estimates of recreational boats, boating households, boaters, boating exposures, practices, and activities. The best way to assess a boater's risk on the water, as well as the effectiveness of boating safety program activities in minimizing that risk, is to quantify exposure factors * * * who is boating, in what types of boats, where, how often, how long, doing what activities, etc., and relate those factors to accident data. The nationwide boating survey is to be of sufficient sample size to provide various exposures data by State. Point of Contact: Mr. Bruce Schmidt, 202–267–0955.

20. Information Resources Management: Recreational Boating Safety (RBS) Exposure Data Capture Project: The Coast Guard seeks a grantee to complete a comprehensive RBS Exposure Data Capture Project to identify organizations who routinely collect recreational boating exposure data measured in passenger hours. The grantee will use the results from a prior grant project which identified exposure data elements and their sources. The objectives of the project are twofold. The first objective is to create a national database of all sources who routinely collect recreational boating exposure data on a continuous basis. The database will contain all exposure data elements and their attributes to include: participant demographics, the locality, type and duration of boating activity, the frequency and methodology of data collection, data storage formats, and information that provides access to the data.

The second objective is to determine the feasibility of collating and using data from the identified sources to develop valid national estimates of recreational boating exposure. Point of Contact: Mr. Bruce Schmidt, 202–267–0955.

One area potential grantees should focus on is PARTNERSHIP. Explore other sources, linkages, in-kind contributions, cost sharing, and partnering with other organizations or corporations. A more detailed discussion of specific projects of interest to the Coast Guard may be obtained by contacting the Coast Guard Infoline at 800–368–5467 and requesting a copy of a specific proposal.

Proposals addressing other boating safety concerns are encouraged. The Boating Safety Financial Assistance Program is listed in section 20.005 of the Catalog of Federal Domestic Assistance.

Dated: September 30, 1998.

Ernest R. Riutta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Operations.

[FR Doc. 98–26853 Filed 10–6–98; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Rotocraft Draft Advisory Material

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of draft rotorcraft advisory material.

SUMMARY: This is a notice of availability of draft Advisory Circular (AC) material, which provides guidance as to an acceptable means of accomplishing the requirements of a proposed rule on the subject of requirements for a critical parts plan for normal and transport category rotorcraft.

FOR FURTHER INFORMATION CONTACT: Kathy Jones, Rotorcraft Standards Staff, FAA, Rotorcraft Directorate, Aircraft Certification Service, Fort Worth, TX 76193–0110; telephone (817) 222–5961, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: This notice announces the availability of draft AC material. The FAA tasked the Aviation Rulemaking Advisory Committee (ARAC) to develop rulemaking and policy material for normal and transport category rotorcraft. The ARAC process is a means for the public to participate in the drafting of rules and advisory material. The FAA review of the ARAC Working Group's material resulted in the FAA proposing a Notice of Proposed Rulemaking (NPRM) and AC material. Consequently, NPRM No. 98–10, ''Harmonization of Critical Parts Rotorcraft Regulations,'' was published in the **Federal Register** on August 24, 1998 (63 FR 45130). The accompanying AC material is available and will be published in a future revision to AC 27–1A and AC 29–2B (Certification of Normal Category Rotorcraft and Certification of Transport Category Rotorcraft, respectively).

Issued in Fort Worth, Texas, on September 24, 1998.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 98–26882 Filed 10–6–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA; Special Committee 189/ EUROCAE Working Group 53; Air Traffic Services Safety and Interoperability Requirements

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice

is hereby given for a joint Special Committee (SC)–189/EUROCAE Working Group (WG)–53 meeting to be held October 26–30, 1998, starting at 9:00 a.m. on October 26. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Washington, DC 20036 (Metro stops Farragut West and Farragut North).

The agenda will be as follows: Monday, October 26: Opening Plenary Session Convenes at 9:00 a.m.: (1) Introductory Remarks; (2) Review and Approval of the Agenda (Monday); (3) Review and Approval of Summary of the Previous Meeting; (4) Sub-Group and Related Reports; (5) Position Papers Planned for Plenary Agreement; (6) SC–189/WG–52 Co-chair Progress Report. Tuesday, October 27–Thursday, October 29: (7) Sub-group Meetings (Sub-group 1, Interoperability Requirements; Sub-group 2, Safety Requirements; Sub-group 3, Performance Requirements). Friday, October 30: Closing Plenary Session: (8) Introductory Remarks; (9) Review and Approval of Agenda (Friday); (10) Review of Preliminary Meeting Minutes; (11) Sub-group and Related Reports; (12) Position Papers Planned for Plenary Agreement; (13) SC–189/WG–53 Co-chair Progress Report and Wrap-up.

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, by phone at (202) 833–9339, by fax at (202) 833–9434, or by e-mail at hmoses@rtca.org. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on September 30, 1998.

Jane P. Caldwell,

Designated Official.

SIXTH JOINT MEETING

RTCA Special Committee-189/EUROCAE Working Group-53 Air Traffic Service (ATS) Safety and Interoperability Requirements

DATE: October 26–30, 1998.

TIME: 9:00 am—Start time.

PLACE: RTCA, Inc., 1140 Connecticut Ace, NW, Suite 1020, Washington, DC 20036, Metro Stops: Faragut West, Faragut North, Tel: 202–833–9339, Fax: 202–833–9434, e-mail: *hmoses@rtca.org*

Agenda

1. Plenary Session, Monday
1.1 Introductory remarks
1.2 Review and approval of agenda (Monday)
1.3 Review and approval of meeting minutes
1.4 Sub-group (SG) and related reports
1.5 Position papers planned for plenary agreement
1.6 SC–189/WG–53 co-chair progress report

Sub Group Meetings (Tuesday through Thursday)

Sub Group 1—Interoperability Requirements
Sub Group 2—Safety Requirements
Sub Group 3—Performance Requirements

2. *Plenary Session, Friday*
2.1 Introductory remarks
2.2 Review and approval of agenda (Friday)
2.3 Review of preliminary meeting minutes
2.4 Sub-group (SG) and related reports
2.5 Position papers planned for plenary agreement
2.6 SC–189/WG–53 co-chair progress report and wrap-up

[FR Doc. 98–26883 Filed 10–6–98; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33662]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Omaha Public Power District

Omaha Public Power District (OPPD), a noncarrier, has agreed to grant local trackage rights to The Burlington Northern and Santa Fe Railway Company (BNSF) over OPPD's rail line,[1] between milepost 56.3 in Collegeview and milepost 6.0 in Arbor, a distance of approximately 50.3 miles in Otoe and Lancaster Counties, NE.[2]

The transaction is scheduled to be consummated on or shortly after October 1, 1998.

The purpose of the trackage rights is to permit BNSF using its own trains and crews to use OPPD's line through the end of the calendar year, at which time Kyle Railroad Company will assume operations over the line.[3]

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN,* 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate,* 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33662, 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, one copy of each pleading must be served on Sarah Whitley Bailiff, The Burlington Northern and Santa Fe Railway Company, 3017 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

Board decisions and notices are available on our website at ''WWW.STB.DOT.GOV.''

Decided: September 30, 1998.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 98–26775 Filed 10–6–98; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Omaha Public Power District—Acquisition—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33447 (STB served Sept. 12, 1997).

[2] On September 28, 1998, BNSF filed a petition for exemption in STB Finance Docket No. 33662 (Sub-No. 1), *The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Omaha Public Power District,* wherein BNSF requests that the Board permit the proposed local trackage rights arrangement described in the present proceeding to expire on December 31, 1998. That petition will be addressed by the Board in a separate decision.

[3] *See Kyle Railroad Company—Acquisition and Operation—Omaha Public Power District,* STB Finance Docket No. 33642 (STB served Aug. 25, 1998).

DEPARTMENT OF THE TREASURY

CUSTOMS SERVICE

Performance Review Board—Appointment of Members

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces the appointment of the members of the United States Customs Service Performance Review Boards (PRB's) in accordance with 5 U.S.C. 4313(c)(4). The purpose of the PRB's is to review senior executives' performance appraisals and to make recommendations regarding performance appraisals and performance awards.

EFFECTIVE DATE: October 1, 1998.

FOR FURTHER INFORMATION CONTACT: Robert M. Smith, Personnel Director, Office of Human Resources Management, United States Customs Service, 1300 Pennsylvania Avenue, N.W., Room 2.4–A, Washington, D.C. 20229; Telephone (202) 927–2900.

Background

There are two (2) PRB's in the U.S. Customs Service.

Performance Review Board 1

The purpose of this Board is to review the performance appraisals of senior executives rated by the Commissioner of Customs. The members are:

Kay Frances Dolan, Deputy Assistant Secretary for Human Resources, Department of the Treasury
John C. Dooher, Director, Washington Center, Federal Law Enforcement Training Center
James J. Flyzik, Deputy Assistant Secretary, Information Support and CIO, Department of the Treasury
Jane E. Vezeris, Assistant Director, Office of Administration, U.S. Secret Service
Karen A. Wehner, Acting Deputy Assistant Secretary Enforcement, Department of the Treasury

Performance Review Board 2

The purpose of this Board is to review the performance appraisals of all senior executives *except* those rated by the Commissioner of Customs. The members are:

William F. Riley, Director, Office of Planning, Office of the Commissioner
Assistant Commissioners:
Douglas M. Browning, International Affairs
S.W. Hall, Information and Technology/CIO
Stuart P. Seidel, Regulations and Rulings
Lance S. Statler, Congressional and Public Affairs
Deborah J. Spero, Human Resources Management
Bonni G. Tischler, Investigations
Robert S. Trotter, Field Operations
Homer J. Williams, Internal Affairs
Charles W. Winwood, Strategic Trade

Dated: October 2, 1998.

Raymond W. Kelly,

Commissioner of Customs.

[FR Doc. 98–26919 Filed 10–6–98; 8:45 am]

BILLING CODE 4820–02–P

UTAH RECLAMATION MITIGATION AND CONSERVATION COMMISSION

Notice of Finding of No Significant Impact for the Reconstruction of Wall Lake Reservoir

AGENCIES: The Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission).

ACTION: Notice of Finding of No Significant Impact (FONSI).

SUMMARY: On September 29, 1998 Michael C. Weland, Executive Director of the Utah Reclamation Mitigation and Conservation Commission signed the Finding of No Significant Impact (FONSI) that documents the decision to fund stabilization of Wall Lake Reservoir, located in the headwaters of the Provo River on the Wasatch-Cache National Forest. Wall Lake will be stabilized near the natural lake level with a low or no hazard dam structure. The Mitigation Commission prepared an Environmental Assessment (EA) to determine impacts of stabilizing Wall Lake at various elevations. The Forest Service is joint-lead agency on the project.

Wall Lake was dammed in the early 1900's for water storage. Through legislation (the Central Utah Project Completion Act) and several environmental impact statements, the determination was made to stabilize Wall Lake and other high elevation lakes as mitigation for constructing Jordanelle Reservoir, a Central Utah Project feature. When Jordanelle Reservoir was built, Wall Lake and other upper elevation reservoirs were no longer needed for water storage. Stabilization funding comes from Title III, Section 308 of CUPCA.

An initial decision was made in 1995 to stabilize Wall Lake at a moderate elevation. This decision was recently revisited in light of concerns over the Forest Service's lack of resources to own and operate a moderate elevation dam and the cost of a moderate elevation dam compared to the fish and wildlife benefits achieved. The Mitigation Commission's Draft and Final EA evaluated the alternatives of: constructing a moderate elevation dam, as prescribed by the 1995 decision; stabilizing Wall Lake at natural lake level; reconstructing Wall Lake as a reservoir to store water for winter instream flow maintenance; and, breaching the dam and stabilizing it below natural lake level. The public was consulted in late spring of 1996 and issues were raised regarding aquatic productivity, construction costs, aesthetics and water supply and the effect of road building and roadless area integrity. After considering public comments on the Draft EA and analyses of environmental effects, the natural lake level stabilization alternative was selected and the Commission issued its own FONSI, in accordance with its NEPA Rule (43 CFR Part 10010.20).

Funding reconstruction of Wall Lake Reservoir at a natural level meets the Commission's planning objectives to incorporate public opinion, use an ecosystem approach, utilize the best science available and do so in the least environmentally damaging manner. Alternative 2, which this decision implements, provides benefits to fish that are different, yet comparable to the other alternatives. It enhances the recreation experience at Wall Lake and maintains the area's potential for wilderness designation. It also costs the least of the alternatives. Under Alternative 2, flow regime will be a natural hydrologic flow with a non-fluctuating lake level. Heavy equipment will be transported by driving over the exiting walk-in route to Wall Lake, which will subsequently be restored. No roads will be constructed. The original 0.8 mile wagon route, wetlands and stream banks will be rehabilitated. Approximately 0.2 acres of disturbed vegetation and soils associated with existing campsites will be rehabilitated and 20 campsites relocated to areas naturally more resistant to human use, which will provide for future environmentally sensitive recreation use. About 1 mile of social, spur and main trails will be relocated, rehabilitated and/or reconstructed for future environmentally sensitive recreation use. No instream flows will be provided. The Forest Service will be the managing entity of the dam.

A Finding of No Significant Impact is made for this action because it does not significantly affect public health or safety; it has no adverse effects on unique geographic characteristics or ecologically significant or critical areas; does not have highly controversial or potentially significant environmental effects or risks; does not establish a precedent for future actions and does not have an adverse effect on species listed or proposed to be listed as Threatened or endangered, or on their habitats.

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained at the address and telephone number set forth below: Ms. Joan Degiorgio, Planning Manager, Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, UT 84101, Telephone: (801) 524–3146.

Dated: September 29, 1998.

Michael C. Weland,

Executive Director, Utah Reclamation Mitigation and Conservation Commission.

[FR Doc. 98–26880 Filed 10–6–98; 8:45 am]

BILLING CODE 4310–05–P

Federal Register

Wednesday
October 7, 1998

Part II

Environmental Protection Agency

40 CFR Parts 9 and 63

National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[FRL–6163–9]

RIN 2060–AE86

National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing plantsites that manufacture flexible polyurethane foam. These standards are estimated to reduce HAP emissions from all existing sources of flexible polyurethane foam manufacturing by over 12,500 Mg/yr. This represents a 70 percent reduction from baseline. This action also promulgates amendments to 40 CFR part 9. 40 CFR part 9 is amended by revising the tables to reflect OMB approvals under the Paperwork Reduction Act.

DATES: *Effective date:* October 7, 1998.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Office of the Federal Register as of October 7, 1998.

Compliance dates: Existing sources—October 8, 2001. New sources—at initial start-up.

ADDRESSES: *Docket.* Docket No. A–95–48, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8:00 a.m. to 5:30 p.m., Monday through Friday, at the following address in room M–1500, Waterside Mall (ground floor): U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460, telephone number (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in the Supplementary Information section of this preamble. For information concerning the analyses performed in developing this rule, contact Mr. David Svendsgaard, Organic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2380, facsimile number (919) 541–3470, electronic mail address ''svendsgaard.dave@epa.gov''.

SUPPLEMENTARY INFORMATION: The initial notification contains general facility information and a brief process discription.

Initial notification: Provide to EPA by February 4, 1999.

Notification of compliance status: Existing sources must provide EPA a notification of compliance status by April 6, 2002. New sources must provide EPA a notification of compliance status within the 180 days after initial start-up.

For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the following EPA Regional Office staff.

Director, Office of Environmental Stewardship, Attention: Air Compliance Clerk, U.S. EPA Region I (SEA), JFK Federal Building, Boston, MA 02203, (617) 565–3432

Umesh Dholakia, U.S. EPA Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–4023

Dianne Walker, U.S. EPA Region III (3AP11), 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–3297

Leonardo Ceron, U.S. EPA Region IV, Atlanta Federal Center, 61 Forsyth Street, NE, Atlanta, GA 30303–3104, (404) 562–9129

Shaun Burke, U.S. EPA Region V (AE–17J), 77 West Jackson Street, Chicago, IL 60604, (312) 353–5713

John Hepola, U.S. EPA Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 665–7220

Gary Schlicht, U.S. EPA Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7097

Heather Rooney, U.S. EPA Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6971

Kenneth Bigos, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1240

Andrea Wullenweber, U.S. EPA Region X, 1200 Sixth Avenue, OAQ–107, Seattle, WA 98101–1128, (206) 553–8760

Regulated Entities

Entities regulated by this action are flexible polyurethane foam production facilities. Typically, these entities are designated as SIC 3086. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	Producers of slabstock, molded, and rebond flexible polyurethane foam.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether a facility is regulated by this promulgated action, examine the applicability criteria in section 63.1290 of the rule. For questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Judicial Review

National emission standards for polyurethane foam production were proposed in the **Federal Register** on December 27, 1996 (61 FR 68406). Today's **Federal Register** action announces the EPA's final decision on the rule. Under section 307(b)(1) of the Act, judicial review of the final rule is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Under section 307(b)(2) of the Act, the requirements that are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

The following outline is provided to aid in reading the preamble to the final rule.

I. Summary of Considerations Made in Developing This Standard

A. Background and Purpose of the Regulation

The Clean Air Act was created in part ''to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population.'' [Clean Air Act, section 101(b)(1)] Section 112(b), as revised in 61 FR 30816 (June 18, 1996), lists 188 hazardous air pollutants (HAP) believed to cause adverse health or environmental effects. Section 112(d) requires that emission standards be promulgated for all categories and subcategories of ''major'' sources of these HAP and for many smaller ''area'' sources listed for regulation, pursuant to section 112(c). Major sources are defined as those that emit or have the potential to emit at least 10 tons per year of any single HAP or 25 tons per year of any combination of HAP.

On July 16, 1992 (57 FR 31576), the EPA published a list of categories of sources slated for regulation. This list included the flexible polyurethane foam production source category regulated by the standards being promulgated today. The statute requires emissions standards for the listed source categories to be promulgated between November 1992 and November 2000. On December 3, 1993, the EPA published a schedule for promulgating these standards (58 FR 63941). Standards for the flexible polyurethane foam production source category covered by this rule were proposed on December 27, 1996 (61 FR 68406).

For the purpose of this rule, the EPA has separated the flexible polyurethane foam production source category into three subcategories. These subcategories are slabstock, molded, and rebond flexible polyurethane foam production.

In the 1990 Amendments to the Clean Air Act, Congress specified that each standard for major sources must require the maximum reduction in emissions of HAP that the EPA determines is achievable, considering cost, non-air quality health and environmental impacts, and energy requirements. In essence, these Maximum Achievable Control Technology (MACT) standards would ensure that all major sources of toxic air pollutants achieve the level of control already being achieved by the better controlled and lower emitting sources in each category. This approach provides assurance to citizens that each major source of toxic air pollution will be required to employ good control measures to limit its emissions.

Available emission data, collected during the development of this rule, shows that pollutants that are listed in section 112(b)(1) and are emitted by flexible polyurethane foam production sources include methylene chloride, 2,4-toluene diisocyanate, methyl chloroform, methylene diphenyl diisocyanate, propylene oxide, diethanolamine, methyl ethyl ketone, methanol, and toluene. Methylene chloride comprises over 98 percent of the total HAP emissions from this industry. Following is a summary of the potential health effects associated with exposure to methylene chloride that will be reduced by the standard.

The acute (short-term) effects of methylene chloride inhalation in humans consist mainly of nervous system symptoms such as decreased visual and auditory functions. These effects appear to be reversible once exposure ceases. Short-term exposure to high concentrations of methylene chloride also irritates the nose and throat. The effects of chronic (long-term) exposure to methylene chloride in humans involve the central nervous system, and include headaches, dizziness, nausea, and memory loss. Animal studies indicate that inhalation of methylene chloride affects the liver, kidney, and cardiovascular system. Developmental or reproductive effects of methylene chloride have not been reported in humans, but limited animal studies have reported lowered fetal body weights in rats exposed to inhalation.

Human data are considered inadequate to prove cancer caused by exposure to methylene chloride; animal studies have shown increases in liver and lung cancer and benign mammary gland tumors following the inhalation of methylene chloride. Methylene chloride is classified as Group B2, probable human carcinogen of relatively low carcinogenic potency.

As noted earlier, there are other HAP emitted by flexible polyurethane foam production facilities. While the magnitude of emissions of these pollutants is dwarfed by those of methylene chloride, it is important to note that the EPA has not undertaken a risk assessment of these facilities. Therefore, it is possible that other HAP, such as diisocyanates, may also pose risks of concern. The seriousness of risks remaining after imposition of the final MACT standards will be examined at a later date, as provided for under Section 112(f) of the Clean Air Act.

The Clean Air Act strategy avoids dependence on a detailed and comprehensive risk assessment as a pre-requisite for controlling air toxics. In addition, this is not a ''significant'' rule as defined by Executive Order 12866, and a specific benefits analysis is not required. Because of these issues, a detailed and intensive risk assessment of potential effects from HAP emitted from flexible foam production plants is not included in this rulemaking.

The effects of HAP vary in severity based on the level and length of exposure and are influenced by source-specific characteristics such as emission rates and local meteorological conditions. The extent and degree to which the health effects may be experienced is dependent upon: (1) the ambient concentrations observed in the area (e.g., as influenced by emission rates, meteorological conditions, and terrain); (2) the frequency and duration of exposures; (3) characteristics of the exposed individuals (e.g., genetics, age, pre-existing health conditions, and lifestyle), which vary significantly with the population; and (4) pollutant specific characteristics (e.g., toxicity, half-life in the environment, bioaccumulation, and persistence).

Due to the volatility and relatively low potential for bioaccumulation of these pollutants, air emissions are not expected to deposit on land or water and cause subsequent adverse health or ecosystem effects.

The final standards give existing sources 3 years from the date of promulgation to comply. Subject to certain limited exceptions, this is the maximum amount of time allowed under the Clean Air Act. New sources are required to comply with the standard upon initial startup. The EPA

believes these standards to be achievable for affected sources within the time provided.

Included in the final rule are methods for determining initial compliance, as well as monitoring, recordkeeping, and reporting requirements. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule.

Two of the HAP used and emitted by the flexible polyurethane foam industry (2,4-toluene diisocyanate and propylene oxide) are subject to the risk management program rule requirements under section 112(r) of the 1990 Clean Air Act Amendments. The risk management program rule was published in the **Federal Register** on June 20, 1996 (61 FR 31668). Facilities handling a listed substance in quantities greater than a threshold amount must comply with the risk management requirements by June 21, 1999. The list of substances and threshold quantities were published in the **Federal Register** on January 31, 1994 (59 FR 4478).

B. Source of Authority

The amended Clean Air Act requires the EPA to promulgate national emission standards for sources of HAP. Section 112(d) provides that these standards must reflect ''* * * the maximum degree of reduction in emissions of the HAP * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies. * * *'' [42 U.S.C. 7412(d)(2)]. This level of control is referred to as the maximum achievable control technology (MACT). The Clean Air Act goes on to establish the least stringent level of control for MACT; this level is termed the ''MACT floor.''

For new sources, the standards for a source category or subcategory ''shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator'' [section 112(d)(3)]. Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for source categories and subcategories with 30 or more sources, or the average emission limitation achieved by the best performing 5 sources for sources or subcategories with fewer than 30 sources [section 112(d)(3)]. These two minimum levels of control define the MACT floor for new and existing sources.

C. Stakeholder and Public Participation

Numerous representatives of the flexible polyurethane foam production industry were consulted in the development of this standard. Industry representatives have included trade associations and flexible foam producers responding to Information Collection Requests. The EPA also received input from representatives from State and Regional environmental agencies. Representatives from other interested EPA offices and programs participated in the regulatory development process as members of the Work Group. The Work Group was involved in the regulatory development process, and was given opportunities to review and comment on the standards before proposal and promulgation. Therefore, the EPA believes that the impact on other EPA offices and programs has been adequately considered during the development of these standards. Finally, industry representatives, regulatory authorities, environmental groups, and the public as a whole had the opportunity to comment on the proposed standards and to provide additional information during the public comment period that followed proposal.

The standards were proposed in the **Federal Register** on December 27, 1996 (61 FR 68406). The preamble and Basis and Purpose Document for the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. To provide interested individuals the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered at proposal. However, the public did not request a hearing and, therefore, one was not held. The public comment period was from December 27, 1996 to February 25, 1997. A total of 12 comment letters were received. Commenters included industry representatives and State agencies. The comments were carefully considered, and changes were made in the proposed standards when determined by the EPA to be appropriate. A detailed discussion of these comments and responses can be found in the Basis and Purpose Document for Final Standards, which is referenced in Section V.A. of this preamble. The summary of comments and responses in the Basis and Purpose Document for the Final Standards serves as the basis for the revisions that have been made to the standards between proposal and promulgation. Section IV of this preamble discusses some of the major changes made to the standards.

II. Summary of Promulgated Standards

HAP emissions from the following types of emission points (i.e., emission source types) are being covered by the final standard: storage vessels, equipment leaks, production line, mixhead flush, mold release agents, and auxiliary blowing agent (ABA) use. The HAP emitted and emission points required to be controlled by these standards vary according to whether the facility produces slabstock, molded, or rebond flexible polyurethane foam.

The affected source is defined as each process that produces flexible polyurethane or rebond foam, emits a HAP, and is located at a major source plant site. A process consists of raw material storage; production equipment and piping, ductwork, and other associated equipment; and curing and storage areas. The regulations do not apply to processes dedicated exclusively to the fabrication (i.e., gluing or otherwise bonding foam pieces together) of flexible polyurethane foam or to research and development.

Existing sources subject to the regulation are required to comply within three years of the effective date of the regulation, and new sources would be required to comply at initial startup. Following is a description of the requirements of the standards.

A. Standards for Molded and Rebond Flexible Polyurethane Foam Production

At new and existing molded and rebond flexible polyurethane foam facilities subject to the rule, the use of HAP or HAP-based products as equipment cleaners or mold release agents is prohibited. The one exception to this prohibition is that diisocyanates may be used at molded foam facilities to flush the mixhead and associated piping during periods of startup or maintenance, as long as such solvents are contained in closed loop systems and are re-used in production. Molded and rebond foam producers are required to submit an initial notification and maintain records to demonstrate that the equipment cleaners and mold release agents used are not HAP-based.

B. Standards for Slabstock Flexible Polyurethane Foam Production

The requirements for slabstock foam facilities are separated into two basic categories: (1) diisocyanates used as a reactant in the foam process; and (2) HAP used as an auxiliary blowing agent (ABA) and for equipment cleaning. The

diisocyanate HAP used in the production of slabstock foam is almost always 2,4-toluene diisocyanate (TDI), and the HAP used as an ABA and equipment cleaner is almost always methylene chloride. The rule covers emissions from two types of TDI emission points— storage vessels and equipment leaks. HAP ABA emissions from the following process points are covered: storage vessels, equipment leaks, the foam tunnel, and equipment cleaning.

C. Standards for Diisocyanate Emissions From Slabstock Flexible Polyurethane Foam Production

The standards cover emissions of diisocyanate from storage vessels and equipment leaks. For new and existing sources, there are two compliance options for storage vessels. The vessel can be equipped with a vapor return line that returns vapors displaced during storage vessel filling to the tank truck or rail car. During each unloading event, the vapor return line must be inspected for leaks. If a leak is detected, it must be repaired before the next unloading event. The second option is to equip the storage vessel with a system in which displaced vapors are routed through a carbon adsorption system prior to being discharged to the atmosphere. Storage vessels equipped with carbon adsorption systems must monitor the outlet of the carbon system to detect breakthrough. If breakthrough is detected, the carbon must be replaced before the next unloading event.

Transfer pumps in diisocyanate service must be either sealless pumps, or submerged pump systems that are visually monitored weekly to detect leaks. Any transfer pump leaks detected must be repaired within 15 calendar days. Diisocyanate leaks for other components in diisocyanate service (valves, connectors, and pressure-relief valves) detected by visual, audible, or any other detection method must be repaired within 15 calendar days, as well.

D. Standards for HAP ABA Emissions From Slabstock Flexible Polyurethane Foam Production

This regulation requires that owners or operators comply with requirements for each of four types of emission points (HAP ABA emissions from storage vessels, equipment leaks, and the production line, and HAP emissions from equipment cleaning). These limitations are described below.

However, since the same HAP, methylene chloride, is frequently used as both an ABA and as an equipment cleaner, this rule allows owners and operators flexibility in complying with the HAP ABA and equipment cleaning provisions. As an alternative to the emission point specific limitations, the owner or operator can elect to comply with a source-wide emission limitation. Owners or operators selecting the source-wide emission limitation must maintain the combined emissions from all of these sources below the required level. While this option is slightly more stringent than the emission point specific limitations, the EPA believes the flexibility it provides will prove to be beneficial for sources selecting this alternative.

1. HAP ABA Storage Vessel Requirements

The requirements for HAP ABA storage vessels are similar to the diisocyanate storage vessel requirements discussed above. Storage vessels can be equipped with either a vapor return line to the tank truck or railcar, or a carbon adsorption system. The requirements for new and existing sources are identical.

2. HAP ABA Equipment Leaks

These standards contain requirements for pumps, valves, connectors, pressure-relief devices, and open-ended valves or lines in HAP ABA service at new and existing sources.

Pumps and valves must be monitored quarterly for leaks using Method 21, 40 CFR part 60, appendix A, where a leak is defined as an instrument reading of 10,000 parts per million or greater. Leaks must be repaired within 15 calendar days after their detection. Alternatively, leakless pumps can be used. Valves that are designated as unsafe-to-monitor must be monitored as frequently as possible, and difficult-to-monitor valves must be monitored once per year.

Connectors must be monitored annually using Method 21, unless the connector has been opened or the seal broken. In these cases, the connector must be monitored within 3 months after being returned to HAP ABA service. As with the other components, a leak is defined as an instrument reading of 10,000 parts per million or greater, and a leak must be repaired within 15 calendar days. Connectors can also be designated as unsafe-to-monitor, in which case they must be monitored as frequently as possible.

Pressure-relief devices must be monitored using Method 21 if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method. If a leak is found (10,000 parts per million), it must be repaired within 15 calendar days. Each open-ended valve or line in HAP ABA service must be equipped with a cap, blind flange, plug, or a second valve.

3. HAP ABA Emissions from the Production Line

The rule includes an emission limit for HAP ABA emissions from the production line at affected slabstock facilities. There are two options for complying with the requirements for HAP ABA emissions from the production line— rolling annual compliance or monthly compliance. When using a rolling annual basis, compliance is determined each month, based on the previous 12-month period. Under the monthly compliance alternative, compliance is based on the previous month. Both options require comparing actual HAP ABA emissions to allowable HAP ABA emissions.

Rolling Annual Compliance. This regulation recognizes the variability in HAP ABA emissions for different grades of foam, where a grade of foam is determined by its density and indentation force deflection (IFD). Therefore, the allowable emission level is dependent on the mix of foam grades produced during the 12-month compliance period. The nucleus of the HAP ABA emission limitation provisions is the HAP ABA formulation limitation equation, which determines an allowable amount of HAP ABA for each grade of foam. For existing sources, this equation is:

$$ABA_{limit} = -0.25\ (IFD) - 19.1\left(\frac{1}{IFD}\right) - 16.2\ (DEN) - 7.56\left(\frac{1}{DEN}\right) + 36.5$$

Where:

ABA_{limit} = HAP ABA formulation limitation, parts HAP ABA allowed per hundred parts polyol (pph)

IFD = Indentation force deflection (25 percent), pounds

DEN = Density, pounds per cubic foot

Therefore, for each foam grade produced during the 12-month period, the owner or operator must determine the HAP ABA formulation limitation. This equation was developed using actual formulation data from the best performing foam production facilities. Negative values are not intended to be used in calculating allowable emissions. That is, zero is the formulation limitation if the results of the formulation limitation equation are negative.

For new sources, the equation is used to determine the HAP ABA formulation limitation for a limited number of grades. However, the formulation limitation for many higher-density, higher-IFD foams is automatically set to zero. The following table describes how the HAP ABA formulation limitation for new sources is determined.

Values in parts ABA per hundred parts polyol		Density ranges (pounds per cubic foot)				
		0-0.95	0.96-1.05	1.06-1.15	1.16-1.40	1.41+
IFD	0-10	Use Equation				
	11-15					
	16-20					
	21-25					
	26-30					0
	31+					

For any foam grade, the owner or operator has the option to designate the HAP ABA formulation limitation as zero. The benefit to such a designation is that the IFD and density testing requirements, as well as the polyol usage monitoring and recordkeeping requirements, are not required for foam grades for which the owner has designated the HAP ABA formulation limitation as zero.

The allowable HAP ABA emissions for a consecutive 12-month period are calculated as the sum of allowable monthly HAP ABA emissions for each of the individual 12 months in the period. Allowable HAP ABA emissions for each individual month are calculated using the following equation.

$$\text{emiss}_{\text{allow, month}} = \sum_{j=1}^{m}\left(\sum_{i=1}^{n}\frac{(\text{limit}_i)\,(\text{polyol}_i)}{100}\right)_j$$

Where:

$\text{emiss}_{\text{allow, month}}$ = Allowable HAP ABA emissions from the slabstock affected source for the month, pounds

m = number of slabstock foam production lines at the affected source

n = Number of foam grades produced in the month on foam production line j

limit_i = HAP ABA formulation limit for foam grade i, parts HAP ABA per 100 parts polyol

polyol_i = Amount of polyol used in the month in the production of foam grade i on foam production line j, pounds

The amount of polyol used is a key component of this analysis, and it must be determined by monitoring the amount of polyol added to the slabstock foam production line at the mixhead when foam is being poured. (See section II. F. 2. below for more information.) Actual HAP ABA emissions are determined by monitoring the HAP ABA added to the slabstock foam production line at the mixhead when foam is being poured.

This regulation also contains provisions to allow for the use of HAP ABA recovery devices. If a recovery device is used, the actual HAP emissions are the difference between the uncontrolled HAP ABA emissions and the HAP ABA recovered. The uncontrolled HAP ABA emissions are determined by monitoring the HAP ABA added to the slabstock foam production line at the mixhead, as discussed above. The amount of HAP ABA recovered is required to be monitored.

Monthly Compliance. As an alternative to the rolling annual compliance approach, owners or operators can elect to comply each month. If this approach is selected, actual and allowable emissions are determined as discussed above. However, compliance is determined by comparing allowable and actual emissions for each month, rather than

for the 12 previous months. An advantage of the monthly compliance approach is that a violation of the allowable monthly HAP limitation constitutes up to 30 days of violation for that compliance period, whereas a violation of the allowable annual total of HAP calculated in any given month constitutes up to 365 days of violation for that compliance period. This alternative is allowed because it is more stringent than the rolling annual compliance approach. In addition, as with the rolling average compliance approach, the use of HAP ABA recovery devices is permitted with the monthly compliance approach.

4. Equipment Cleaning HAP Emissions

Affected sources complying with the emission point specific limitations are prohibited from using a HAP, or a HAP-based product, as an equipment cleaner.

5. Source-wide Emission Limitation Alternative

This alternative allows the owner or operator to choose which of the HAP ABA emission sources to control, but is only available for sources using no more than one HAP as an ABA and equipment cleaner in the process. In other words, an owner or operator could choose not to control HAP ABA storage vessels and equipment leaks, and instead achieve a higher HAP ABA emission reduction from the production line. Alternatively, an owner or operator could choose to control emissions from equipment leaks and storage to ''save'' as much HAP ABA as possible for use in the production line. In addition, under the source-wide alternative, a facility could utilize a HAP equipment cleaner, as long as the HAP used as the equipment cleaner is the same chemical as the HAP ABA. However, the equipment cleaning HAP emissions must be offset by emission reductions from one of the HAP ABA emission sources.

An owner or operator electing to comply with the source-wide emission limitation for HAP ABA and equipment cleaning determines compliance by comparing actual emissions from the three HAP ABA emission sources and from equipment cleaning with an allowable emissions level. Compliance is determined each month for the previous 12-month period.

The allowable emissions level is determined using the same procedures discussed above for HAP ABA emissions from the production line. Therefore, the total HAP ABA and equipment cleaning HAP emissions allowed under this alternative are equivalent to the allowed HAP ABA emissions from the production line if the emission point specific alternative is selected.

The actual HAP ABA and equipment cleaning emissions are determined by performing a material balance at the HAP ABA storage vessel, using the following equation:

$$PWE_{actual} = \sum_{i}^{n} \left(ST_{i,\,begin} - ST_{i,\,end} + ADD_{i} \right)$$

Where:

PWE_{actual} = Actual source-wide HAP ABA and equipment cleaning HAP emissions for a month, pounds/month

$ST_{i,begin}$ = Amount of HAP ABA in storage tank i at the beginning of the month, pounds

$ST_{i,\,end}$ = Amount of HAP ABA in storage tank i at the end of the month, pounds,

ADD_i = Amount of HAP ABA added to storage tank i during the month, pounds

n = Number of HAP ABA storage vessels

Weekly monitoring of the level of HAP ABA in the storage vessels is required, thus providing the amounts for the beginning and end of month to be used in the above equation. In addition, the amount of each HAP ABA delivery must be determined. The requirements for the monitoring of HAP ABA storage vessel levels and the amount of HAP ABA added during each delivery are discussed later in this section. Emission reductions achieved by recovery devices can be accounted for by monitoring the amount of HAP ABA recovered.

As with the emission point specific limitation for HAP ABA from the production line, the source-wide emission limitation includes a monthly compliance alternative.

E. Monitoring Requirements

This regulation contains monitoring requirements for five situations: (1) storage vessels complying using carbon adsorption systems; (2) polyol and HAP ABA added to the production line at the mixhead; (3) recovered HAP ABA when a recovery device is used; (4) the amount of HAP ABA in a storage vessel; and (5) the amount of HAP ABA added to a storage vessel.

1. Storage Vessel Complying Using Carbon Adsorption Systems

Storage vessels equipped with carbon adsorption systems must monitor either the concentration of HAP or the concentration of organic compounds at the exit of the adsorption system. Measurements of HAP concentration must be made using Method 18 Appendix A of 40 CFR 60 and measurements of organic compound concentrations must be made using Method 25A. Outlet concentration measurements must be made monthly (or each time the vessel is filled, if filling occurs less frequently than monthly). Alternatively, the owner or operator can implement an alternative monitoring program where monitoring of HAP or organic compound concentrations during vessel filling must be conducted at an interval no greater than 20 percent of the carbon replacement interval, which is established using a design analysis.

2. Polyol and HAP ABA Monitoring at the Mixhead

All slabstock facilities must continuously monitor the amount of polyol added to the slabstock foam production line at the mixhead when foam is being poured to allow the calculation of allowable emissions. The regulation contains two options for continuously monitoring the polyol added: (1) a device installed and operated to monitor and record pump revolutions per minute, or (2) a flow rate monitoring device installed and operated to measure the amount of polyol added at the mixhead. Either of these devices must be calibrated at least once each 6 months, and must have an accuracy to within ± 2 percent. The owner or operator can develop an alternative monitoring program to monitor the amount of polyol added at the mixhead. The components of an alternative monitoring plan must include, at a minimum: (1) description of the parameter to be monitored to measure the amount of HAP ABA or polyol added at the mixhead; (2) a description of how the monitoring results will be recorded, and how the results will be converted into amount of

HAP ABA or polyol delivered to the mixhead; (3) data demonstrating that the monitoring device is accurate to within ± 2.0 percent; and (4) procedures to ensure that the accuracy of the parameter monitoring results is maintained. These procedures shall, at a minimum, consist of periodic calibration of all monitoring devices. An alternative plan must be submitted to the Administrator for approval.

In addition, if an owner or operator elects to comply with the emission point specific limitations, the amount of HAP ABA added to the slabstock foam production line at the mixhead must be continuously monitored when foam that contains HAP ABA in the formulation is being poured. The requirements for monitoring the amount of HAP ABA added are the same as discussed above for polyol, except that the device must be calibrated at least once per month.

3. Recovered HAP ABA Monitoring

The rule also includes monitoring requirements for slabstock facilities using a recovery device to reduce HAP ABA emissions. The amount of HAP ABA recovered is determined by using a device that monitors the cumulative amount of HAP ABA recovered by the recovery device. This device must be installed, calibrated, maintained, and operated according to the manufacturer's specifications, and must be certified by the manufacturer to be accurate to within ± 2.0 percent. The rule requires the owner or operator to develop a recovered HAP ABA monitoring and recordkeeping plan and submit it to the EPA for approval.

4. Monitoring to Determine Amount of HAP ABA in a Storage Vessel

For slabstock sources complying with the source-wide alternative, the amount of HAP ABA in a storage vessel must be monitored weekly using a level measurement device. The level measurement device must be calibrated initially and at least once per year thereafter. If the level measurement device produces an output signal, it must have either a digital or printed output. If the level measurement device is a visually-read device (i.e., gauge glass), it must have permanent graduated markings to indicate HAP ABA level in the storage tank.

5. Monitoring to Determine the Amount of HAP ABA Added to a Storage Vessel

The amount of HAP ABA added to a storage vessel during a delivery must be determined using any one of four options. The first option requires that the amount of HAP ABA in the storage vessel be measured before and after the loading, provided that the level measurement device meets the requirements discussed above in section ''II.E.4''. The second option requires that the volume of HAP ABA added to the storage vessel be determined by monitoring the flow rate using a device with an accuracy of 98 percent or greater, and which is calibrated at least once every six months. The third option allows the owner or operator to calculate the weight of HAP ABA added by determining the difference between the full weight of the transfer vehicle prior to unloading into the storage vessel and the empty weight of the transfer vehicle after unloading has been completed. This weight must be determined using a scale approved by the State or local agencies using the procedures contained in the National Institute of Standards and Technology Handbook 44, or a scale determined to be in compliance with the requirements of the National Institute of Standards and Technology Handbook 44 at least once per year by a registered scale technician. The final option for determining the amount of HAP ABA added to a storage vessel allows the owner or operator to develop an alternative monitoring program. The alternative monitoring program must include, at a minimum, a description of the parameter to be monitored to determine the amount of the addition, a description of how the results of the monitoring will be recorded and converted into the amount of HAP ABA added, data demonstrating the accuracy of the monitoring measurements, and procedures for ensuring that the accuracy of the monitoring measurements is maintained. Alternative monitoring programs must be submitted to the EPA for approval.

F. Testing Requirements

There are two instances where the use of test methods is required. First, for slabstock owners or operators complying with the emission point specific requirements for HAP ABA equipment leaks, testing must be conducted using Method 21 of 40 CFR part 60, subpart A.

Second, all slabstock affected sources must test each grade of foam produced during a single production ''run'' to verify the IFD and density, as these are integral inputs into the equation to determine the HAP ABA formulation limitation. This rule requires these parameters to be determined using American Society for Testing and Materials (ASTM) D3574 using a sample of foam cut from the center of the foam bun. The maximum sample size for which the IFD and density is determined shall not be larger than 24 inches by 24 inches by 4 inches. IFD and density testing is not required for foam grades for which the owner or operator has designated the HAP ABA formulation limitation as zero. The IFD and density testing results must be conducted and recorded within 10 working days of the date the foam was produced.

G. Alternative Means of Emission Limitation

This regulation also contains provisions to allow an owner or operator to request approval to use an alternative means of emission limitation. Examples of alternative means of emission limitation could be the reduction of HAP ABA by a combustion device, use of a storage tank control not mentioned in the regulation, or an alternative program to reduce HAP ABA equipment leak emissions. The request, which may be submitted in the precompliance report for existing sources, the application for construction or reconstruction for new sources, or at any other time after the initial compliance, must include a complete description of the alternative means of emission limitation and documentation demonstrating equivalency with the requirements in the regulation. The owner or operator can begin using the alternative means of emission limitation upon approval of the request by the Administrator.

H. Applicability of General Provisions

The General Provisions for Part 63 (40 CFR part 63, subpart A) create the technical and administrative framework for implementing national emission standards established under section 112 of the Clean Air Act. The General Provisions establish baseline applicable requirements for activities such as performance testing, monitoring, notifications, recordkeeping, and reporting. They also implement statutory provisions such as compliance dates for new and existing sources and preconstruction review requirements. The General Provisions apply to all sources that are affected by Part 63 standards, including the standard for flexible polyurethane foam production. However, individual standards may override certain requirements in the General Provisions. This regulation contains a table outlining the sections of the General Provisions that are applicable to the standard for flexible polyurethane foam production. It also outlines sections of the General Provisions that are being overridden or not incorporated. The performance test requirements; monitoring requirements;

and startup, shutdown, and malfunction plan requirements of the General Provisions do not apply to this standard. Most of the other requirements in the General Provisions do apply.

I. Reporting Requirements

This regulation requires the submittal of seven types of reports: (1) initial notification, (2) application for approval of construction or reconstruction, (3) precompliance report, (4) notification of compliance status, (5) semi-annual compliance reports, (6) other reports, and (7) annual compliance certifications. These reports are briefly described below.

1. Initial Notification

Each owner or operator of an affected source must submit an initial notification to the Administrator within 120 days after promulgation of the rule. This initial notification must contain an identification of the facility that is subject to the regulation, the name and address of the owner or operator of the subject facility, and a brief description of the production process.

2. Application for Approval of Construction or Reconstruction

Owners or operators constructing a new affected source, or reconstructing an existing affected source, must submit an application for approval of construction or reconstruction. This application must contain identification information such as location, owner/operator, and the anticipated completion and start-up dates. The application must also contain a description of the planned process and how compliance will be achieved. The application must be submitted as soon as practicable before the construction or reconstruction is planned to commence. A permit application can take the place of this report.

3. Precompliance Report

One year before the compliance date, each existing owner or operator of an existing slabstock facility must submit a precompliance report. This report must contain notification of whether compliance will be achieved using the emission point specific HAP ABA and equipment cleaning emission limitation or the source-wide emission limitation. The report must also indicate if either of the following compliance options are going to be utilized:

- If compliance will be achieved on a monthly basis for either the emission point specific limitation for HAP ABA emissions from the production line or the source-wide emission limitation.
- If a recovery device will be used to reduce HAP ABA emissions.

This report must also contain a description of how the amount of polyol and HAP ABA (if required) added at the mixhead will be monitored. If the owner or operator is developing an alternative monitoring plan, the plan must be submitted with the precompliance report. In addition, owners or operators of slabstock flexible polyurethane production facilities using a recovery device to reduce HAP ABA emissions must include a description of the HAP ABA monitoring and recordkeeping program to determine the amount of HAP ABA recovered in the precompliance report.

Each owner or operator of an affected source complying with the source-wide emission limitation must submit a description of how the amount of HAP ABA in a storage vessel will be determined, and a description of how the amount of HAP ABA added to a storage vessel during a delivery will be monitored. If the owner or operator is developing an alternative monitoring program for the determination of HAP ABA added to a storage vessel, this program must be submitted with the precompliance report.

The rule specifies that if the Administrator does not notify the owner or operator of objections to an alternative monitoring program or a recovered HAP ABA monitoring and recordkeeping program within 45 days after its receipt, the program is automatically assumed to be approved.

4. Notification of Compliance Status

Each owner or operator of a new or existing slabstock affected source must submit a notification of compliance status report 180 days after the compliance date. This report must contain notification of the compliance status of diisocyanate storage vessels and diisocyanate transfer pumps. In addition, this report must contain compliance information for HAP ABA storage vessels and equipment in HAP ABA service.

5. Semi-annual Reports

Each slabstock owner or operator must submit semi-annual reports. For affected sources complying with the rolling annual compliance provisions (for either the emission point specific HAP ABA limitations or the source-wide emission limitation), the report must contain the allowable and actual HAP ABA emissions (or allowable and actual HAP ABA and equipment cleaning HAP emissions) for each of the 12-month periods ending on each of the six months in the reporting period. For affected sources complying with the monthly compliance alternative, the report must contain the allowable and actual HAP ABA emissions (or allowable and actual HAP ABA and equipment cleaning HAP emissions) for each of the six months in the reporting period. Affected sources complying with the storage vessel provisions of § 63.1294(a) or § 63.1295 using a carbon adsorption system must include unloading events that occur after breakthrough is detected where the carbon in the system is not replaced. Any equipment leaks that were not repaired in accordance with the rule requirements must also be included in the semi-annual compliance report.

6. Other Reports

A slabstock owner or operator must provide a report to the Administrator indicating the intent to change the selected compliance alternative (emission point specific limitations or source-wide emission limitation). This report must be submitted at least 180 days prior to the change.

Similarly, the intent to switch the compliance method (rolling annual or monthly) must be reported. This report must be submitted at least 180 days prior to the change.

7. Annual Compliance Certifications

Each affected source is required to submit a compliance certification annually. Each compliance certification must be signed by a responsible official of the company that owns or operates the affected source.

J. Recordkeeping Requirements

Records must be completed in a form suitable and readily available for expeditious inspection and review, and must be kept for a period of 5 years. At a minimum, the most recent 2 years of data must be retained on-site.

Records are required for storage vessels, equipment leaks, and HAP ABA. If the owner or operator complies with the source-wide emission limitation, no records are required for HAP ABA storage vessel controls (see section ''I.J.1'' below) or controls for equipment in HAP ABA service (see section ''I.J.2'' below).

1. Storage Vessel Records

All slabstock affected sources must maintain records listing all diisocyanate storage vessels and the type of control utilized to comply with the regulation. For the storage vessels complying through the use of a carbon adsorption system, the records must include the design parameters of the system and the monitoring records.

2. Equipment Leak Records

All slabstock affected sources must maintain a list of components in diisocyanate service, and a description of the control utilized for each transfer pump. If the affected source is complying with the emission point specific limitations, records listing each component in HAP ABA service must also be maintained.

When a leak, as defined in the rule, is detected for any component, the component must be marked with a readily visible identification until the leak is repaired. For valves, the identification must remain until 2 successive quarters have passed where no leak is detected. Records must be kept specifying when the leak was detected, when it was repaired, and when the identification was removed.

3. HAP ABA records

All slabstock affected sources must keep records integral to the calculation of allowable emissions. These include a daily log of foam runs and daily records of the amount of polyol added at the mixhead for each grade of foam. The results of the density and IFD testing for each grade must be recorded within 10 working days of the production of the foam. Polyol usage and density/IFD testing records are not required for those foam grades for which the owner or operator has designated the HAP ABA formulation limitation as zero. Monthly, a cumulative record must be maintained listing the foam grades containing HAP ABA produced during the month, along with the total amount of polyol used for each foam grade, and the corresponding allowable HAP ABA (or HAP ABA and equipment cleaning) emissions level. If complying on an annual rolling basis, the allowable HAP ABA (or HAP ABA and equipment cleaning) emissions level for the previous 12 consecutive months must also be recorded each month.

For affected sources complying with the emission point specific limitation for HAP ABA emissions from the production line, records must be kept regarding the amount of HAP ABA added at the mixhead each day. In addition, there must also be a cumulative HAP ABA usage record for each month, and a cumulative record for the previous 12 consecutive months (if complying on an annual rolling basis).

For affected sources complying with the source-wide emission limitation, monthly records must be kept regarding the actual HAP ABA and equipment cleaning emissions, as measured at the storage vessel. Also required are weekly records of the HAP ABA storage vessel levels and records of the amount of HAP ABA added to the storage vessel during each delivery. If complying on an annual rolling basis, monthly records must be kept of the actual cumulative HAP ABA and equipment cleaning emissions for the previous 12 months.

If an affected source uses a recovery device to reduce HAP ABA emissions, records must be kept regarding the amount of HAP ABA recovered. In addition, records of all required calibrations must be maintained.

III. Summary of Impacts

This section identifies the facilities affected by these NESHAP. It also presents the air, non-air environmental (waste and solid waste), energy, cost, and economic impacts resulting from the control of HAP emissions under this rule.

A. Facilities Affected by These NESHAP

It is estimated that 176 sources will be subject to the regulation. This number includes 57 slabstock foam facilities, 21 facilities with slabstock and rebond processes, and 98 molded foam facilities. It is estimated that 130 molded foam facilities are area sources, and will not be subject to this rule. It is also estimated that all rebond facilities not collocated with a slabstock foam process are area sources.

B. Air Impacts

These standards are estimated to reduce HAP emissions from all existing sources of flexible polyurethane foam manufacturing by over 12,500 Mg/yr. This represents a 70 percent reduction from baseline. This includes over 10,400 Mg/yr from slabstock foam production (69 percent reduction from baseline) and over 2,100 Mg/yr from molded foam production (73 percent reduction from baseline). No reduction is expected from rebond foam production, since it is believed that the entire industry has already stopped using HAP cleaners and mold release agents.

C. Other Environmental Impacts

The Agency estimates that there will be minimal secondary environmental impacts from this regulation. There could be a slight increase in volatile organic compound (VOC) air emissions if facilities switch from a HAP-based product to a non-HAP VOC based product for equipment cleaning, mold release agents, and mixhead flushes. Wastewater could contain minor amounts of HAP if carbon adsorption systems are used to comply with the HAP ABA limitations, but the Agency believes the use of such systems will be rare. The only potential hazardous waste impact would be due to the disposal of spent carbon adsorption canisters used to control storage vessels. The Agency does not believe these impacts to be significant.

D. Energy Impacts

Due to the use of several control technologies in both slabstock and molded foam, there will be some increase in the amount of energy used by this source category. The impact will vary depending on which control technology is chosen by each facility, but is not expected to be significant.

E. Cost Impacts

Cost impacts include the capital costs of new equipment that reduces HAP emissions, the cost of energy required to operate the equipment, operation and maintenance costs, as well as cost savings. Also, cost impacts include the costs of monitoring, recordkeeping, and reporting associated with the promulgated standards. Average cost effectiveness ($/Mg of pollutant removed) is also presented as part of cost impacts and is determined by dividing the annual cost by the annual emission reduction.

For the molded subcategory, the estimated total capital investment is $5.9 million, and the total estimated annual cost is around $715,000 per year. The total annual HAP emission reduction is 2,100 Mg/year, resulting in a cost effectiveness of $350/Mg per year.

For the rebond subcategory, it is anticipated that there will be no cost or environmental impacts, since it is believed that every facility already complies with these provisions. The regulation will prohibit the future use of HAP-based cleaners and mold release agents in this industry.

For the slabstock subcategory, the total estimated capital investment is around $68 million, and the total estimated annual cost is $7.3 million per year. The total annual HAP emission reduction is over 10,400 Mg/yr, resulting in a cost-effectiveness of around $700/Mg per year.

Therefore, the total capital investment for this regulation is estimated at $74 million. The total estimated annual cost is $8.1 million per year. The total emission reduction is over 12,500 Mg/yr, resulting in an overall cost effectiveness of around $650/Mg per year.

F. Economic Impacts

An economic impact analysis of these standards was prepared to evaluate primary and secondary impacts on: (1) the slabstock and molded foam sectors of the flexible polyurethane foam

production industry; (2) consumers; and (3) society.

For the slabstock foam sector of the industry, the total annualized social cost (in 1994 dollars) of this promulgated regulation is $7.18 million. Market price is estimated to increase by 2.20 percent, and the corresponding decrease in market output is estimated to be 1.08 percent. Employment loss is estimated to be 1.09 percent (i.e., 96 jobs).

For the molded foam sector, impacts on price and output are estimated to be smaller than those predicted for the slabstock market. The total annualized social cost (in 1994 dollars) of the promulgated standards for the molded foam subcategory is $0.71 million. Price is estimated to increase by 1.14 percent, and the corresponding decrease in market output is estimated to be 0.56 percent. Employment loss in the molded sector is estimated to be 0.67 percent (37 jobs).

However, given the predicted changes in market price and output, the industry will experience increases in the value of shipments (i.e., industry profits), because estimated price increases more than offset the lower production volumes. Since no significant export or import markets exist for the industry (due to prohibitive transportation costs), no impacts on foreign trade are expected.

The analysis also predicts the number of plant closures that may result from the imposition of compliance costs on a facility. For the analysis, a worst-case assumption is adopted that the facilities with the highest emission control costs are the least efficient producers in the market. Actual plant closures will be less than that predicted if plants with the highest emission control costs are not the least efficient producers in the industry. In addition, the outcome of predicted closures is sensitive to the wide variety of emission control technologies assigned to the model plants. If the control technology assigned to the representative model plant is different than that which would be chosen by an actual facility, the analysis could overestimate the number of predicted plant closures. Therefore, a sensitivity analysis was performed to test the outcome of closures based on the assignment of control technology to model plants. For the slabstock sector, plant closures are estimated to range from 1 to 3 facilities for this standard. For the molded foam sector, closures are estimated to be zero for this promulgated standard (a sensitivity analysis was not performed for the molded foam production subcategory). Given the significant amount of restructuring currently occurring in the industry (mergers, buy-outs, and shut-downs), the number of facility closures that will result from the regulation is likely to be minimal.

IV. Significant Comments and Changes to the Proposed Standards

In response to comments received on the proposed standards, changes have been made to the final standards. While several of these changes are clarifications designed to make the EPA's intent clearer, a number of them are changes to the requirements of the proposed standards. Public comment was received on several issues that the EPA raised in the proposal preamble. The public also commented on other issues. In addition, some changes were made to ensure that the regulations are ''permit friendly.'' A summary of the substantive comments and changes made since the proposal are described in the following sections. The rationale for these changes and detailed responses to all public comments are included in the Basis and Purpose Document for the final standards. Additional information is contained in the docket for these final standards. (See **ADDRESSES** section of this preamble.)

A. Public Response to EPA Request for Comment

In the proposal preamble, the EPA specifically requested comment on the following issues: (1) the need for a federally enforceable mechanism for limiting potential to emit (PTE) at flexible polyurethane foam production sources; (2) controlling TDI emissions from slabstock flexible foam production lines; (3) the burdens of the monthly averaging time option for compliance with the emission limitation for slabstock flexible foam production lines; (4) monitoring in HAP ABA storage vessels; (5) the prohibition on the use of HAP-based adhesives; and (6) the number of affected facilities. No public comments were received on the number of affected facilities in the flexible polyurethane foam production source category. Public comments on the remaining five issues are summarized below.

1. Federally Enforceable Mechanism

The proposed regulation contained provisions for obtaining a federally enforceable limitation on PTE, which would allow sources to maintain emissions below the major source threshold amount. It also included recordkeeping and reporting requirements for sources obtaining the federally enforceable emission limitation. One commenter urged the EPA to identify the criteria for establishing area source status, while others objected to the requirements that an area source maintain supporting documentation, stating that facilities should not be required to keep records to prove they are not subject to the regulation.

The EPA agrees that criteria for area source status should be included within the regulation, rather than the general criteria in the proposed rule. Therefore, § 63.1290(c) has been revised to add specific criteria for identifying slabstock sources with potential emissions below the major source threshold levels. Slabstock flexible polyurethane foam producers may elect to use a total of less than 5 tons of total HAP at the entire plant site, including uses as an auxiliary blowing agent, an equipment cleaner, and as an adhesive in foam fabrication operations. The addition of these specific criteria will ease the administrative burden for both State and local agency regulators and sources by reducing the need for case-by-case determination of area or synthetic minor source status. This option is not available to slabstock processes located at plant sites that have HAP-using processes other than slabstock foam production and foam fabrication. Also, due to the large number of potential uses of HAP at molded foam facilities, such criteria are not included for molded foam facilities.

The Agency agrees with the commenters that recordkeeping requirements should be sufficiently detailed to ensure that PTE limits are practically enforceable; however, the EPA recognizes that State and local agencies should establish such recordkeeping requirements. In the consideration of these comments, the EPA determined that it is not appropriate for the rule to require specific records at facilities that are not subject to the regulation. Therefore, the rule only requires that records be kept to verify the HAP usage.

2. TDI emissions from Slabstock Production Lines

The proposed rule did not require control of 2,4-toluene diisocyanate (TDI) emissions from the foam production line. At proposal, the EPA requested comment on the feasibility and necessity of additional controls for TDI emissions from the foam line.

Four commenters responded to the EPA's request for comments on this item. Three of the commenters supported the EPA in proposing no control for TDI emissions from the foam production line. All three commenters noted that TDI emissions from foam production are very small. Two of these

commenters also indicated the lack of currently available control technologies to address these emissions and the high costs of utilizing technologies that are common in other applications. However, one commenter believed additional controls for TDI were needed. This commenter urged the EPA to assess applicable work practices or equipment standards that would reduce TDI and other emissions from the production line and other emission points not covered under the current rule.

The EPA agrees with the three commenters who believe that the regulation should not control TDI emissions from the production line. The primary reasons for this opinion are the low level of emissions and the high costs of control. The EPA recognizes the concerns related to the health effects of TDI, even at relatively low concentrations. However, nationwide TDI emissions from the foam tunnel at slabstock polyurethane foam production facilities are estimated to be less than 10 tons per year. A typical plant emits around 1/10 of a ton per year. In addition, TDI is present in exhaust streams in very low concentrations, typically less than 1 part per million (ppm). Currently available control technologies common to other applications are not suited to the cost-effective removal of low concentrations of TDI from a high velocity exhaust stream.

Prior to proposal, the EPA determined that the floor for the control of TDI was no control. Further, no controls techniques were identified in practice to allow the consideration of levels more stringent than the floor. After proposal, the EPA re-investigated technologies for the control of TDI emissions from the foam production line by contacting vendors of control equipment, as well as air pollution regulatory agencies in other countries. Based on that additional analysis, the EPA concludes that the MACT floor is no control. Despite indications of the existence of cost-effective TDI control technologies, none of these efforts identified any technology for TDI that the Agency believed could be cost-effectively applied to the foam tunnel in a slabstock foam production facility.

In the future, the EPA will conduct a section 112(f) residual risk assessment of the flexible polyurethane foam industry. In a section 112(f) residual risk assessment, a regulated industry is evaluated based on the risks it still poses to people and the environment. If the assessment determines that unacceptable health risks are still related to the industry, the EPA will impose additional requirements on the industry.

The EPA does not feel it is appropriate to require additional recordkeeping or reporting in this rule to support a future risk assessment, as suggested by the commenter. The EPA will obtain the necessary information at the time of the risk assessment.

3. Monthly Averaging Time

The proposed rule allowed for two averaging time formats for compliance with the requirements for HAP ABA emissions from the production line and source-wide HAP ABA and equipment cleaning emissions: (1) rolling annual compliance [§ 63.1297(a)(1)]; and (2) compliance determined for each individual month. [§ 63.1297(a)(2)] At proposal, the EPA requested comments on any burdens caused by inclusion of the monthly compliance alternative in the proposed regulation.

Two commenters responded to the EPA's request for comments on this item. Neither commenter reported any burdens associated with inclusion of the monthly compliance alternative. However, both commenters were concerned about the potential for being assessed penalties based on 365 days of violations when using the rolling annual compliance alternative, even if the actual number of non-compliance days was much less.

In response to the seasonal variation of the production of slabstock foam, the EPA based the proposed HAP ABA emission requirements on a 12-month period, where compliance would be determined each month for the previous 12 months. While industry recognized the flexibility of this 12-month averaging period, they were concerned regarding the enforcement of such provisions. The concerns expressed at that time were analogous to those made by these commenters.

In response to these concerns, the EPA included the monthly compliance alternative in the proposed regulation. This alternative, while reducing flexibility, eliminates the potential for violations for a 365-day period. Since no comments were received indicating that the inclusion of two averaging time options was inappropriate or burdensome to either affected sources or enforcement agencies, both averaging periods were retained in the final rule.

In response to the commenters' concern about penalties associated with the 12-month averaging option, the EPA points out that the rule cannot specify a penalty structure, but can only include the definition of a violation. Clearly, a violation of the HAP ABA (or source-wide) requirements of this rule occurs when the actual emissions exceed the allowable emissions. In the case of a violation, the State or local enforcement agency (and in some cases the EPA Regional Office) will determine the penalty for a violation.

In conclusion, the commenters continue to be concerned with the potential penalties associated with the 12-month averaging time. The EPA continues to believe that the monthly averaging time is a viable alternative available to all affected sources, and that each owner or operator will have to weigh the added flexibility of the 12-month averaging period with the potential for higher penalties associated with this option.

4. Monitoring in HAP ABA Storage Vessels

If a facility is complying with the source-wide alternative for HAP ABA and HAP equipment cleaners, actual emissions are measured by conducting a monthly material balance at the HAP ABA storage vessel. An input to this determination is the amount of HAP ABA in the storage tank. The proposed rule at § 63.1303(d) contained criteria for the devices that could be used to measure the level of HAP ABA in the vessel. Gauge glasses and simple floats would not have fit these criteria. At proposal, the EPA requested comment on the monitoring requirements and whether the use of gauge glasses, float systems, and other visually-read systems should be allowed.

All the commenters that provided input on this issue felt that visually-read level measurement systems, which are ''standard'' in the industry, should be allowed. They believed that visually-read measurement systems were sufficiently accurate, and that the competitive nature of the industry dictated that facilities eliminate raw material loss. Due to the need to manage chemical use, visually-read level measurement systems in conjunction with existing inventory controls provide necessary compliance records.

Upon reviewing these comments and collecting additional information on this issue by conducting a survey of storage tank level measurement device vendors, contacting foam trade organizations and foam producers, and visiting a foam plant and observing first hand the use of visually-read level measurement devices to determine the storage tank level, the EPA agreed that these visually-read devices should be allowed. The EPA now believes that the use of gauge glasses and float systems will not result in significantly greater errors in level measurement than devices that meet the proposed

requirements. For example, an error analysis based on typical 10,000 gallon storage vessels and an error in measurement of 0.5 inches indicates that the error is approximately 3.27 cubic feet or 24.5 gallons (0.5 percent) for a vertical tank at half capacity. For horizontal tanks at half capacity, the error is approximately 8.8 cubic feet or 65.8 gallons (1.3 percent). In order to minimize the potential for human error, the final rule requires that all visually-read measurement devices have permanent graduated markings from which the level will be read. This practice should eliminate any error associated with the use of non-fixed measuring tools, such as tapes or rulers. Therefore, in the final rule, paragraph 63.1303(d) requires that devices that are used to measure the level in the storage vessel be calibrated initially and at least once per year. If the device produces an output signal, it must have either a digital or printed output. If the device is a visually-read device, it must have permanent graduated markings.

5. Prohibition on the Use of HAP-based Adhesives

The EPA requested comment on the technical feasibility of prohibiting the use of HAP-based adhesives for foam repair in molded foam production. Two responses to this request were received. The first commenter reported that HAP-free adhesives have not been successful in all applications. The commenter recommended a review process that would allow a facility to use HAP-based mold release agents if they demonstrated that product quality suffered with the use of HAP-free adhesives. The second commenter was also concerned about the proposed prohibition, and recommended that the EPA defer consideration of HAP-based adhesives until development of the foam fabrication NESHAP.

The EPA acknowledges the commenters' concern that HAP-free adhesives may not be successful in all applications. In further conversations after proposal of the regulations, adhesive manufacturers indicated that the molded foam production source category was not a major market for their products. The EPA therefore agrees with the second commenter that consideration of HAP-based adhesives should be deferred until development of the foam fabrication NESHAP. The proposed provisions at 63.1300(c) prohibiting the use of HAP-based adhesives to repair foam products in a molded flexible polyurethane foam source have been removed. The Agency expects to consider use of HAP-based molded foam repair adhesives in the development of the flexible polyurethane foam fabrication NESHAP.

B. Other Rule Changes in Response to Public Comments

1. IFD and Density Testing

The proposed rule required that the indentation force deflection (IFD) and density be tested for every grade of foam produced. It also required that the amount of polyol used be monitored for every foam grade, and that records of this usage be maintained. A comment was received stating that there was no benefit to testing foams or monitoring and keeping records of the amount of polyol added for grades that do not have any ABA in the formulation.

For each specific grade, the allowable emissions are calculated using the formulation limitation (which is calculated using the IFD and density of the grade) and the amount of polyol used to produce the grade. The calculation of the allowable HAP ABA emissions is unrelated to the amount of HAP ABA added to the formulation for that grade. The amount of HAP ABA added represents the actual emissions. Therefore, if a facility produced a particular grade (e.g., Grade A) with a formulation limitation greater than zero, but used no HAP ABA, then emission ''credits'' would be generated. This ''credit'' would then allow the owner or operator to use an amount of HAP ABA higher than the formulation limitation for another grade (e.g., Grade B). If no testing of the grade, or records of polyol used, were kept for Grade A, then credits would not be generated to allow the production of Grade B with the desired amount. Therefore, the EPA sees considerable benefit in testing and keeping records for all grades that have formulation limitations greater than zero.

However, the EPA does believe that the burden can be reduced by eliminating the requirement that any IFD or density testing be conducted for grades where the owner or operator designates the formulation limitation as zero. This decision is reflected in the final rule.

2. Definition of Flexible

One comment was received regarding the adjective ''flexible'' in the term ''flexible polyurethane foam''. The commenter (IV–D–07) noted that while ''flexible polyurethane foam'' is defined in the rule, the definition did not address ''the degree of flexibility or rigidity associated with the foam.'' The commenter believed that their ''foam-in-place'' operation is intended to be included within the scope of the proposed rule. However, the foam, which is sprayed into boxes to provide a protective cushioning layer for shipment of products, is ''quite rigid in nature''. The commenter requested clarification regarding the meaning of flexible.

The EPA agrees that there is a need to clarify ''flexible'' as it is used in the definition of flexible polyurethane foam, and has added language to the definition provided in the rule, as follows:

''*Flexible polyurethane foam* means a flexible cellular polymer containing urea and carbamate linkages in the chain backbone produced by reacting a diisocyanate, polyol, and water. Flexible polyurethane foams are open-celled, permit the passage of air through the foam, and possess the strength and flexibility to allow repeated distortion or compression under stress with essentially complete recovery upon removal of the stress.''

By comparison, rigid polyurethane foams are closed-celled, do not allow the passage of air through the foam, and do not distort or compress under stress until there is sufficient stress to crush the foam. Rigid foams that have been crushed do not recover to their original shape.

Based on information provided by the commenter, the EPA is unable to definitively determine if the foam produced is flexible polyurethane foam and if the commenter's process is subject to the rule. However, it is believed that the ''foam-in-place'' process described is a molded foam process and would be subject to the rule, if the foam produced meets the revised definition of flexible polyurethane foam cited above.

3. HAP ABA Emission Calculation

One commenter noted that there was a typographical error in the equation as published in the preamble. The first term should appear as ''-25(IFD).'' Two commenters noted that the HAP ABA formulation equation results in a negative (<0) value for the ABA limitation in some cases. One commenter felt that this was a result of a typing error in the published equation. The second commenter was concerned that it would be ''possible for certain foam grades to calculate a negative monthly ABA, thus reducing the total ABA and misrepresenting the intent of the ABA formulation limitation equation.'' This commenter recommended that the minimum amount of ABA be limited to zero (0) for averaging purposes.

The EPA recognizes that there was a typographical error in the equation as

published in the preamble. The first term in the equation 25(IFD) should be preceded by a negative sign. The proposed regulatory language was correct. The final rule and the rule summary in the preamble for the promulgated regulation include the correct equation.

However, the commenter was incorrect in assuming that an error in the published equation resulted in the equation yielding negative values. The equation indeed results in negative values for some combinations of density and indentation force deflection (IFD). The EPA did not intend for these negative values to be used in calculating allowable emissions. Rather, the intent was for the foam manufacturer to use zero if the calculated HAP ABA formulation limitation was negative. However, the proposed regulation did not state this intention, and the Agency recognizes that this situation would clearly lead to confusion. Therefore, in accordance with the commenter's suggestion, the EPA has revised the regulation to clearly state that zero shall be the formulation limitation if the results of the formulation limitation equation are negative. A new table has been added to § 63.1297(d)(2) to clarify the new source formulation limitation requirements.

4. State Delegation

One comment was received requesting clarification as to what authorities, if any, have been delegated to States. The commenter reported that in some instances, the EPA has specified within given Part 63 standards that certain authorities were not to be delegated to States.

The proposal regulation was silent on the implementation and enforcement authorities that may be delegated to States. The EPA agrees that the regulations should specify which authorities are and are not delegated to State and local permitting authorities. § 63.1308 has been added to the regulations to identify these authorities. The new provisions clarify that the authority to approve alternative monitoring plans and emission limitations shall be retained by the EPA Administrator and not transferred to a State or local permitting authority. The Administrator must approve alternative programs required in § 63.1303(b)(5) for monitoring HAP ABA and polyol added to the foam production line at the mixhead. Alternative emission limitations allowed under § 63.1305(d) must also be approved by the Administrator. These requirements are in keeping with longstanding EPA policy that emission limits to satisfy Clean Air Act requirements for protecting the public health, as well as the monitoring to demonstrate compliance with those limits, must be determined by the Administrator.

C. Other Changes to the Proposed Regulation

In addition to the changes in response to public comments discussed above, changes to the proposed rule have been made to clarify the requirements of the regulations. These changes do not add emission standards or requirements to the regulation. In general, they specify aspects of the regulations that were not included in sufficient detail in the proposed rule. The effect of these changes will be to assure compliance with the standards while providing flexibility and regulatory certainty for affected sources, as well as for permitting and enforcement agencies. The changes are related to a test method for carbon adsorption and a continuous compliance demonstration.

The proposed rule required monitoring of HAP or organic compounds from storage vessel carbon adsorption systems to determine breakthrough. However, the rule did not indicate the test method to use if the owner or operator elected to monitor organic compound concentration. Section 63.1303(a)(4) now specifies the use of Method 25A for measuring organic emissions from carbon adsorption systems. This change clarifies the compliance requirements for carbon adsorption system use.

The regulation has been revised to clarify what constitutes compliance with the rule. No new emission standards or work practice requirements have been added to the regulations. While the compliance requirements could be inferred from the proposed regulation, the final rule now directly states the specific actions needed and the records required to demonstrate compliance, absent credible evidence to the contrary. These changes will ensure compliance to protect the public health, ensure the practical enforceability of the standards, identify the permit terms and conditions implementing the standards, and provide regulatory clarity for affected sources. They are in keeping with the Agency's priorities for streamlining the regulatory process and minimizing the burden on affected sources by clearly defining compliance terms.

Section 63.1308 summarizes what indicates compliance with the standards in § 63.1293–63.1301, absent credible evidence to the contrary, as well as what constitutes a violation of the standard, for each requirement in the rule. Facility owners will not have to speculate on how compliance with a particular requirement may be interpreted. For regulating agencies, these provisions identify the terms and conditions that could be included in the permit. The provisions thus increase regulatory certainty, minimize the amount of time spent developing and reviewing permit terms, and ensure enforceability.

The provisions of §§ 63.1306(g) and 63.1308 do not, and are not intended to, alter or affect the requirements of 40 CFR part 70 for the purposes of addressing the requirements of this subpart, or any applicable requirements, in part 70 permits. Sources required to have a Title V operating permit must submit annual compliance certifications consistent with § 70.6(c)(5) applicable to all permit terms and conditions, which include applicable requirements such as subpart III. The certification requirements of part 70 require a statement from part 70 sources that, based on information and belief formed after reasonable inquiry, the statments and information in certifications—including annual compliance certifications—are true, accurate, and complete (40 CFR 70.5(d) and 71.5(d)). While a part 70 compliance certification may be used to satisfy the requirements of § 63.1306(g) (see § 63.1306(g)(2)) the annual compliance certification required by § 63.1306(g) may not be used to satisfy the compliance certification requirements of part 70, for purposes of part 70 permits that include subpart III as an applicable requirement.

In addition to the clarifying changes noted above, the EPA has removed the requirement that each facility develop, maintain, and implement a startup, shutdown, and malfunction plan.

The General Provisions include the requirements for a startup, shutdown, and malfunction plan in § 63.6(e)(3). A table of the proposed rule indicated that the provisions of § 63.6 were applicable to flexible polyurethane foam production affected sources. In the exercise of improving the clarity of the rule, the EPA decided that it would be more apparent to affected sources if the provisions related to the startup, shutdown, and malfunction were included in this rule, rather than simply referring to subpart A. However, in adding these provisions, the EPA concluded that they were not appropriate for the flexible polyurethane foam production industry. Therefore, the final rule has removed the requirement that flexible polyurethane foam affected sources create and implement a startup, shutdown, and malfunction plan. This is indicated by a ''NO'' in the General

Provisions table (Table 2) of the final rule for § 63.6(e)(3). The rationale for this conclusion is briefly discussed below.

The fundamental problem in applying the General Provisions startup, shutdown, and malfunction provisions to flexible polyurethane foam production facilities is defining a startup and a shutdown. The foam production process is intermittant in nature and, based on the EPA's knowledge of the industry, every foam production process will undergo at least one routine ''startup'' and one routine ''shutdown'' per day. The EPA never intended that these routine activities be addressed by the startup, shutdown, and malfunction plan.

The intent of the startup, shutdown, and malfunction plan is to identify methods to reduce excess emissions that may occur during these events when air pollution is emitted in quantities greater than anticipated by the standard. Given the comprehensive approach of subpart III to regulate emissions by restricting the amount of HAP used, the EPA does not believe that, for foam production facilities, startups, shutdowns, or malfunctions provide the opportunity for excess emissions not already anticipated in the regulation. Finally, as discussed in section I.A, two of the HAP used and potentially emitted during malfunctions by the flexible polyurethane foam industry (2,4-toluene diisocyanate and propylene oxide) are subject to the risk management program rule requirements under section 112(r) of the 1990 Clean Air Act Amendments.

V. Administrative Requirements

A. Docket

A record has been established for this rulemaking under docket number A–95–48. The record includes printed, paper versions of comments and data submitted electronically. A public version of this record, which does not include any information included as CBI, is available for inspection from 8:00 a.m. to 5:30 p.m. Monday-Friday, excluding legal holidays. The public record is located in the Air & Radiation Docket & Information Center, Room M1500, 401 M Street SW, Washington, DC 20460.

Response-to-Comment Document. The response-to-comment document for the promulgated standards contains: (1) A summary of the public comments made on the proposed standards and the Administrator's response to the comments; and (2) a summary of the changes made to the standards since proposal. The document may be obtained from the U.S. EPA Library (MD–35), Research Triangle Park, North Carolina 27711, telephone (919) 541–2777. It may also be obtained from the National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia 22151, telephone (703) 487–4650. Please refer to ''Hazardous Air Pollutant Emissions from the Flexible Polyurethane Foam Production Industry—Basis and Purpose Document for Final Standards, Summary of Public Comments and Responses'' (EPA–453/R–97–008b, December 1997). This document is also located in the docket (Docket Item No. V–B–1) and is available for downloading from the Technology Transfer Network (TTN). The TTN is one of the EPA's electronic bulletin boards. The TTN provides information and technology exchange in various areas of air pollution control. The service is free except for the cost of a phone call. Dial (919) 541–5742 for up to a 14,400 bps modem, or connect through the internet to the following address: ''www.epa.gov/ttn/oarpg''. If more information on the Technology Transfer Network is needed, call the HELP line at (919) 541–5384.

Previous Background Documents. Other materials related to this rulemaking are available for review in the docket. The Basis and Purpose Document, which contains the rationale for the various components of the standard, is available in the docket and on the TTN. This document is entitled ''Hazardous Air Pollutant Emissions from the Production of Flexible Polyurethane Foam—Basis and Purpose Document for Proposed Standards,'' September 1996, and has been assigned document number EPA–453/D–96–008a.

Some of the technical memoranda have been compiled into a single document, the Supplementary Information Document (SID), to allow interested parties more convenient access to the information. The SID is available in the docket (Docket No. A–95–48 Category III–B), and, in limited supply, from the EPA Library by calling (919) 541–2777. The document is entitled Hazardous Air Pollutant Emissions from the Production of Flexible Polyurethane Foam—Supplementary Information Document for Proposed Standards, October 1996, and has been assigned document number EPA–453/D–96–009a.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 5173, October 4, 1993), the EPA must determine whether the regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines ''significant regulatory action'' as one that is likely to result in standards that may:

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

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

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

It has been determined that this rule is not a ''significant regulatory action'' under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Applicability of Executive Order 13045

Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), applies to any rule that the EPA determines (1) is ''economically significant,'' as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0357.

The public reporting burden for this collection of information is estimated to

average 101 hours per respondent per year. The average burden for the 78 affected slabstock foam producers is somewhat higher than this estimate, due to their monthly recordkeeping and semiannual reporting requirements, while the average burden for the 98 affected molded foam manufacturers is less than 101 hours, since they are only required to submit an initial one-time notification of compliance. No cost burden associated with the purchase of new equipment or technology is estimated to result from this collection of information. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. The EPA is amending the table in 40 CFR Part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

E. Regulatory Flexibility Act

The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. The EPA has also determined that this rule will not have a significant economic impact on a substantial number of small entities.

Due to insufficient data on the ownership of the plants in the flexible polyurethane foam industry, an analysis of each parent company in the industry was not feasible. Consequently, the EPA used data collected in the section 114 survey to evaluate the impact on small businesses based on model facilities. That analysis indicates that there is a total of approximately 121 businesses (31 slabstock, 90 molded) that are affected by the promulgated regulation, of which approximately 71 are small businesses (18 slabstock, 53 molded).

The calculation of average compliance costs as a percent of revenues is less than one percent for nearly all model facilities in the analysis. The analysis also indicates a potential for business closures ranging from 0 to 3 of the total number of estimated entities. However, because there is insufficient data to determine the exact size of the plants that may close, the analysis cannot determine if these impacts will occur at small businesses. Given the results of the analysis and the use of worst-case assumptions in the closure analysis, the EPA believes that the effect of the promulgated regulation on small businesses will be minimal.

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), as amended, Pub. L. 104–121, 110 Stat. 847, the EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities and therefore no initial regulatory flexibility analysis under section 604(a) of the Act is required.

F. 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. The 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).

G. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), P.L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with ''Federal mandates'' that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any one year, nor does the rule significantly or uniquely impact small governments, because it contains no requirements that apply to such governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to this rule.

H. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, the EPA must provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires the EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments ''to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.''

Today's rule implements requirements specifically set forth by the Congress in Section 112 of the Clean Air Act without the exercise of any discretion by the EPA. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, the EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires the EPA to develop an effective process permitting elected and other representatives of Indian tribal governments ''to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.''

Today's rule implements requirements specifically set forth by the Congress in Section 112 of the Clean Air Act without the exercise of any discretion by the EPA. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

J. Clean Air Act

In accordance with section 117 of the Act, publication of this rule was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies.

This regulation will be reviewed 8 years from the date of promulgation. This review will include an assessment of such factors as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

K. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act of 1995 (NTTAA) requires federal agencies to evaluate existing technical standards when developing new regulations. To comply with the NTTAA, the EPA must consider and use ''voluntary consensus standards'' (VCS), if available and applicable, when developing NESHAP and other programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

A VCS is a technical standard developed or adopted by a legitimate standards developing organization. The NTTAA defines ''technical standards'' as ''performance-based or design-specific technical specifications and related management systems practices.'' According to NTTAA's legislative history, a ''technical standard'' pertains to ''products and processes, such as size, strength, or technical performance of a product, process or material.'' A legitimate standards-developing organization must produce standards by consensus and observe the principles of due process, openness, and balance of interests.

Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), International Organization for Standardization (ISO), International Electrotechnical Commission (IEC), American Petroleum Institute (API), National Fire Protection Association (NFPA) and the Society of Automotive Engineers (SAE).

The well-known American National Standards Institute (ANSI) evaluates the standards development processes of these bodies, and when requested by one of them, certifies standards meeting the above criteria as American National Standards. Such a designation is an important indicator for determining whether a given standard qualifies as a legitimate VCS.

In developing the flexible polyurethane foam regulation, the EPA searched for potentially useful VCS. This search included the use of the National Standards System Network and the National Center for Standards for Certification Information. The Agency also conducted extensive conversations with the affected industry and other stakeholders. In response to this information, the regulation includes two VCS—ASTM D3574 and National Institute of Standards and Technology Handbook 44. ASTM D3574 is used to determine IFD and density of slabstock foam buns. Transfer vehicle weight may be determined by using the procedures contained in the National Institute of Standards and Technology Handbook 44. These VCS were selected for incorporation by reference because they provide the proper information with sufficient accuracy for this rule.

The EPA is not required to give deference under NTTAA to a standard that does not qualify as a VCS. Sight gauges and other level measurement devices, which are commonly used in the industry, do not qualify as VCS. However, the Agency did elect to utilize such devices to measure HAP ABA added to storage vessels in slabstock flexible polyurethane foam facilities. These requirements are described in Section II. C.4. of this preamble. The decision to adopt common industry practices reflects the Agency's commitment to reduce costs to the private sector where technically feasible and in accordance with Clean Air Act requirements.

List of Subjects in 40 CFR Parts 9 and 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: September 15, 1998.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, parts 9 and 63 of title 40, chapter I of the Code of Federal Regulations are amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding the new entries to the table under the indicated heading in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
63.1290—63.1309	2060–0357
* * * * *	

National Emission Standards for Hazardous Air Pollutants for Source Categories[3]

* * * * * *

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR AFFECTED SOURCE CATEGORIES

3. The authority citation for part 63 continues to read as follows:

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

Subpart A—General Provisions

4. Section 63.14 is amended by revising paragraph (b) introductory text, and adding paragraphs (b)(20) and (e) to read as follows:

§ 63.14 Incorporation by reference.

* * * * *

(b) The materials listed below are available for purchase from at least one of the following addresses: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428–2959; or University Microfilms International, 300 North Zeeb Road, Ann Arbor, MI 48106.

* * * * *

(20) ASTM D3574–91, Standard Test Methods for Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams, IBR approved for § 63.1304(b).

* * * * *

(e) The materials listed below are available for purchase from the National Institute of Standards and Technology, Springfield, VA 22161, (800) 553–6847.

(1) Handbook 44, Specificiations, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices 1998, IBR approved for § 63.1303(e)(3).

(2) [Reserved]

5. Part 63 is amended by adding subpart III to read as follows:

Subpart III—National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production

Subpart III—National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production

§ 63.1290 Applicability.

(a) The provisions of this subpart apply to each new and existing flexible polyurethane foam or rebond foam process that meets the criteria listed in paragraphs (a)(1) through (3) of this section.

(1) Produces flexible polyurethane or rebond foam;

(2) Emits a HAP, except as provided in paragraph (c)(2) of this section; and

(3) Is located at a plant site that is a major source, as defined in § 63.2 of subpart A.

(b) For the purpose of this subpart, an affected source includes all processes meeting the criteria in paragraphs (a)(1) through (a)(3) of this section that are located at a contiguous plant site, with the exception of those processes listed in paragraph (c) of this section.

(c) A process meeting one of the following criteria listed in paragraphs (c)(1) through (3) of this section shall not be subject to the provisions of this subpart:

(1) A process exclusively dedicated to the fabrication of flexible polyurethane foam;

(2) A research and development process; or

(3) A slabstock flexible polyurethane foam process at a plant site where the total amount of HAP, excluding diisocyanate reactants, used for slabstock foam production and foam fabrication is less than or equal to five tons per year, provided that slabstock foam production and foam fabrication processes are the only processes at the plant site that emit HAP. The amount of non-diisocyanate HAP used, HAP_{used}, shall be calculated using Equation 1. Owners or operators of slabstock foam processes exempt from the regulation in accordance with this paragraph shall maintain records to verify that total non-diisocyanate HAP use at the plant site is less than 5 tons per year (4.5 megagrams per year).

$$HAP_{used} = \left[\sum_{i=1}^{m} (VOL_{ABA,\,i})(D_{ABA,\,i}) + \sum_{j=1}^{n} (VOL_{clean,\,j})(D_{clean,\,j})(WT_{HAPclean,\,j}) + \sum_{k=1}^{o} (VOL_{adh,\,k})(D_{adh,\,k})(WT_{HAPadh,\,k}) \right] \div 2000 \quad \text{(Equation 1)}$$

Where,

HAP_{used} = amount of HAP, excluding diisocyanate reactants, used at the plant site for slabstock foam production and foam fabrication, tons per year

$VOL_{ABA,i}$ = volume of HAP ABA i used at the facility, gallons per year

$D_{ABA,i}$ = density of HAP ABA i, pounds per gallon

m = number of HAP ABAs used

$VOL_{clean,j}$ = volume of HAP used as an equipment cleaner, gallons per year

$D_{clean,j}$ = density of HAP equipment cleaner j, pounds per gallon

$WT_{HAPclean,k}$ = HAP content of equipment cleaner j, weight percent

n = number of HAP equipment cleaners used

$VOL_{adh,k}$ = volume of adhesive k, gallons per year

$D_{adh,k}$ = density of adhesive k, pounds per gallon

$WT_{HAPadh,k}$ = HAP content of adhesive k, weight percent

o = number of adhesives used

§ 63.1291 Compliance schedule.

(a) Existing affected sources shall be in compliance with all provisions of this subpart no later than October 8, 2001.

(b) New or reconstructed affected sources shall be in compliance with all provisions of this subpart upon initial startup.

[3] The ICRs referenced in this section of the Table encompass the applicable general, provisions contained in 40 CFR part 63, subpart A, which are not independent information collection requirements.

§ 63.1292 Definitions.

All terms used in this subpart shall have the meaning given them in the Act, in subpart A of this part, and in this section. If a term is defined in subpart A and in this section, it shall have the meaning given in this section for purposes of this subpart.

Auxiliary blowing agent, or ABA, means a low-boiling point liquid added to assist foaming by generating gas beyond that resulting from the isocyanate-water reaction.

Breakthrough means that point in the adsorption step when the mass transfer zone (i.e., the section of the carbon bed where the HAP is removed from the carrier gas stream) first reaches the carbon bed outlet as the mass transfer zone moves down the bed in the direction of flow. The breakthrough point is characterized by the beginning of a sharp increase in the outlet HAP or organic compound concentration.

Calibrate means to verify the accuracy of a measurement device against a known standard. For the purpose of this subpart, there are two levels of calibration. The initial calibration includes the verification of the accuracy of the device over the entire operating range of the device. Subsequent calibrations can be conducted for a point or several points in a limited range of operation that represents the most common operation of the device.

Canned motor pump means a pump with interconnected cavity housings, motor rotors, and pump casing. In a canned motor pump, the motor bearings run in the process liquid and all seals are eliminated.

Carbon adsorption system means a system consisting of a tank or container that contains a specific quantity of activated carbon. For the purposes of this subaprt, a carbon adsorption system is used as a control device for storage vessels. Typically, the spent carbon bed does not undergo regeneration, but is replaced.

Connector means flanged, screwed, or other joined fittings used to connect two pipe lines or a pipe line and a piece of equipment. A common connector is a flange. Joined fittings welded completely around the circumference of the interface are not considered to be connectors for the purposes of this subpart.

Cured foam means flexible polyurethane foam with fully developed physical properties. A period of 12 to 24 hours from pour is typically required to completely cure foam, although mechanical or other devices are sometimes used to accelerate the curing process.

Curing area means the area in a slabstock foam production facility where foam buns are allowed to fully develop physical properties.

Diaphragm pump means a pump where the driving member is a flexible diaphragm made of metal, rubber, or plastic. In a diaphragm pump, there is no packing or seals that are exposed to the process liquid.

Diisocyanate means a compound containing two isocyanate groups per molecule. The most common diisocyanate compounds used in the flexible polyurethane foam industry are toluene diisocyanate (TDI) and methylene diphenyl diisocyanate (MDI).

Flexible polyurethane foam means a flexible cellular polymer containing urea and carbamate linkages in the chain backbone produced by reacting a diisocyanate, polyol, and water. Flexible polyurethane foams are open-celled, permit the passage of air through the foam, and possess the strength and flexibility to allow repeated distortion or compression under stress with essentially complete recovery upon removal of the stress.

Flexible polyurethane foam process means the equipment used to produce a flexible polyurethane foam product. For the purpose of this subpart, the flexible polyurethane foam process includes raw material storage; production equipment and associated piping, ductwork, etc.; and curing and storage areas.

Foam fabrication process means an operation for cutting or bonding flexible polyurethane foam pieces together or to other substrates.

Grade of foam means foam with a distinct combination of indentation force deflection (IFD) and density values.

HAP ABA means methylene chloride, or any other HAP compound used as an auxiliary blowing agent.

HAP-based means to contain 5 percent (by weight) or more of HAP. This applies to equipment cleaners (and mixhead flushes) and mold release agents. The concentration of HAP may be determined using EPA test method 18, material safety data sheets, or engineering calculations.

High-pressure mixhead means a mixhead where mixing is achieved by impingement of the high pressure streams within the mixhead.

Indentation Force Deflection (IFD) means a measure of the load bearing capacity of flexible polyurethane foam. IFD is generally measured as the force (in pounds) required to compress a 50 square inch circular indentor foot into a four inch thick sample, typically 15 inches square or larger, to 25 percent of the sample's initial height.

In diisocyanate service means a piece of equipment that contains or contacts a diisocyanate.

In HAP ABA service means a piece of equipment that contains or contacts a HAP ABA.

Initial startup means the first time a new or reconstructed affected source begins production of flexible polyurethane foam.

Isocyanate means a reactive chemical grouping composed of a nitrogen atom bonded to a carbon atom bonded to an oxygen atom; or a chemical compound, usually organic, containing one or more isocyanate groups.

Magnetic drive pump means a pump where an externally-mounted magnet coupled to the pump motor drives the impeller in the pump casing. In a magnetic drive pump, no seals contact the process fluid.

Metering pump means a pump used to deliver reactants, ABA, or additives to the mixhead.

Mixhead means a device that mixes two or more component streams before dispensing foam producing mixture to the desired container.

Molded flexible polyurethane foam means a flexible polyurethane foam that is produced by shooting the foam mixture into a mold of the desired shape and size.

Mold release agent means any material which, when applied to the mold surface, serves to prevent sticking of the foam part to the mold.

Plant site means all contiguous or adjoining property that is under common control, including properties that are separated only by a road or other public right-of-way. Common control includes properties that are owned, leased, or otherwise operated by the same entity, parent entity, subsidiary, or any combination thereof.

Polyol, for the purpose of this subpart, means a polyether or polyester polymer with more than one reactive hydroxyl group attached to the molecule.

Rebond foam means the foam resulting from a process of adhering small particles of foam (usually scrap or recycled foam) together to make a usable cushioning product. Various adhesives and bonding processes are used. A typical application for rebond foam is for carpet underlay.

Rebond foam process means the equipment used to produce a rebond foam product. For the purpose of this subpart, the rebond foam process includes raw material storage; production equipment and associated piping, ductwork, etc.; and curing and storage areas.

Reconstructed source means an affected source undergoing

reconstruction, as defined in subpart A. For the purposes of this subpart, process modifications made to reduce HAP ABA emissions to meet the existing source requirements of this subpart shall not be counted in determining whether or not a change or replacement meets the definition of reconstruction.

Recovery device means an individual unit of equipment capable of and used for the purpose of recovering chemicals for use, reuse, or sale. Recovery devices include, but are not limited to, carbon adsorbers, absorbers, and condensers.

Research and development process means a laboratory or pilot plant operation whose primary purpose is to conduct research and development into new processes and products, where the operations are under the close supervision of technically trained personnel, and which is not engaged in the manufacture of products for commercial sale except in a de minimis manner.

Run of foam means a continuous production of foam, which may consist of several grades of foam.

Sealless pump means a canned-motor pump, diaphragm pump, or magnetic drive pump, as defined in this section.

Slabstock flexible polyurethane foam means flexible polyurethane foam that is produced in large continuous buns that are then cut into the desired size and shape.

Slabstock flexible polyurethane foam production line includes all portions of the flexible polyurethane foam process from the mixhead to the point in the process where the foam is completely cured.

Storage vessel means a tank or other vessel that is used to store diisocyanate or HAP ABA for use in the production of flexible polyurethane foam. Storage vessels do not include vessels with capacities smaller than 38 cubic meters (or 10,000 gallons).

Transfer pump means all pumps used to transport diisocyanate or HAP ABA that are not metering pumps.

Transfer vehicle means a railcar, tank truck, or other vehicle used to transport HAP ABA to the flexible polyurethane foam facility.

§ 63.1293 Standards for slabstock flexible polyurethane foam production.

Each owner or operator of a new or existing slabstock affected source shall comply with § 63.1294 and either paragraph (a) or (b) of this section:

(a) The emission point specific limitations in §§ 63.1295 through 63.1298; or

(b) For sources that use no more than one HAP as an ABA and an equipment cleaner, the source-wide emission limitation in § 63.1299.

§ 63.1294 Standards for slabstock flexible polyurethane foam production—diisocyanate emissions.

Each new and existing slabstock affected source shall comply with the provisions of this section.

(a) *Diisocyanate storage vessels.* Diisocyanate storage vessels shall be equipped with either a system meeting the requirements in paragraph (a)(1) of this section, or a carbon adsorption system meeting the requirements of paragraph (a)(2) of this section.

(1) The storage vessel shall be equipped with a vapor return line from the storage vessel to the tank truck or rail car that is connected during unloading.

(i) During each unloading event, the vapor return line shall be inspected for leaks by visual, audible, or any other detection method.

(ii) When a leak is detected, it shall be repaired as soon as practicable, but not later than the subsequent unloading event.

(2) The storage vessel shall be equipped with a carbon adsorption system, meeting the monitoring requirements of § 63.1303(a), that routes displaced vapors through activated carbon before being discharged to the atmosphere. The owner or operator shall replace the existing carbon with fresh carbon upon indication of breakthrough before the next unloading event.

(b) *Transfer pumps in diisocyanate service.* Each transfer pump in diisocyanate service shall meet the requirements of paragraph (b)(1) or (b)(2) of this section.

(1) The pump shall be a sealless pump; or

(2) The pump shall be a submerged pump system meeting the requirements in paragraphs (b)(2)(i) through (iii) of this section.

(i) The pump shall be completely immersed in bis(2-ethylhexyl)phthalate (DEHP, CAS #118–81–7), 2(methyloctyl)phthalate (DINP, CAS #68515–48–0), or another neutral oil.

(ii) The pump shall be visually monitored weekly to detect leaks,

(iii) When a leak is detected, it shall be repaired in accordance with the procedures in paragraphs (b)(2)(iii)(A) and (B) of this section, except as provided in paragraph (d) of this section.

(A) The leak shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(B) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempts at repair include, but are not limited to, the following practices where practicable:

(*1*) Tightening of packing gland nuts.

(*2*) Ensuring that the seal flush is operating at design pressure and temperature.

(c) *Other components in diisocyanate service.* If evidence of a leak is found by visual, audible, or any other detection method, it shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (d) of this section. The first attempt at repair shall be made no later than 5 calendar days after each leak is detected.

(d) *Delay of repair.* (1) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in diisocyanate service.

(2) Delay of repair for valves and connectors is also allowed if:

(i) The owner or operator determines that diisocyanate emissions of purged material resulting from immediate repair are greater than the fugitive emissions likely to result from delay of repair, and

(ii) The purged material is collected and destroyed or recovered in a control device when repair procedures are effected.

(3) Delay of repair for pumps is also allowed if repair requires replacing the existing seal design with a sealless pump, and repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

§ 63.1295 Standards for slabstock flexible polyurethane foam production—HAP ABA storage vessels.

Each owner or operator of a new or existing slabstock affected source complying with the emission point specific limitation option provided in § 63.1293(a) shall control HAP ABA storage vessels in accordance with the provisions of this section.

(a) Each HAP ABA storage vessel shall be equipped with either a vapor balance system meeting the requirements in paragraph (b) of this section, or a carbon adsorption system meeting the requirements of paragraph (c) of this section.

(b) The storage vessel shall be equipped with a vapor balance system. The owner or operator shall ensure that the vapor return line from the storage vessel to the tank truck or rail car is connected during unloading.

(1) During each unloading event, the vapor return line shall be inspected for leaks by visual, audible, olfactory, or any other detection method.

(2) When a leak is detected, it shall be repaired as soon as practicable, but not later than the subsequent unloading event.

(c) The storage vessel shall be equipped with a carbon adsorption system, meeting the monitoring requirements of § 63.1303(a), that routes displaced vapors through activated carbon before discharging to the atmosphere. The owner or operator shall replace the existing carbon with fresh carbon upon indication of breakthrough before the next unloading event.

§ 63.1296 Standards for slabstock flexible polyurethane foam production—HAP ABA equipment leaks.

Each owner or operator of a new or existing slabstock affected source complying with the emission point specific limitation option provided in § 63.1293(a) shall control HAP ABA emissions from leaks from transfer pumps, valves, connectors, pressure-relief valves, and open-ended lines in accordance with the provisions in this section.

(a) *Pumps.* Each pump in HAP ABA service shall be controlled in accordance with either paragraph (a)(1) or (a)(2) of this section.

(1) The pump shall be a sealless pump, or

(2) Each pump shall be monitored for leaks in accordance with paragraphs (a)(2)(i) and (ii) of this section. Leaks shall be repaired in accordance with paragraph (a)(2)(iii) of this section.

(i) Each pump shall be monitored quarterly to detect leaks by the method specified in § 63.1304(a). If an instrument reading of 10,000 parts per million (ppm) or greater is measured, a leak is detected.

(ii) Each pump shall be checked by visual inspection each calendar week for indications of liquids dripping from the pump seal. If there are indications of liquids dripping from the pump seal, a leak is detected.

(iii) When a leak is detected, it shall be repaired in accordance with the procedures in paragraphs (a)(2)(iii)(A) and (B) of this section, except as provided in paragraph (f) of this section.

(A) The leak shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(B) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempts at repair include, but are not limited to, the following practices, where practicable:

(*1*) Tightening of packing gland nuts.

(*2*) Ensuring that the seal flush is operating at design pressure and temperature.

(b) *Valves.* Each valve in HAP ABA service shall be monitored for leaks in accordance with paragraph (b)(1) of this section, except as provided in paragraphs (b)(3) and (4) of this section. Leaks shall be repaired in accordance with paragraph (b)(2) of this section.

(1) Each valve shall be monitored quarterly to detect leaks by the method specified in § 63.1304(a). If an instrument reading of 10,000 parts per million or greater is measured, a leak is detected.

(2) When a leak is detected, the owner or operator shall repair the leak in accordance with the procedures in paragraphs (b)(2)(i) and (ii) of this section, except as provided in paragraph (f) of this section.

(i) The leak shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected. First attempts at repair include, but are not limited to, the following practices where practicable:

(A) Tightening of bonnet bolts;

(B) Replacement of bonnet bolts;

(C) Tightening of packing gland nuts; and

(D) Injection of lubricant into lubricated packing.

(3) Any valve that is designated as an unsafe-to-monitor valve is exempt from the requirements of paragraphs (b)(1) and (2) of this section if:

(i) The owner or operator of the valve determines that the valve is unsafe to monitor because monitoring personnel would be exposed to an immediate danger as a consequence of complying with paragraphs (b)(1) and (2) of this section; and

(ii) The owner or operator of the valve has a written plan that requires monitoring of the valve as frequently as practicable during safe-to-monitor times. The plan shall also include requirements for repairing leaks as soon as possible after detection.

(iii) The owner or operator shall monitor the unsafe-to-monitor valve in accordance with the written plan, and

(iv) The owner or operator shall repair leaks in accordance with the written plan.

(4) Any valve that is designated as a difficult-to-monitor valve is exempt from the requirements of paragraphs (b)(1) and (2) of this section if:

(i) The owner or operator of the valve determines that the valve cannot be monitored without elevating the monitoring personnel more than 2 meters above a support surface or it is not accessible at any time in a safe manner;

(ii) The process within which the valve is located is an existing source, or the process within which the valve is located is a new source that has less than 3 percent of the total number of valves designated as difficult to monitor; and

(iii) The owner or operator of the valve develops a written plan that requires monitoring of the valve at least once per calendar year. The plan shall also include requirements for repairing leaks as soon as possible after detection.

(iv) The owner or operator shall monitor the difficult-to-monitor valve in accordance with the written plan, and

(v) The owner or operator shall repair leaks in accordance with the written plan.

(c) *Connectors.* Each connector in HAP ABA service shall be monitored for leaks in accordance with paragraph (c)(1) of this section, except as provided in paragraph (c)(3) of this section. Leaks shall be repaired in accordance with (c)(2) of this section, except as provided in paragraph (c)(4) of this section.

(1) Connectors shall be monitored at the times specified in paragraphs (c)(1)(i) through (iii) of this section to detect leaks by the method specified in § 63.1304(a). If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(i) Each connector shall be monitored annually, and

(ii) Each connector that has been opened or has otherwise had the seal broken shall be monitored for leaks within the first 3 months after being returned to HAP ABA service.

(iii) If a leak is detected, the connector shall be monitored for leaks in accordance with paragraph (c)(1) of this section within the first 3 months after its repair.

(2) When a leak is detected, it shall be repaired in accordance with the procedures in paragraphs (c)(2)(i) and (ii) of this section, except as provided in paragraph (c)(4) and paragraph (f) of this section.

(i) The leak shall be repaired as soon as practicable, but no later than 15 calendar days after the leak is detected.

(ii) A first attempt at repair shall be made no later than 5 calendar days after the leak is detected.

(3) Any connector that is designated as an unsafe-to-monitor connector is exempt from the requirements of paragraph (c)(1) of this section if:

(i) The owner or operator determines that the connector is unsafe to monitor because personnel would be exposed to an immediate danger as a result of complying with paragraph (c)(1) of this section; and

(ii) The owner or operator has a written plan that requires monitoring of the connector as frequently as practicable during safe-to-monitor periods.

(4) Any connector that is designated as an unsafe-to-repair connector is exempt from the requirements of paragraph (c)(2) of this section if:

(i) The owner or operator determines that repair personnel would be exposed to an immediate danger as a consequence of complying with paragraph (c)(2) of this section; and

(ii) The connector will be repaired as soon as practicable, but not later than 6 months after the leak was detected.

(d) *Pressure-relief devices.* Each pressure-relief device in HAP ABA service shall be monitored for leaks in accordance with paragraph (d)(1) of this section. Leaks shall be repaired in accordance with paragraph (d)(2) of this section.

(1) Each pressure-relief device in HAP ABA service shall be monitored within 5 calendar days by the method specified in § 63.1304(a) if evidence of a potential leak is found by visual, audible, olfactory, or any other detection method. If an instrument reading of 10,000 ppm or greater is measured, a leak is detected.

(2) When a leak is detected, the leak shall be repaired as soon as practicable, but not later than 15 calendar days after it is detected, except as provided in paragraph (f) of this section.

The owner or operator shall make a first attempt at repair no later than 5 calendar days after the leak is detected.

(e) *Open-ended valves or lines.* (1)(i) Each open-ended valve or line in HAP ABA service shall be equipped with a cap, blind flange, plug, or a second valve, except as provided in paragraph (e)(4) of this section.

(ii) The cap, blind flange, plug, or second valve shall seal the open end at all times except during operations requiring process fluid flow through the open-ended valve or line, or during maintenance or repair.

(2) Each open-ended valve or line equipped with a second valve shall be operated in a manner such that the valve on the process fluid end is closed before the second valve is closed.

(3) When a double block and bleed system is being used, the bleed valve or line may remain open during operations that require venting the line between the block valves but shall comply with paragraph (e)(1) of this section at all other times.

(4) Open-ended valves or lines in an emergency shutdown system which are designed to open automatically in the event of a process upset are exempt from the requirements of paragraphs (e)(1), (2), and (3) of this section.

(f) *Delay of repair.* (1) Delay of repair of equipment for which leaks have been detected is allowed for equipment that is isolated from the process and that does not remain in HAP ABA service.

(2) Delay of repair for valves and connectors is also allowed if:

(i) The owner or operator determines that emissions of purged material resulting from immediate repair are greater than the fugitive emissions likely to result from delay of repair, and

(ii) The purged material is collected and destroyed or recovered in a control device when repair procedures are effected.

(3) Delay of repair for pumps is also allowed if repair requires replacing the existing seal design with a sealless pump, and repair is completed as soon as practicable, but not later than 6 months after the leak was detected.

§ 63.1297 Standards for slabstock flexible polyurethane foam production—HAP ABA emissions from the production line.

(a) Each owner or operator of a new or existing slabstock affected source complying with the emission point specific limitation option provided in § 63.1293(a)(1) shall control HAP ABA emissions from the slabstock polyurethane foam production line in accordance with the provisions in this section. Compliance shall be determined on a rolling annual basis as described in paragraph (a)(1) of this section. As an alternative, the owner or operator can determine compliance on a monthly basis, as described in paragraph (a)(2) of this section.

(1) *Rolling annual compliance.* In determining compliance on a rolling annual basis, actual HAP ABA emissions shall be compared to allowable HAP ABA emissions for each consecutive 12-month period. The allowable HAP ABA emission level shall be calculated based on the production for the 12-month period, resulting in a potentially different allowable level for each 12-month period. Compliance shall be determined each month for the previous 12-month period. The compliance requirements are provided in paragraph (b) of this section.

(2) *Monthly compliance alternative.* As an alternative to determining compliance on a rolling annual basis, an owner or operator can determine compliance by comparing actual HAP ABA emissions to allowable HAP ABA emissions for each month. The allowable HAP ABA emission level shall be calculated based on the production for the month, resulting in a potentially different allowable level each month. The requirements for this monthly compliance alternative are provided in paragraph (c) of this section.

(3) Each owner or operator electing to change between the compliance methods described under paragraphs (a)(1) and (a)(2) of this section shall notify the Administrator no later than 180 calendar days prior to the change.

(b) *Rolling annual compliance.* At each slabstock foam production source complying with the rolling annual compliance provisions described in paragraph (a)(1) of this section, actual HAP ABA emissions shall not exceed the allowable HAP ABA emission level for a consecutive 12-month period. The actual HAP ABA emission level for a consecutive 12-month period shall be determined using the procedures in paragraph (b)(1) of this section, and the allowable HAP ABA emission level for the corresponding 12-month period shall be calculated in accordance with paragraph (b)(2) of this section.

(1) The actual HAP ABA emissions for a 12-month period shall be calculated as the sum of actual monthly HAP ABA emissions for each of the individual 12 months in the period. Actual monthly HAP ABA emissions shall be equal to the amount of HAP ABA added to the slabstock foam production line at the mixhead, determined in accordance with § 63.1303(b), unless a recovery device is used. Slabstock foam production sources using recovery devices to reduce HAP ABA emissions shall determine actual monthly HAP ABA emissions using the procedures in paragraph (e) of this section.

(2) The allowable HAP ABA emissions for a consecutive 12-month period shall be calculated as the sum of allowable monthly HAP ABA emissions for each of the individual 12 months in the period. Allowable HAP ABA emissions for each individual month shall be calculated using Equation 2.

$$\text{emiss}_{\text{allow, month}} = \sum_{j=1}^{m}\left(\sum_{i=1}^{n}\frac{(\text{limit}_i)\,(\text{polyol}_i)}{100}\right)j \qquad \text{(Equation 2)}$$

Where:

$emiss_{allow,month}$ = Allowable HAP ABA emissions from the slabstock foam production source for the month, pounds.

m = Number of slabstock foam production lines.

$polyol_i$ = Amount of polyol used in the month in the production of foam grade i on foam production line j, determined in accordance with paragraph (b)(3) of this section, pounds.

n = Number of foam grades produced in the month on foam production line j.

$limit_i$ = HAP ABA formulation limit for foam grade i, parts HAP ABA per 100 parts polyol. The HAP ABA formulation limits are determined in accordance with paragraph (d) of this section.

(3) The amount of polyol used for specific foam grades shall be based on the amount of polyol added to the slabstock foam production line at the mixhead, determined in accordance with the provisions of § 63.1303(b).

(c) *Monthly compliance alternative.* At each slabstock foam production source complying with the monthly compliance alternative described in paragraph (a)(2) of this section, actual HAP ABA emissions shall not exceed the corresponding allowable HAP ABA emission level for the same month. The actual monthly HAP ABA emission level shall be determined using the procedures in paragraph (c)(1) of this section, and the allowable monthly HAP ABA emission level shall be calculated in accordance with paragraph (c)(2) of this section.

(1) The actual monthly HAP ABA emissions shall be equal to the amount of HAP ABA added to the slabstock foam production line at the mixhead, determined in accordance with § 63.1303(b), unless a recovery device is used. Slabstock foam production sources using recovery devices to reduce HAP ABA emissions shall determine actual monthly HAP ABA emissions using the procedures in paragraph (e) of this section.

(2) The allowable HAP ABA emissions for the month shall be determined in accordance with Equation 2 of this section.

(d) *HAP ABA formulation limitations.* For each grade, the HAP ABA formulation limitation shall be determined in accordance with paragraphs (d)(1) through (d)(3) of this section. For any grade, the owner or operator may designate zero as the HAP ABA formulation limitation and not determine the HAP ABA formulation limitation in accordance with paragraphs (d)(1) through (d)(3) of this section.

(1) For existing sources, the HAP ABA formulation limitation for each grade of slabstock foam produced shall be determined using Equation 3 of this section. Zero shall be the formulation limitation for any grade of foam where the result of the formulation limitation equation (Equation 3) is negative (i.e., less than zero).

$$ABA_{limit} = -0.25(IFD) - 19.1\left(\frac{1}{IFD}\right) - 16.2(DEN) - 7.56\left(\frac{1}{DEN}\right) + 36.5 \qquad \text{(Equation 3)}$$

Where:

ABA_{limit}= HAP ABA formulation limitation, parts HAP ABA allowed per hundred parts polyol (pph).

IFD = Indentation force deflection, pounds.

DEN = Density, pounds per cubic foot.

(2) For new sources, the HAP ABA formulation limitation for each grade of slabstock foam produced shall be determined as described in paragraphs (d)(2)(i) through (d)(2)(iv) of this section and in Table 1 of this subpart.

(i) For each foam grade with a density of 0.95 pounds per cubic foot or less, the HAP ABA formulation limitation shall be determined using Equation 3. Zero shall be the formulation limitation for any grade of foam where the result of the formulation limitation equation (Equation 3 of this section) is negative (i.e., less than zero).

(ii) For each foam grade with a density of 1.4 pounds per cubic foot or less, and an IFD of 15 pounds or less, the HAP ABA formulation limitation shall be determined using Equation 3.

(iii) For each foam grade with a density greater than 0.95 pounds per cubic foot and an IFD greater than 15 pounds, the HAP ABA formulation limitation shall be zero.

(iv) For each foam grade with a density greater than 1.40 pounds per cubic foot, the HAP ABA formulation limitation shall be zero.

(3) With the exception of those grades for which the owner or operator has designated zero as the HAP ABA formulation limitation, the IFD and density for each foam grade shall be determined in accordance with § 63.1304(b) and recorded in accordance with § 63.1307(c)(1)(i)(B) or § 63.1307(c)(2)(i)(B) within 10 working days of the production of the foam.

(e) *Compliance using recovery devices.* If a recovery device is used to comply with paragraphs (b) or (c) of this section, the owner or operator shall determine the allowable HAP ABA emissions for each month using Equation 2 in paragraph (b)(2) of this section, and the actual monthly HAP ABA emissions in accordance with paragraph (e)(1) of this section. The owner or operator shall also comply with the provisions of paragraph (e)(2) of this section.

(1) The actual monthly HAP ABA emissions shall be determined using Equation 4:

$$E_{actual} = E_{unc} - HAPABA_{recovered} \qquad \text{(Equation 4)}$$

Where:

E_{actual} = Actual HAP ABA emissions after control, pounds/month.

E_{unc} = Uncontrolled HAP ABA emissions, pounds/month, determined in accordance with paragraph (b)(1) of this section.

$HAPABA_{recovered}$ = HAP ABA recovered, pounds/month, determined in accordance with paragraph (e)(2) of this section.

(2) The amount of HAP ABA recovered shall be determined in accordance with § 63.1303(c).

§ 63.1298 Standards for slabstock flexible polyurethane foam production—HAP emissions from equipment cleaning.

Each owner or operator of a new or existing slabstock affected source complying with the emission point specific limitation option provided in § 63.1293(a)(1) shall not use a HAP or a

HAP-based material as an equipment cleaner.

§ 63.1299 Standards for slabstock flexible polyurethane foam production—source-wide emission limitation.

Each owner or operator of a new or existing slabstock affected source complying with the source-wide emission limitation option provided in § 63.1293(b) shall control HAP ABA storage and equipment leak emissions, HAP ABA emissions from the production line, and equipment cleaning HAP emissions in accordance with the provisions in this section. Compliance shall be determined on a rolling annual basis in accordance with paragraph (a) of this section. As an alternative, the owner or operator can determine compliance monthly, as described in paragraph (b) of this section.

(a) *Rolling annual compliance.* Under the rolling annual compliance provisions, actual source-wide HAP ABA storage and equipment leak emissions, HAP ABA emissions from the production line, and equipment cleaning HAP emissions are compared to allowable source-wide emissions for each consecutive 12-month period. The allowable source-wide HAP emission level is calculated based on the production for the 12-month period, resulting in a potentially different allowable level for each 12-month period. While compliance is on an annual basis, compliance shall be determined monthly for the preceding 12-month period. The actual source-wide HAP emission level for a consecutive 12-month period shall be determined using the procedures in paragraphs (c)(1) through (4) of this section, unless a recovery device is used. Slabstock foam production sources using recovery devices shall determine actual source-wide HAP emissions in accordance with paragraph (e) of this section. The allowable HAP emission level for a consecutive 12-month period shall be determined using the procedures in paragraph (d) of this section.

(b) *Monthly compliance alternative.* As an alternative to determining compliance on a rolling annual basis, an owner or operator can determine compliance by comparing actual HAP emissions to allowable HAP emissions for each month. The allowable source-wide emission level is calculated based on the production for the month, resulting in a potentially different allowable level each month. The actual monthly emission level shall be determined using the procedures in paragraphs (c)(1) through (3) of this section, unless a recovery device is used. Slabstock foam production sources using recovery devices shall determine actual source-wide HAP emissions in accordance with paragraph (e) of this section. The allowable monthly HAP ABA emission level shall be determined in accordance with Equation 6.

(c) *Procedures for determining actual source-wide HAP emissions.* The actual source-wide HAP ABA storage and equipment leak emissions, HAP ABA emissions from the production line, and equipment cleaning HAP emissions shall be determined using the procedures in this section. Actual source-wide HAP emissions for each individual month shall be determined using the procedures specified in paragraphs (c)(1) through (3) of this section.

(1) Actual source-wide HAP emissions for a month shall be determined using Equation 5 and the information determined in accordance with paragraphs (c)(2) and (3) of this section.

$$PWE_{actual} = \sum_{i}^{n} \left(ST_{i,\,begin} - ST_{i,\,end} + ADD_{i} \right) \qquad \text{(Equation 5)}$$

Where:

PWE_{actual} = Actual source-wide HAP ABA and equipment cleaning HAP emissions for a month, pounds/month.

n = Number of HAP ABA storage vessels.

$ST_{i,\,begin}$ = Amount of HAP ABA in storage vessel i at the beginning of the month, pounds, determined in accordance with the procedures listed in paragraph (c)(2) of this section.

$ST_{i,\,end}$ = Amount of HAP ABA in storage vessel i at the end of the month, pounds, determined in accordance with the procedures listed in paragraph (c)(2) of this section.

ADD_i = Amount of HAP ABA added to storage vessel i during the month, pounds, determined in accordance with the procedures listed in paragraph (c)(3) of this section.

(2) The amount of HAP ABA in a storage vessel shall be determined by monitoring the HAP ABA level in the storage vessel in accordance with § 63.1303(d).

(3) The amount of HAP ABA added to a storage vessel for a given month shall be the sum of the amounts of all individual HAP ABA deliveries that occur during the month. The amount of each individual HAP ABA delivery shall be determined in accordance with § 63.1303(e).

(4) Actual source-wide HAP emissions for each consecutive 12-month period shall be calculated as the sum of actual monthly source-wide HAP emissions for each of the individual 12 months in the period, calculated in accordance with paragraphs (c) (1) through (3) of this section.

(d) Allowable source-wide HAP emissions for a consecutive 12-month period shall be calculated as the sum of allowable monthly source-wide HAP emissions for each of the individual 12 months in the period. Allowable source-wide HAP emissions for each individual month shall be calculated using Equation 6.

$$emiss_{allow,\,month} = \sum_{j=1}^{m} \left(\sum_{i=1}^{n} \frac{(limit_i)\,(polyol_i)}{100} \right) j \qquad \text{(Equation 6)}$$

Where:

$emiss_{allow,\,month}$ = Allowable HAP ABA storage and equipment leak emissions, HAP ABA emissions from the production line, and equipment cleaning HAP emissions from the slabstock foam production source for the month, pounds.

m = Number of slabstock foam production lines.

$polyol_i$ = Amount of polyol used in the month in the production of foam grade i on foam production line j, determined in accordance with § 63.1303(b), pounds.

n = Number of foam grades produced in the month on foam production line j.

$limit_i$ = HAP ABA formulation limit for foam grade i, parts HAP ABA per 100 parts polyol. The HAP ABA formulation limits are determined in accordance with § 63.1297(d).

(e) *Compliance using recovery devices.* If a recovery device is used to comply with paragraphs (a) or (b) of this section, the owner or operator shall determine the allowable source-wide HAP emissions for each month using Equation 6 in paragraph (d) of this section, and the actual monthly source-wide HAP emissions in accordance with paragraph (e)(1) of this section. The owner or operator shall also comply with the provisions of paragraph (e)(2) of this section.

(1) Actual monthly source-wide HAP emissions shall be determined using Equation 7.

$$E_{actual} = E_{unc} - HAPABA_{recovered} \qquad \text{(Equation 7)}$$

Where:

E_{actual} = Actual source-wide HAP emissions after control, pounds/month.

E_{unc} = Uncontrolled source-wide HAP emissions, pounds/month, determined in accordance with paragraph (c) (1) through (3) of this section.

$HAPABA_{recovered}$ = HAP ABA recovered, pounds/month, determined in accordance with paragraph (e)(2) of this section.

(2) The amount of HAP ABA recovered shall be determined in accordance with § 63.1303(c).

§ 63.1300 Standards for molded flexible polyurethane foam production.

Each owner or operator of a new or existing molded affected source shall comply with the provisions in paragraphs (a) and (b) of this section.

(a) A HAP or HAP-based material shall not be used as an equipment cleaner to flush the mixhead, nor shall it be used elsewhere as an equipment cleaner in a molded flexible polyurethane foam process, with the following exception. Diisocyanates may be used to flush the mixhead and associated piping during periods of startup or maintenance, provided that the diisocyanate compounds are contained in a closed-loop system and are re-used in production.

(b) A HAP-based mold release agent shall not be used in a molded flexible polyurethane foam source process.

§ 63.1301 Standards for rebond foam production.

Each owner or operator of a new or existing rebond foam affected source shall comply with the provisions in paragraphs (a) and (b) of this section.

(a) A HAP or HAP-based material shall not be used as an equipment cleaner at a rebond foam source.

(b) A HAP-based mold release agent shall not be used in a rebond foam source.

§ 63.1302 Applicability of subpart A requirements.

The owner or operator of an affected source shall comply with the applicable requirements of subpart A of this part, as specified in Table 2 of this subpart.

§ 63.1303 Monitoring requirements.

Owners and operators of affected sources shall comply with each applicable monitoring provision in this section.

(a) *Monitoring requirements for storage vessel carbon adsorption systems.* Each owner or operator using a carbon adsorption system to meet the requirements of § 63.1294(a) or § 63.1295 shall monitor the concentration level of the HAP or the organic compounds in the exhaust vent stream (or outlet stream exhaust) from the carbon adsorption system at the frequency specified in (a)(1) or (2) of this section in accordance with either (a)(3) or (4) of this section.

(1) The concentration level of HAP or organic compounds shall be monitored during each unloading event, or once per month during an unloading event if multiple unloading events occur in a month.

(2) As an alternative to monthly monitoring, the owner or operator can set the monitoring frequency at an interval no greater than 20 percent of the carbon replacement interval, which is established using a design analysis described below in paragraphs (a)(1)(i) through (iii) of this section.

(i) The design analysis shall consider the vent stream composition, constituent concentration, flow rate, relative humidity, and temperature.

(ii) The design analysis shall establish the outlet organic concentration level, the capacity of the carbon bed, and the working capacity of activated carbon used for the carbon bed, and

(iii) The design analysis shall establish the carbon replacement interval based on the total carbon working capacity of the carbon adsorption system and the schedule for filling the storage vessel.

(3) Measurements of HAP concentration shall be made using 40 CFR part 60, appendix A, Method 18. The measurement shall be conducted over at least one 5-minute interval during which the storage vessel is being filled.

(4) Measurements of organic compounds shall be made using 40 CFR part 60, Appendix A, Method 25A. The measurement shall be conducted over at least one 5-minute interval during which the storage vessel is being filled.

(b) *Monitoring for HAP ABA and polyol added to the foam production line at the mixhead.* (1) The owner or operator of each slabstock affected source shall comply with the provisions in paragraph (b)(1)(i) of this section, and, if applicable, the provisions of paragraph (b)(1)(ii) of this section. Alternatively, the owner or operator may comply with paragraph (b)(5) of this section.

(i) Owners or operators of all slabstock affected sources shall continuously monitor the amount of polyol added at the mixhead when foam is being poured, in accordance with paragraphs (b)(2) through (4) of this section.

(ii) Owners or operators of slabstock foam affected sources using the emission point specific limitation option provided in § 63.1293(a)(1) shall continuously monitor the amount of HAP ABA added at the mixhead when foam is being poured, in accordance with paragraphs (b)(2)(ii), (b)(3), and (b)(4) of this section.

(2) The owner or operator shall monitor either:

(i) Pump revolutions; or

(ii) Flow rate.

(3) The device used to monitor the parameter from paragraph (b)(2) shall have an accuracy to within +/− 2.0 percent of the HAP ABA being measured, and shall be calibrated initially, and periodically, in

accordance with paragraph (b)(3)(i) or (ii) of this section.

(i) For polyol pumps, the device shall be calibrated at least once each 6 months.

(ii) For HAP ABA pumps, the device shall be calibrated at least once each month.

(4) Measurements must be recorded at the beginning and end of the production of each grade of foam within a run of foam.

(5) As an alternative to the monitoring described in paragraphs (b)(2) through (4) of this section, the owner or operator may develop an alternative monitoring program. Alternative monitoring programs must be submitted to the Administrator for approval in the Precompliance Report as specified in § 63.1306(c)(4) for existing sources or in the Application for approval of construction or reconstruction for new sources. If an owner or operator wishes to develop an alternative monitoring program after the compliance date, the program shall be submitted to the Administrator for approval before the owner or operator wishes to begin using the alternative program. If the Administrator does not notify the owner or operator of objections to the program, or any part of the program, within 45 days after its receipt, the program shall be deemed approved. Until the program is approved, the owner or operator of an affected source remains subject to the requirements of this subpart. The components of an alternative monitoring program shall include, at a minimum, the items listed in paragraphs (b)(5)(i) through (iv) of this section.

(i) A description of the parameter to be continuously monitored when foam is being poured to measure the amount of HAP ABA or polyol added at the mixhead.

(ii) A description of how the monitoring results will be recorded, and how the results will be converted into amount of HAP ABA or polyol delivered to the mixhead.

(iii) Data demonstrating that the monitoring device is accurate to within +/−2.0 percent.

(iv) Procedures to ensure that the accuracy of the parameter monitoring results is maintained. These procedures shall, at a minimum, consist of periodic calibration of all monitoring devices.

(c) *Recovered HAP ABA monitoring.* The owner or operator of each slabstock affected source using a recovery device to reduce HAP ABA emissions shall develop and comply with a recovered HAP ABA monitoring and recordkeeping program. The components of these plans shall include, at a minimum, the items listed in paragraphs (c)(1) through (5) of this section. These plans must be submitted for approval in accordance with paragraph (c)(6) of this section.

(1) A device, installed, calibrated, maintained, and operated according to the manufacturer's specifications, that indicates the cumulative amount of HAP ABA recovered by the solvent recovery device over each 1-month period. The device shall be certified by the manufacturer to be accurate to within +/−2.0 percent.

(2) The location where the monitoring will occur shall ensure that the measurements are taken after HAP ABA has been fully recovered (i.e., after separation from water introduced into the HAP ABA during regeneration).

(3) A description of the parameter to be monitored, and the times the parameter will be monitored.

(4) Data demonstrating that the monitoring device is accurate to within +/−2.0 percent.

(5) Procedures to ensure that the accuracy of the parameter monitoring results is maintained. These procedures shall, at a minimum, consist of periodic calibration of all monitoring devices.

(6) Recovered HAP ABA monitoring and recordkeeping programs must be submitted to the Administrator for approval in the Precompliance Report as specified in § 63.1306(c)(6) for existing sources or in the Application for approval of construction or reconstruction for new sources. If an owner or operator wishes to develop a recovered HAP ABA monitoring program after the compliance date, the program shall be submitted to the Administrator for approval before the owner or operator wishes to begin using the program. If the Administrator does not notify the owner or operator of objections to the program within 45 days after its receipt, the program shall be deemed approved. Until the program is approved, the owner or operator of an affected source remains subject to the requirements of this subpart.

(d) *Monitoring of HAP ABA in a storage vessel.* The amount of HAP ABA in a storage vessel shall be determined weekly by monitoring the HAP ABA level in the storage vessel using a level measurement device that meets the criteria described in paragraphs (d)(1) and either (d)(2) or (d)(3) of this section.

(1) The level measurement device must be calibrated initially and at least once per year thereafter.

(2) With the exception of visually-read level measurement devices (i.e., gauge glass), the device must have either a digital or printed output.

(3) If the level measurement device is a visually-read device, the device must be equipped with permanent graduated markings to indicate HAP ABA level in the storage tank.

(e) *Monitoring of HAP ABA added to a storage vessel.* The amount of HAP ABA added to a storage vessel during a delivery shall be determined in accordance with either paragraphs (e)(1), (2), (3), or (4) of this section.

(1) The volume of HAP ABA added to the storage vessel shall be determined by recording the volume in the storage vessel prior to the delivery and the volume after the delivery, provided that the storage tank level measurement device used to determine the levels meets the criteria in (d) of this section.

(2) The volume of HAP ABA added to the storage vessel shall be determined by monitoring the flow rate using a device with an accuracy of ± 2.0 percent, and calibrated initially and at least once each six months thereafter.

(3) The weight of HAP ABA added to the storage vessel shall be calculated as the difference of the full weight of the transfer vehicle prior to unloading into the storage vessel and the empty weight of the transfer vehicle after unloading into the storage vessel. The weight shall be determined using a scale meeting the requirements of either paragraph (e)(2)(i) or (ii) of this section.

(i) A scale approved by the State or local agencies using the procedures contained in Handbook 44, Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices 1998 (incorporation by reference—see § 63.14).

(ii) A scale determined to be in compliance with the requirements of the National Institute of Standards and Technology Handbook 44 at least once per year by a registered scale technician.

(4) As an alternative to the monitoring options described in paragraphs (e)(1) through (e)(3) of this section, the owner or operator may develop an alternative monitoring program. Alternative monitoring programs must be submitted to the Administrator for approval in the Precompliance Report as specified in § 63.1306(c)(4) for existing sources or in the Application for approval of construction or reconstruction for new sources. If an owner or operator wishes to develop an alternative monitoring program after the compliance date, the program shall be submitted to the Administrator for approval before the owner or operator wishes to begin using the alternative program. If the Administrator does not notify the owner or operator of objections to the program within 45 days after its receipt, the

program shall be deemed approved. Until the program is approved, the owner or operator of an affected source remains subject to the requirements of this subpart. The components of an alternative monitoring program shall include, at a minimum, the items listed in paragraphs (e)(3)(i) through (iv) of this section.

(i) A description of the parameter to be monitored to determine the amount of HAP ABA added to the storage vessel during a delivery,

(ii) A description of how the results will be recorded, and how the results will be converted into the amount of HAP ABA added to the storage vessel during a delivery,

(iii) Data demonstrating that the monitoring device is accurate to within ± 2.0 percent, and

(iv) Procedures to ensure that the accuracy of the monitoring measurements is maintained. These procedures shall, at a minimum, consist of periodic calibration of all monitoring devices.

§ 63.1304 Testing requirements.

Owners and operators of affected sources shall use the test methods listed in this section, as applicable, to demonstrate compliance with this subpart.

(a) *Test method and procedures to determine equipment leaks.* Monitoring, as required under § 63.1296, shall comply with the following requirements:

(1) Monitoring shall comply with Method 21 of 40 CFR part 60, appendix A.

(2) The detection instrument shall meet the performance criteria of Method 21 of 40 CFR part 60, appendix A, except that the instrument response factor criteria in section 3.1.2(a) of Method 21 shall be for the average composition of the source fluid, rather than for each individual VOC in the stream. For source streams that contain nitrogen, air, or other inerts which are not HAP or VOC, the average stream response factor shall be calculated on an inert-free basis. The response factor may be determined at any concentration for which monitoring for leaks will be conducted.

(3) The instrument shall be calibrated before use on each day of its use by the procedures specified in Method 21 of 40 CFR part 60, appendix A.

(4) Calibration gases shall be:

(i) Zero air (less than 10 ppm of hydrocarbon in air); and

(ii) A mixture of methane and air at a concentration of approximately, 1,000 ppm for all transfer pumps; and 500 ppm for all other equipment, except as provided in paragraph (a)(4)(iii) of this section.

(iii) The instrument may be calibrated at a higher methane concentration (up to 2,000 ppm) than the leak definition concentration for a specific piece of equipment for monitoring that piece of equipment. If the monitoring instrument's design allows for multiple calibration gas concentrations, then the lower concentration calibration gas shall be no higher than 2,000 ppm methane and the higher concentration calibration gas shall be no higher than 10,000 ppm methane.

(5) Monitoring shall be performed when the equipment is in HAP ABA service, in use with an acceptable surrogate volatile organic compound which is not a HAP ABA, or is in use with any other detectable gas or vapor.

(6) If no instrument is available onsite that will meet the performance criteria specified in section 3.1.2(a) of Method 21 of 40 CFR Part 60, appendix A, the readings from an available instrument may be adjusted by multiplying by the average response factor for the stream.

(b) *Test method to determine foam properties.* The IFD and density of each grade of foam produced during each run of foam shall be determined using ASTM D3574–91, Standard Test Methods for Flexible Cellular Materials—Slab, Bonded, and Molded (incorporation by reference—see § 63.14), using a sample of foam cut from the center of the foam bun. The maximum sample size for which the IFD and density is determined shall not be larger than 24 inches by 24 inches by 4 inches. For grades of foam where the owner or operator has designated the HAP ABA formulation limitation as zero, the owner or operator is not required to determine the IFD and density in accordance with this paragraph.

§ 63.1305 Alternative means of emission limitation.

An owner or operator of an affected source may request approval to use an alternative means of emission limitation, following the procedures in this section.

(a) The owner or operator can request approval to use an alternative means of emission limitation in the precompliance report for existing sources, the application for construction or reconstruction for new sources, or at any time.

(b) This request shall include a complete description of the alternative means of emission limitation.

(c) Each owner or operator applying for permission to use an alternative means of emission limitation under § 63.6(g) shall be responsible for collecting and verifying data to demonstrate the emission reduction achieved by the alternative means of emission limitation.

(d) Use of the alternative means of emission limitation shall not begin until approval is granted by the Administrator in accordance with § 63.6(g).

§ 63.1306 Reporting requirements.

Owners and operators of affected sources shall comply with each applicable reporting provision in this section.

(a) *Initial notification.* Each affected source shall submit an initial notification in accordance with § 63.9(b).

(b) *Application for approval of construction or reconstruction.* Each owner or operator shall submit an application for approval of construction or reconstruction in accordance with the provisions of § 63.5(d).

(c) *Precompliance report.* Each slabstock affected source shall submit a precompliance report no later than 12 months before the compliance date. This report shall contain the information listed in paragraphs (c)(1) through (c)(8) of this section, as applicable.

(1) Whether the source will comply with the emission point specific limitations described in § 63.1293(a), or with the source-wide emission limitation described in § 63.1293(b).

(2) For a source complying with the emission point specific limitations, whether the source will comply on a rolling annual basis in accordance with § 63.1297(b), or will comply with the monthly alternative for compliance contained in § 63.1297(c).

(3) For a source complying with the source-wide emission limitation, whether the source will comply on a rolling annual basis in accordance with § 63.1299(a), or will comply with the monthly alternative for compliance contained in § 63.1299(b).

(4) A description of how HAP ABA and/or polyol added at the mixhead will be monitored. If the owner or operator is developing an alternative monitoring program, the alternative monitoring program containing the information in § 63.1303(b)(5)(i) through (iv) shall be submitted.

(5) Notification of the intent to use a recovery device to comply with the provisions of § 63.1297 or § 63.1299.

(6) For slabstock affected sources complying with § 63.1297 or § 63.1299 using a recovery device, the continuous recovered HAP ABA monitoring and

recordkeeping program, developed in accordance with § 63.1303(c).

(7) For sources complying with the source-wide emission limitation, a description of how the amount of HAP ABA in a storage vessel shall be determined.

(8) For sources complying with the source-wide emission limitation, a description of how the amount of HAP ABA added to a storage vessel during a delivery will be monitored. If the owner or operator is developing an alternative monitoring program, the alternative monitoring program containing the information in § 63.1303(e)(4)(i) through (iv) shall be submitted.

(9) If the Administrator does not notify the owner or operator of objections to an alternative monitoring program submitted in accordance with (c)(4) or (c)(6) of this section, or a recovered HAP ABA monitoring and recordkeeping program submitted in accordance with (c)(7) of this section, the program shall be deemed approved 45 days after its receipt by the Administrator.

(d) *Notification of compliance status.* Each affected source shall submit a notification of compliance status report no later than 180 days after the compliance date. For slabstock affected sources, this report shall contain the information listed in paragraphs (d)(1) through (3) of this section, as applicable. This report shall contain the information listed in paragraph (d)(4) of this section for molded foam processes and in paragraph (d)(5) for rebond foam processes.

(1) A list of diisocyanate storage vessels, along with a record of the type of control utilized for each storage vessel.

(2) For transfer pumps in diisocyanate service, a record of the type of control utilized for each transfer pump.

(3) If the source is complying with the emission point specific limitations of §§ 63.1294 through 63.1298, the information listed in paragraphs (b)(3)(i) through (iii) of this section.

(i) A list of HAP ABA storage vessels, along with a record of the type of control utilized for each storage vessel.

(ii) A list of pumps, valves, connectors, pressure-relief devices, and open-ended valves or lines in HAP ABA service.

(iii) A list of any modifications to equipment in HAP ABA service made to comply with the provisions of § 63.1296.

(4) A statement that the molded foam affected source is in compliance with § 63.1300, or a statement that molded foam processes at an affected source are in compliance with § 63.1300.

(5) A statement that the rebond foam affected source is in compliance with § 63.1301, or that rebond processes at an affected source are in compliance with § 63.1301.

(e) *Semiannual reports.* Each slabstock affected source shall submit a report containing the information specified in paragraphs (e)(1) through (5) of this section semiannually no later than 60 days after the end of each 180 day period. The first report shall be submitted no later than 240 days after the date that the Notification of Compliance Status is due and shall cover the 6-month period beginning on the date that the Notification of Compliance Status Report is due.

(1) For slabstock affected sources complying with the rolling annual compliance provisions of either § 63.1297 or § 63.1299, the allowable and actual HAP ABA emissions (or allowable and actual source-wide HAP emissions) for each of the 12-month periods ending on each of the six months in the reporting period. This information is not required to be included in the initial semi-annual compliance report.

(2) For sources complying with the monthly compliance alternative of either § 63.1297 or § 63.1299, the allowable and actual HAP ABA emissions (or allowable and actual source-wide HAP emissions) for each of the six months in the reporting period.

(3) For sources complying with the storage vessel provisions of § 63.1294(a) or § 63.1295 using a carbon adsorption system, unloading events that occurred after breakthrough was detected and before the carbon was replaced.

(4) Any equipment leaks that were not repaired in accordance with § 63.1294(b)(2)(iii), § 63.1294(c), § 63.1296(a)(2)(iii), (b)(2), (b)(3)(iv), (b)(4)(v), (c)(2), (c)(4)(ii), and (d)(2).

(5) Any leaks in vapor return lines that were not repaired in accordance with § 63.1294(a)(1)(ii) or § 63.1295(b)(2).

(f) *Other reports.* (1) Change in selected emission limitation. An owner or operator electing to change their slabstock flexible polyurethane foam emission limitation (from emission point specific limitations to a source-wide emission limitation, or vice versa), selected in accordance with § 63.1293, shall notify the Administrator no later than 180 days prior to the change.

(2) *Change in selected compliance method.* An owner or operator changing the period of compliance for either § 63.1297 or § 63.1299 (between rolling annual and monthly) shall notify the Administrator no later than 180 days prior to the change.

(g) *Annual compliance certifications.* Each affected source subject to the provisions in §§ 63.1293 through 63.1301 shall submit a compliance certification annually.

(1) The compliance certification shall be based on information consistent with that contained in § 63.1308 of this section, as applicable.

(2) A compliance certification required pursuant to a State or local operating permit program may be used to satisfy the requirements of this section, provided that the compliance certification is based on information consistent with that contained in § 63.1308 of this section, and provided that the Administrator has approved the State or local operating permit program under part 70 of this chapter.

(3) Each compliance certification submitted pursuant to this section shall be signed by a responsible official of the company that owns or operates the affected source.

§ 63.1307 Recordkeeping requirements.

The applicable records designated in paragraphs (a) through (c) of this section shall be maintained by owners and operators of all affected sources.

(a) *Storage vessel records.* (1) A list of diisocyanate storage vessels, along with a record of the type of control utilized for each storage vessel.

(2) For each slabstock affected source complying with the emission point specific limitations of §§ 63.1294 through 63.1298, a list of HAP ABA storage vessels, along with a record of the type of control utilized for each storage vessel.

(3) For storage vessels complying through the use of a carbon adsorption system, paragraph (a)(3)(i) or (ii), and paragraph (a)(3)(iii) of this section.

(i) Records of dates and times when the carbon adsorption system is monitored for carbon breakthrough and the monitoring device reading, when the device is monitored in accordance with § 63.1303(a); or

(ii) For affected sources monitoring at an interval no greater than 20 percent of the carbon replacement interval, in accordance with § 63.1303(a)(2), the records listed in paragraphs (a)(3)(ii)(A) and (B) of this section.

(A) Records of the design analysis, including all the information listed in § 63.1303(a)(2)(i) through (iii), and

(B) Records of dates and times when the carbon adsorption system is monitored for carbon breakthrough and the monitoring device reading.

(iii) Date when the existing carbon in the carbon adsorption system is replaced with fresh carbon.

(4) For storage vessels complying through the use of a vapor return line,

paragraphs (a)(4)(i) through (iii) of this section.

(i) Dates and times when each unloading event occurs and each inspection of the vapor return line for leaks occurs.

(ii) Records of dates and times when a leak is detected in the vapor return line.

(iii) Records of dates and times when a leak is repaired.

(b) *Equipment leak records.* (1) A list of components as specified below in paragraphs (b)(1)(i) and (ii).

(i) For all affected sources, a list of components in diisocyanate service,

(ii) For affected sources complying with the emission point specific limitations of §§ 63.1294 through 63.1298, a list of components in HAP ABA service.

(2) For transfer pumps in diisocyanate service, a record of the type of control utilized for each transfer pump and the date of installation.

(3) When a leak is detected as specified in § 63.1294(b)(2)(ii), § 63.1294(c), § 63.1296(a)(2), (b)(1), (c)(1), and (d)(1), the requirements listed in paragraphs (b)(3)(i) and (ii) of this section apply:

(i) Leaking equipment shall be identified in accordance with the requirements in paragraphs (b)(3)(i)(A) through (C) of this section.

(A) A readily visible identification, marked with the equipment identification number, shall be attached to the leaking equipment.

(B) The identification on a valve may be removed after it has been monitored for 2-successive quarters as specified in § 63.1296(b)(1) and no leak has been detected during those 2 quarters.

(C) The identification on equipment, other than a valve, may be removed after it has been repaired.

(ii) The information in paragraphs (b)(2)(ii)(A) through (H) shall be recorded for leaking components.

(A) The instrument and operator identification numbers and the equipment identification number.

(B) The date the leak was detected and the dates of each attempt to repair the leak.

(C) Repair methods applied in each attempt to repair the leak.

(D) The words ''above leak definition'' if the maximum instrument reading measured by the methods specified in § 63.1304(a) after each repair attempt is equal or greater than the leak definitions for the specified equipment.

(E) The words ''repair delayed'' and the reason for the delay if a leak is not repaired within 15 calendar days after discovery of the leak.

(F) The expected date of the successful repair of the leak if a leak is not repaired within 15 calendar days.

(G) The date of successful repair of the leak.

(H) The date the identification is removed.

(c) *HAP ABA records.* (1) *Emission point specific limitations—rolling annual compliance and monthly compliance alternative records.* Each slabstock affected source complying with the emission point specific limitations of §§ 63.1294 through 63.1298, and the rolling annual compliance provisions of § 63.1297(a)(1), shall maintain the records listed in paragraphs (c)(1)(i), (ii), (iii), and (iv) of this section. Each flexible polyurethane foam slabstock source complying with the emission point specific limitations of §§ 63.1294 through 63.1298, and the monthly compliance alternative of § 63.1297(a)(2), shall maintain the records listed in paragraphs (c)(1)(i), (ii), and (iv) of this section.

(i) Daily records of the information listed below in paragraphs (c)(1)(i)(A) through (C) of this section.

(A) A log of foam runs each day. For each run, the log shall include a list of the grades produced during the run.

(B) Results of the density and IFD testing for each grade of foam produced during each run of foam, conducted in accordance with the procedures in § 63.1304(b). The results of this testing shall be recorded within 10 working days of the production of the foam. For grades of foam where the owner or operator has designated the HAP ABA formulation limitation as zero, the owner or operator is not required to keep records of the IFD and density.

(C) The amount of polyol added to the slabstock foam production line at the mixhead for each run of foam, determined in accordance with § 63.1303(b).

(ii) Monthly records of the information listed in paragraphs (c)(1)(ii)(A) through (E) of this section.

(A) A listing of all foam grades produced during the month,

(B) For each foam grade produced, the HAP ABA formulation limitation, calculated in accordance with § 63.1297(d).

(C) With the exception of those grades for which the owner or operator has designated zero as the HAP ABA formulation limitation, the total amount of polyol used in the month for each foam grade produced.

(D) The total allowable HAP ABA emissions for the month, determined in accordance with § 63.1297(b)(2).

(E) The total amount of HAP ABA added to the slabstock foam production line at the mixhead during the month, determined in accordance with § 63.1303(b).

(iii) Each source complying with the rolling annual compliance provisions of § 63.1297(b) shall maintain the records listed in paragraphs (c)(1)(iii)(A) and (B) of this section.

(A) The sum of the total allowable HAP ABA emissions for the month and the previous 11 months.

(B) The sum of the total actual HAP ABA emissions for the month and the previous 11 months.

(iv) Records of all calibrations for each device used to measure polyol and HAP ABA added at the mixhead, conducted in accordance with § 63.1303(b)(3).

(2) *Source-wide limitations—rolling annual compliance and monthly compliance alternative records.* Each slabstock affected source complying with the source-wide limitations of § 63.1299, and the rolling annual compliance provisions in § 63.1299(a), shall maintain the records listed in paragraphs (c)(2)(i) through (c)(2)(vii) of this section. Each flexible polyurethane foam slabstock source complying with the source-wide limitations of § 63.1299, and the monthly compliance alternative of § 63.1299(b), shall maintain the records listed in paragraphs (c)(2)(i) through (c)(2)(iii) and paragraphs (c)(2)(v) through (c)(2)(vii) of this section.

(i) Daily records of the information listed in paragraphs (c)(2)(i)(A) through (C) of this section.

(A) A log of foam runs each day. For each run, the log shall include a list of the grades produced during the run.

(B) Results of the density and IFD testing for each grade of foam produced during each run of foam, conducted in accordance with the procedures in § 63.1304(b). The results of this testing shall be recorded within 10 working days of the production of the foam. For grades of foam where the the owner or operator has designated the HAP ABA formulation limitation as zero, the owner or operator is not required to keep records of the IFD and density.

(C) With the exception of those grades for which the owner or operator has designated zero as the HAP ABA formulation limitation, the amount of polyol added to the slabstock foam production line at the mixhead for each grade produced during each run of foam, determined in accordance with § 63.1303(b).

(ii) For sources complying with the source-wide emission limitation, weekly records of the storage tank level,

determined in accordance with § 63.1303(d).

(iii) Monthly records of the information listed below in paragraphs (c)(2)(iii)(A) through (E) of this section.

(A) A listing of all foam grades produced during the month,

(B) For each foam grade produced, the residual HAP formulation limitation, calculated in accordance with § 63.1297(d).

(C) With the exception of those grades for which the owner or operator has designated zero as the HAP ABA formulation limitation, the total amount of polyol used in the month for each foam grade produced.

(D) The total allowable HAP ABA and equipment cleaning emissions for the month, determined in accordance with § 63.1297(b)(2).

(E) The total actual source-wide HAP ABA emissions for the month, determined in accordance with § 63.1299(c)(1), along with the information listed in paragraphs (c)(2)(iii)(E)(*1*) and (*2*) of this section.

(*1*) The amounts of HAP ABA in the storage vessel at the beginning and end of the month, determined in accordance with § 63.1299(c)(2); and

(*2*) The amount of each delivery of HAP ABA to the storage vessel, determined in accordance with § 63.1299(c)(3).

(iv) Each source complying with the rolling annual compliance provisions of § 63.1299(a) shall maintain the records listed in paragraphs (c)(2)(iv)(A) and (B) of this section.

(A) The sum of the total allowable HAP ABA and equipment cleaning HAP emissions for the month and the previous 11 months.

(B) The sum of the total actual HAP ABA and equipment cleaning HAP emissions for the month and the previous 11 months.

(v) Records of all calibrations for each device used to measure polyol added at the mixhead, conducted in accordance with § 63.1303(b)(3).

(vi) Records of all calibrations for each device used to measure the amount of HAP ABA in the storage vessel, conducted in accordance with § 63.1303(d)(1).

(vii) Records to verify that all scales used to measure the amount of HAP ABA added to the storage vessel meet the requirements of § 63.1303(e)(3). For scales meeting the criteria of § 63.1303(e)(3)(i), this documentation shall be in the form of written confirmation of the State or local approval. For scales complying with § 63.1303(e)(3)(ii), this documentation shall be in the form of a report provided by the registered scale technician.

(d) The owner or operator of each affected source complying with § 63.1297 or § 63.1299 through the use of a recovery device shall maintain the following records:

(1) A copy of the recovered HAP ABA monitoring and recordkeeping program, developed pursuant to § 63.1303(c);

(2) Certification of the accuracy of the monitoring device,

(3) Records of periodic calibration of the monitoring devices,

(4) Records of parameter monitoring results, and

(5) The amount of HAP ABA recovered each time it is measured.

(e) The owner or operator of an affected source subject to § 63.1298 of this subpart shall maintain a product data sheet for each equipment cleaner used which includes the HAP content, in kg of HAP/kg solids (lb HAP/lb solids).

(f) The owner or operator of an affected source following the compliance methods in § 63.1308(b)(1) and (c)(1) shall maintain records of each use of a vapor return line during unloading, of any leaks detected during unloading, and of repairs of leaks detected during unloading.

(g) The owner or operator of an affected source subject to § 63.1300 or § 63.1301 of this subpart shall maintain a product data sheet for each compound other than diisocyanates used to flush the mixhead and associated piping during periods of startup or maintenance, which includes the HAP content, in kg of HAP/kg solids (lb HAP/lb solids), of each solvent other than diisocyanates used to flush the mixhead and associated piping during periods of startup or maintenance.

(h) The owner or operator of an affected source subject to § 63.1300 or § 63.1301 of this subpart shall maintain a product data sheet for each mold release agent used that includes the HAP content, in kg of HAP/kg solids (lb HAP/lb solids), of each mold release agent.

§ 63.1308 Compliance demonstrations.

(a) For each affected source, compliance with the requirements listed in paragraphs (a)(1) through (a)(2) of this section shall mean compliance with the requirements contained in §§ 63.1293 through 63.1301, absent any credible evidence to the contrary.

(1) The requirements described in Tables 3, 4, and 5 of this subpart; and

(2) The requirement to submit a compliance certification annually as required under § 63.1306(g).

(b) *All slabstock affected sources.* For slabstock affected sources, failure to meet the requirements contained in § 63.1294 shall be considered a violation of this subpart. Violation of each item listed in the paragraphs (b)(1) through (b)(6) of this section, as applicable, shall be considered a separate violation.

(1) For each affected source complying with § 63.1294(a) in accordance with § 63.1294(a)(1), each unloading event that occurs when the diisocyanate storage vessel is not equipped with a vapor return line from the storage vessel to the tank truck or rail car, each unloading event that occurs when the vapor line is not connected, each unloading event that the vapor line is not inspected for leaks as described in § 63.1294(a)(1)(i), each unloading event that occurs after a leak has been detected and not repaired, and each calendar day after a leak is detected, but not repaired as soon as practicable;

(2) For each affected source complying with § 63.1294(a) in accordance with § 63.1294(a)(2), each unloading event that the diisocyanate storage vessel is not equipped with a carbon adsorption system, each unloading event (or each month if more than one unloading event occurs in a month) that the carbon adsorption system is not monitored for breakthrough in accordance with § 63.1303(a)(3) or (4), and each unloading event that occurs when the carbon is not replaced after an indication of breakthrough;

(3) For each affected source complying with § 63.1294(a) in accordance with § 63.1294(a)(2) through the alternative monitoring procedures in § 63.1303(a)(2), each unloading event that the diisocyanate storage vessel is not equipped with a carbon adsorption system, each time that the carbon adsorption system is not monitored for breakthrough in accordance with § 63.1303(a)(3) or (4) at the interval established in the design analysis, and each unloading event that occurs when the carbon is not replaced after an indication of breakthrough;

(4) For each affected source complying with § 63.1294(b) in accordance with § 63.1294(b)(1), each calendar day that a transfer pump in diisocyanate service is not a sealless pump;

(5) For each affected source complying with § 63.1294(b) in accordance with § 63.1294(b)(2), each calendar day that a transfer pump in diisocyanate service is not submerged as described in § 63.1294(b)(2)(i), each week that the pump is not visually monitored for leaks, each calendar day after 5 calendar days after detection of a leak that a first attempt at repair has not been made in accordance with

§ 63.1294(b)(2)(iii)(B), and the earlier of each calendar day after 15 calendar days after detection of a leak that a leak is not repaired, or a leak is not repaired as soon as practicable, each subsequent calender day (with the exception of situations meeting the criteria of § 63.1294(d));

(6) For each affected source complying with § 63.1294(c), each calendar day after 5 calendar days after detection of a leak that a first attempt at repair has not been made, and the earlier of each calendar day after 15 calendar days after detection of a leak that a leak is not repaired, or if a leak is not repaired as soon as practicable, each subsequent calender day (with the exception of situations meeting the criteria of § 63.1296(f)).

(c) *Slabstock affected sources complying with the emission point specific limitations.* For slabstock affected sources complying with the emission point specific limitations as provided in § 63.1293(a), failure to meet the requirements contained in §§ 63.1295 through 63.1298 shall be considered a violation of this subpart. Violation of each item listed in the paragraphs (c)(1) through (c)(17) of this section, as applicable, shall be considered a separate violation.

(1) For each affected source complying with § 63.1295(a) in accordance with § 63.1295(b), each unloading event that occurs when the HAP ABA storage vessel is not equipped with a vapor return line from the storage vessel to the tank truck or rail car, each unloading event that occurs when the vapor line is not connected, each unloading event that the vapor line is not inspected for leaks as described in § 63.1295(b)(1), each unloading event that occurs after a leak has been detected and not repaired, and each calendar day after a leak is detected but not repaired as soon as practicable;

(2) For each affected source complying with § 63.1295(a) in accordance with § 63.1295(c), each unloading event that the HAP ABA storage vessel is not equipped with a carbon adsorption system, each unloading event (or each month if more than one unloading event occurs in a month) that the carbon adsorption system is not monitored for breakthrough in accordance with § 63.1303(a)(3) or (4), and each unloading event that occurs when the carbon is not replaced after an indication of breakthrough ;

(3) For each affected source complying with § 63.1295(a) in accordance with § 63.1295(c) through the alternative monitoring procedures in § 63.1303(a)(2), each unloading event that the HAP ABA storage vessel is not equipped with a carbon adsorption system, each time that the carbon adsorption system is not monitored for breakthrough in accordance with § 63.1303(a)(3) or (4) at the interval established in the design analysis, and each unloading event that occurs when the carbon is not replaced after an indication of breakthrough;

(4) For each affected source complying with § 63.1296(a) in accordance with § 63.1296(a)(1), each calendar day that a transfer pump in HAP ABA service is not a sealless pump;

(5) For each affected source complying with § 63.1296(a) in accordance with § 63.1296(a)(2), each week that a visual inspection of a pump in HAP ABA service is not performed, each quarter that a pump in HAP ABA service is not monitored to detect leaks in accordance with § 63.1304(a), each calendar day after 5 calendar days after detection of a leak that a first attempt at repair has not been made in accordance with § 63.1296(b)(2)(iii)(B), and the earlier of each calendar day after 15 calendar days after detection of a leak that a leak is not repaired, or if a leak is not repaired as soon as practicable, each subsequent calender day (with the exception of situations meeting the criteria of § 63.1296(f));

(6) For each affected source complying with § 63.1296(b) in accordance with § 63.1296(b)(1) and (2), each quarter that a valve in HAP ABA service is not monitored to detect leaks in accordance with § 63.1304(a), each calendar day after 5 calendar days after detection of a leak that a first attempt at repair has not been made in accordance with § 63.1296(b)(2)(ii), and each calendar day after 15 calendar days after detection of a leak that a leak is not repaired, or if a leak is not repaired as soon as practicable, whichever is earlier (with the exception of situations meeting the criteria of § 63.1296(f));

(7) For each affected source complying with § 63.1296(b)(3) for each valve designated as unsafe to monitor as described in § 63.1296(b)(3)(i), failure to develop the written plan required by § 63.1296(b)(3)(ii), each period specified in the written plan that an unsafe-to-monitor valve in HAP ABA service is not monitored, and each calendar day in which a leak is not repaired in accordance with the written plan;

(8) For each affected source complying with § 63.1296(b)(4) for one or more valves designated as difficult-to-monitor in accordance with § 63.1296(b)(4)(i) and (ii), failure to develop the written plan required by § 63.1296(b)(4)(iii), each calendar year that a difficult-to-monitor valve in HAP ABA service is not monitored, and each calendar day in which a leak is not repaired in accordance with the written plan;

(9) For each affected source complying with § 63.1296(c) in accordance with § 63.1296(c)(1) and (2), each year that a connector in HAP ABA service is not monitored to detect leaks in accordance with § 63.1304(a); each calendar day after 3 months after a connector has been opened, has otherwise had the seal broken, or a leak is repaired, that each connector in HAP ABA service is not monitored to detect leaks in accordance with § 63.1304(a); each calendar day after 5 calendar days after detection of a leak that a first attempt at repair has not been made, and the earlier of each calendar day after 15 calendar days after detection of a leak that a leak is not repaired, or if a leak is not repaired as soon as practicable, each subsequent calendar day (with the exception of situations meeting the criteria of § 63.1296(f));

(10) For each affected source complying with § 63.1296(c)(3) for one or more connectors designated as unsafe-to-monitor in accordance with § 63.1296(c)(3)(i), failure to develop the written plan required by § 63.1296(c)(3)(ii), each period specified in the written plan that an unsafe-to-monitor valve in HAP ABA service is not monitored, each calendar day after 5 calendar days after detection of a leak of an unsafe-to-monitor connector that a first attempt at repair has not been made, and the earlier of each calendar day after 15 calendar days after detection of a leak that a leak is not repaired, or if a leak is not repaired as soon as practicable, each subsequent calender day (with the exception of situations meeting the criteria of § 63.1296(f));

(11) For each affected source complying with § 63.1296(c)(4) for one or more connectors designated as unsafe to repair, each year that one or more unsafe-to-repair connectors in HAP ABA service is not monitored to detect leaks in accordance with § 63.1304(a); each calendar day after 3 months after one or more unsafe-to-repair connectors has been opened, has otherwise had the seal broken, or a leak is repaired, that each unsafe-to-repair connector in HAP ABA service is not monitored to detect leaks in accordance with § 63.1304(a); and the earlier of each calendar day after six-months after detection of a leak that a leak is not repaired, or if a leak is not repaired as soon as practicable, each subsequent calendar day;

(12) For each affected source complying with § 63.1296(d) in

accordance with § 63.1296(d)(1) and (2), each calendar day after the 5 days that the pressure-relief device has not been monitored in accordance with § 63.1304(a) after a potential leak was discovered as described in § 63.1296(d)(1), each calendar day after 5 calendar days after detection of a leak that a first attempt at repair has not been made, and the earlier of each calendar day after 15 calendar days after detection of a leak that a leak is not repaired, or if a leak is detected and not repaired as soon as practicable, each subsequent calendar day (with the exception of situations meeting the criteria of § 63.1296(f));

(13) For each affected source complying with § 63.1296(e) in accordance with § 63.1296(e)(1) through (5), each calendar day that an open-ended valve or line has no cap, blind flange, plug or second valve as described in § 63.1296(e)(2), and each calendar day that a valve on the process fluid end of an open-ended valve or line equipped with a second valve is not closed before the second valve is closed;

(14) For each affected source complying with § 63.1297(a) in accordance with the rolling annual compliance option in § 63.1297(a)(1) and (b), each calendar day in the 12-month period for which the actual HAP ABA emissions exceeded the allowable HAP ABA emissions level, each calendar day in which foam is being poured where the amount of polyol added at the mixhead is not monitored (as required) in accordance with § 63.1303(b)(1)(i), each calendar day in which foam is being poured where the amount of HAP ABA added at the mixhead is not monitored (as required) in accordance with § 63.1303(b)(1)(ii), each calendar day in a 6-month period in which the polyol pumps are not calibrated in accordance with § 63.1303(b)(3)(i), each calendar day in a month in which the HAP ABA pumps are not calibrated in accordance with § 63.1303(b)(3)(ii), and each calendar day after 10 working days after production where the IFD and density of a foam grade are not determined (where required) in accordance with § 63.1304(b);

(15) For each affected source complying with § 63.1297(a) in accordance with the monthly compliance option in § 63.1297(a)(2) and (c), each calendar day of each month for which the actual HAP ABA emissions exceeded the allowable HAP ABA emissions level for that month, each calendar day in which foam is being poured where the amount of polyol added at the mixhead is not monitored (as required) in accordance with § 63.1303(b)(1)(i), each calendar day in which foam is being poured where the amount of HAP ABA added at the mixhead is not monitored (as required) in accordance with § 63.1303(b)(1)(ii), each 6-month period in which the polyol pumps are not calibrated in accordance with § 63.1303(b)(3)(i), each month in which the HAP ABA pumps are not calibrated in accordance with § 63.1303(b)(3)(ii), and each calendar day after 10 working days after production where the IFD and density of a foam grade are not determined (where required) in accordance with § 63.1304(b);

(16) For each affected source complying with § 63.1297(a) by using a recovery device as allowed under § 63.1297(e), the items listed in (c)(16)(i) or (ii) of this section, as applicable.

(i) If complying with rolling annual compliance option in § 63.1297(a)(1) and (b), each item listed in (c)(14) of this section, failure to develop a recovered HAP ABA monitoring and recordkeeping program in accordance with § 63.1303(c), and each instance when an element of the program is not followed.

(ii) If complying with the monthly compliance option in § 63.1297(a)(2) and (c), each item listed in (c)(15) of this section, failure to develop a recovered HAP ABA monitoring and recordkeeping program in accordance with § 63.1303(c), and each instance when an element of the program is not followed.

(17) For each affected source complying with § 63.1298, each calendar day that a HAP or any HAP-based material is used as an equipment cleaner.

(d) *Slabstock affected sources complying with the source-wide emission limitation.* For slabstock affected sources complying with the source-wide emission limitation as provided in § 63.1293(b), failure to meet the requirements contained in § 63.1299 shall be considered a violation of this subpart. Violation of each item listed in the paragraphs (d)(1) through (d)(3) of this section, as applicable, shall be considered a separate violation.

(1) For each affected source complying with § 63.1299 in accordance with the rolling annual compliance option in § 63.1299(a), each calendar day in the 12-month period for which the actual HAP ABA emissions exceeded the allowable HAP ABA emissions level, each calendar day in which foam is being poured where the amount of polyol added at the mixhead is not monitored (as required) in accordance with § 63.1303(b)(1)(i), each calendar day in a week in which the amount of HAP ABA in a storage vessel is not determined in accordance with § 63.1303(d), each delivery of HAP ABA in which the amount of HAP ABA added to the storage vessel is not determined in accordance with § 63.1303(e), each calendar day in a 6-month period in which the polyol pumps are not calibrated in accordance with § 63.1303(b)(3)(i), and each calendar day after 10 working days after production where the IFD and density of a foam grade are not determined (where required) in accordance with § 63.1304(b);

(2) For each affected source complying with § 63.1299 in accordance with the monthly compliance option in § 63.1299(b), each calendar day of each month for which the actual HAP ABA emissions exceeded the allowable HAP ABA emissions level for that month, each calendar day in which foam is being poured where the amount of polyol added at the mixhead is not monitored (as required) in accordance with § 63.1303(b)(1)(i), each calendar day in a week in which the amount of HAP ABA in a storage vessel is not determined in accordance with § 63.1303(d), each delivery of HAP ABA in which the amount of HAP ABA added to the storage vessel is not determined in accordance with § 63.1303(e), each calendar day in a 6-month period in which the polyol pumps are not calibrated in accordance with § 63.1303(b)(3)(i), and each calendar day after 10 working days after production where the IFD and density of a foam grade are not determined (where required) in accordance with § 63.1304(b).

(3) For each affected source complying with § 63.1299 by using a recovery device as allowed under § 63.1299(e), the items listed in (d)(3)(i) or (ii) of this section, as applicable.

(i) If complying with rolling annual compliance option in § 63.1299(a), each item listed in (d)(1) of this section, failure to develop a recovered HAP ABA monitoring and recordkeeping program in accordance with § 63.1303(c), and each instance when an element of the program is not followed.

(ii) If complying with the monthly compliance option in § 63.1299(b), each item listed in (d)(2) of this section, failure to develop a recovered HAP ABA monitoring and recordkeeping program in accordance with § 63.1303(c), and each instance when an element of the program is not followed.

(e) *Molded and rebond foam affected sources.* For molded and rebond foam affected sources, failure to meet the requirements contained in § 63.1300 and § 63.1301, respectively, shall be

considered a violation of this subpart. Violation of each item listed in the following paragraphs shall be considered a separate violation.

(1) For each molded foam affected source subject to the provisions in § 63.1300(a), each calendar day that a HAP-based material is used as an equipment cleaner (except for diisocyanates used to flush the mixhead and associated piping during periods of startup or maintenance, provided that the diisocyanate compounds are contained in a closed-loop system and are re-used in production);

(2) For each molded foam affected source subject to the provisions of § 63.1300(b), each calendar day that a HAP-base material is used as a mold release agent;

(3) For each rebond foam affected source subject to the provisions of § 63.1301(a), each calendar day that a HAP-based material is used as an equipment cleaner; and

(4) For each rebond foam affected source complying with § 63.1301(b), each calendar day that a HAP-based mold release agent is used.

§ 63.1309 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under § 112(d) of the Clean Air Act, the authorities contained in paragraph (b) of this section shall be retained by the Administrator and not transferred to a State.

(b) The authority conferred in § 63.1303(b)(5) and § 63.1305(d) shall not be delegated to any State.

Appendix to Subpart III—Tables

For the convenience of the readers of subpart III, the tables below summarize the requirements in §§ 63.1290 to 63.1307. These tables are intended to assist the reader in determining the requirements applicable to affected sources and do not alter an affected source's obligation to comply with the requirements in §§ 63.1290 to 63.1307.

TABLE 1 TO SUBPART III—HAP ABA FORMULATION LIMITATIONS MATRIX FOR NEW SOURCES [see § 63.1297(d)(2)]

Values in parts ABA per hundred parts polyol		Density ranges (pounds per cubic foot)				
		0-0.95	0.96-1.05	1.06-1.15	1.16-1.40	1.41+
IFD	0-10	Use Equation 3				
	11-15					
	16-20					
	21-25					
	26-30					
	31+	0				

TABLE 2 TO SUBPART III—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART III.

Subpart A reference	Applies to subpart III	Comment
§ 63.1	YES	Except that § 63.1(c)(2) is not applicable to the extent area sources are not subject to subpart III.
§ 63.2	YES	Definitions are modified and supplemented by § 63.1292.
§ 63.3	YES	
§ 63.4	YES	
§ 63.5	YES	
§ 63.6 (a)–(d)	YES	
§ 63.6(e) (1)–(2)	YES	
§ 63.6(e)(3)	NO	Owners and operators of subpart III affected sources are not required to develop and implement a startup, shutdown, and malfunction plan.
§ 63.6 (f)–(g)	YES	

TABLE 2 TO SUBPART III—APPLICABILITY OF GENERAL PROVISIONS (40 CFR PART 63, SUBPART A) TO SUBPART III.—Continued

Subpart A reference	Applies to subpart III	Comment
§ 63.6(h)	NO	Subpart III does not require opacity and visible emission standards.
§ 63.6 (i)–(j)	YES	
§ 63.7	NO	Performance tests not required by subpart III.
§ 63.8	NO	Continuous monitoring, as defined in subpart A, is not required by subpart III.
§ 63.9 (a)–(d)	YES	
§ 63.9 (e)–(g)	NO	
§ 63.9(h)	NO	Subpart III specifies Notification of Compliance Status requirements.
§ 63.9 (i)–(j)	YES	
§ 63.10 (a)–(b)	YES	Except that the records specified in § 63.10(b)(2)(vi) through (xi) and (xiii) are not required.
§ 63.10(c)	NO	
§ 63.10(d)(1)	YES	
§ 63.10 (d) (2)–(3)	NO	
§ 63.10 (d) (4)–(5)	YES	
§ 63.10(e)	NO	
§ 63.10(f)	YES	
§ 63.11	YES	
§ 63.12	YES	
§ 63.13	YES	
§ 63.14	YES	
§ 63.15	YES	

TABLE 3 TO SUBPART III.—COMPLIANCE REQUIREMENTS FOR SLABSTOCK FOAM PRODUCTION AFFECTED SOURCES COMPLYING WITH THE EMISSION POINT SPECIFIC LIMITATIONS

Emission point	Emission point compliance option	Emission, work practice, and equipment standards	Monitoring	Recordkeeping	Reporting
Diisocyanate storage vessels § 63.1294(a)	Vapor balance	§ 63.1294(a)(1) and (1)(ii).	§ 63.1294(a)(1)(i)	§ 63.1307(a)(1) and (4)	§ 63.1306(e)(5).
	Carbon adsorber	§ 63.1294(a)(2)	§ 63.1303(a)(1), (3), and (4).	§ 63.1307(a)(1), (3)(i), and (3)(iii).	§ 63.1306(e)(3).
	Carbon adsorber—alternative monitoring.	§ 63.1294(a)(2)	§ 63.1303(a)(2), (3) and (4).	§ 63.1307(a)(1), (3)(ii), and (3)(iii).	§ 63.1306(e)(3).
Diisocyanate transfer pumps § 63.1294(b)	Sealless pump	§ 63.1294(b)(1)		§ 63.1307 (b)(1)(i) and (2)	
	Submerged pump	§ 63.1294(b)(2)(i) and (iii).	§ 63.1294 (b)(2)(ii)	§ 63.1307 (b)(1)(i), (2), and (3)	§ 63.1306(e)(4).
Other components in diisocyanate service § 63.1294(c).	N/A	§ 63.1294(c)	§ 63.1294(c)	§ 63.1307 (b)(1)(i) and (3)	§ 63.1306(e)(4).
HAP ABA storage vessels § 63.1295	Vapor balance	§ 63.1295(b) and (b)(2).	§ 63.1295 (b)(1)	§ 63.1307(a)(2) and (4)	§ 63.1306(e)(5).
	Carbon adsorber	§ 63.1295(c)	§ 63.1303(a)(1), (3), and (4).	§ 63.1307(a)(2), (3)(i), (3)(iii)	§ 63.1306(e)(3).
	Carbon adsorber—alternative monitoring.	§ 63.1295(c)	§ 63.1303(a)(2), (3) and (4).	§ 63.1307(a)(2), (3)(ii), and (3)(iii).	§ 63.1306(e)(3).
HAP ABA pumps § 63.1296(a):	Sealless pump	§ 63.1296(a)(1)		§ 63.1307 (b)(1)(ii)	
	Quarterly monitoring	§ 63.1296(a)(2) and (2)(iii).	§ 63.1296(a)(2)(i), (2)(ii) and § 63.1304(a).	§ 63.1307 (b)(1)(ii) and (3)	§ 63.1304(e)(4).
HAP ABA valves § 63.1296(b):	Quarterly monitoring	§ 63.1296(b), and (b)(2).	§ 63.1296 (b)(1) and § 63.1304(a).	§ 63.1307 (b)(1)(ii) and (3)	§ 63.1304(e)(4).
	Unsafe-to-monitor	§ 63.1296(b)(3) (i), (ii), and (iv).	§ 63.1296 (b)(3)(iii)	§ 63.1307 (b)(1)(ii), and (4)	§ 63.1304(e)(4).
	Difficult-to-monitor	§ 63.1296(b)(4) (i), (ii), (iii), and (v).	§ 63.1296(b)(4)(iv) and § 63.1304(a).	§ 63.1307 (b)(1)(ii) and (4)	§ 63.1306(e)(4).
HAP ABA Connectors § 63.1296(c):.	Annual monitoring	§ 63.1296(c) and (c)(2).	§ 63.1296(c)(1) and § 63.1304(a).	§ 63.1307 (b)(1)(ii) and (3)	§ 63.1306(e)(4).
	Unsafe-to-monitor	§ 63.1296(c)(2), (3) (i), and (ii).	§ 63.1296(c)(3) (iii) and § 63.1304(a).	§ 63.1307 (b)(1)(ii) and (4)	§ 63.1306(e)(4).
	Unsafe-to-repair	§ 63.1296(c)(4)	§ 63.1296(c)(1)	§ 63.1307 (b)(1)(ii)	§ 63.1306(e)(4).

TABLE 3 TO SUBPART III.—COMPLIANCE REQUIREMENTS FOR SLABSTOCK FOAM PRODUCTION AFFECTED SOURCES COMPLYING WITH THE EMISSION POINT SPECIFIC LIMITATIONS—Continued

Emission point	Emission point compliance option	Emission, work practice, and equipment standards	Monitoring	Recordkeeping	Reporting
Pressure-relief devices § 63.1296(d)	N/A	§ 63.1296(d) and (d)(2).	§ 63.1296 (d)(1) and § 63.1304(a).	§ 63.1307 (b)(1)(ii) and (3)	§ 63.1306(e)(4).
Open-ended valves or lines § 63.1296(e).	N/A	§ 63.1296(e)		§ 63.1307 (b)(1)(ii)	
Production line § 63.1297.	Rolling annual compliance.	§ 63.1297(a)(1) and (b).	§ 63.1303 (b)	§ 63.1307(c)(1)	§ 63.1306(e)(1).
	Monthly compliance	§ 63.1297(a)(2) and (c).	§ 63.1303 (b)	§ 63.1307(c)(1)	§ 63.1306(e)(2).
	Compliance Using a Recovery device.	§ 63.1297(a)(1), (b), and (e) for rolling annual compliance or § 63.1297(a)(2), (c), and (e) for monthly compliance.	§ 63.1303 (b) and (c).	§ 63.1307(c)(1) and (d)	§ 63.1306(e)(1) or (2).
Equipment Cleaning § 63.1298.	N/A	§ 63.1298		§ 63.1307(e)	

TABLE 4 TO SUBPART III.—COMPLIANCE REQUIREMENTS FOR SLABSTOCK FOAM PRODUCTION AFFECTED SOURCES COMPLYING WITH THE SOURCE-WIDE EMISSION LIMITATION

Emission point	Emission point compliance option	Emission, work practice, and equipment standards	Monitoring	Recordkeeping	Reporting
Diisocyanate storage vessels § 63.1294(a).	Vapor balance	§ 63.1294(a)(1) and (1)(ii).	§ 63.1294(a)(1)(i)	§ 63.1307(a)(1) and (4)	§ 63.1306(e)(5).
	Carbon adsorber	§ 63.1294(a)(2)	§ 63.1303(a)(1), (3), and (4).	§ 63.1307(a)(1), (3)(i), and (3)(iii).	§ 63.1306(e)(3).
	Carbon adsorber—alternative monitoring.	§ 63.1294(a)(2)	§ 63.1303(a)(2), (3) and (4).	§ 63.1307(a)(1), (3)(ii), and (3)(iii).	§ 63.1306(e)(3).
Diisocyanate transfer pumps § 63.1294(b).	Sealless pump	§ 63.1294(b)(1)		§ 63.1307 (b)(1)(i) and (2)	
	Submerged pump	§ 63.1294(b)(2)(i) and (iii).	§ 63.1294 (b)(2)(ii)	§ 63.1307 (b)(1)(i), (2), and (3)	§ 63.1306(e)(4).
Other components in diisocyanate service § 63.1294(c).	N/A	§ 63.1294(c)	§ 63.1294(c)	§ 63.1307 (b)(1)(i) and (3)	§ 63.1306(e)(4).
HAP ABA storage vessels, equipment leaks, production line, and equipment cleaning.	Rolling annual compliance.	§ 63.1299(a), (c)(1) through (4), and (d).	§ 63.1303 (b) except (b)(1)(ii), (d), and (e).	§ 63.1307(c)(2)	§ 63.1306(e)(1).
	Monthly compliance	§ 63.1299(b), (c)(1) through (4), and (d).	§ 63.1303 (b) except (b)(1)(ii), (d), and (e).	§ 63.1307(c)(2)	§ 63.1306(e)(2).
	Compliance Using a Recovery device.	§ 63.1299(a), (d), and (e) for rolling annual compliance or § 63.1299(b), (d), and (e) for monthly compliance.	§ 63.1303 (b) except (b)(1)(ii) and (c).	§ 63.1307(c)(2) and (d)	§ 63.1306(e)(1) or (2).

TABLE 5 TO SUBPART III.—COMPLIANCE REQUIREMENTS FOR MOLDED AND REBOND FOAM PRODUCTION AFFECTED SOURCES

Emission point	Emission point compliance option	Emission, work practice, and equipment standards	Monitoring	Recordkeeping	Reporting
Molded Foam					
Equipment cleaning ..	N/A	§ 63.1300(a)	.....	§ 63.1307(g)	
Mold release agent ..	N/A	§ 63.1300(b)	.....	§ 63.1307 (h)	
Rebond Foam					
Equipment cleaning ..	N/A	§ 63.1301(a)	.....	§ 63.1307 (g)	
Mold release agent ..	N/A	§ 63.1301(b)	.....	§ 63.1307 (h)	

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Extension of Temporary Approval of Tungsten-Iron Shot as Nontoxic for the 1998–99 Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE35

Migratory Bird Hunting; Extension of Temporary Approval of Tungsten-Iron Shot as Nontoxic for the 1998–99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) amends Section 20.21(j) to grant temporary approval of tungsten-iron shot as nontoxic for the 1998–99 migratory bird hunting season, except in the Yukon-Kuskokwim (Y–K) Delta region, Alaska. The Service had previously granted temporary approval of tungsten-iron shot as nontoxic for the 1997–98 season. The toxicological report, which is an extensive literature search and analysis of tungsten and tungsten-iron, suggests that these compounds are nontoxic under assumed use and in the environment. Analysis of the toxicity study reveal no adverse effects over a 30-day period when dosing mallards (*Anas platyrhynchos*) with 8 BB size tungsten-iron shot.

DATES: This rule takes effect on October 7, 1998.

ADDRESSES: Copies of the EA are available by writing to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 1849 C Street, NW., room 634–ARLSQ, Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert J. Blohm, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1838.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that, when spent, does not pose a significant toxic hazard to migratory birds and other wildlife. The Service established procedures and requirements for approval of shot and shot coatings as nontoxic in 1986 and published them in 50 CFR 20.134. The Service adopted new procedures in December 1997. These are published at 50 CFR 20.134. Currently, only steel shot and bismuth-tin shot are approved by the Service as nontoxic shot. The Service granted temporary approval of bismuth-tin as nontoxic on two separate actions for the hunting seasons of 1994–95 and 1995–96. Tungsten-iron shot was given temporary approval for the 1997–98 migratory bird hunting season (62 FR 43444 published August 18, 1997). The Service believes approval for other suitable candidate shot materials as nontoxic is feasible. Compliance with the use of nontoxic shot is increasing over the last few years. The Service believes that this level of compliance will continue to increase with the availability and approval of other nontoxic shot types.

Federal Cartridge Company's (Anoka, Minnesota) candidate shot is made from sintering tungsten and iron, which together forms a two-phase alloy. Shot made from this material has a density of approximately 10.3 g/cc or 94 percent of the density of lead. The shot will contain nominally 55 percent tungsten and 45 percent iron, by weight. The pellet will have sufficient iron to attract a magnet.

Federal's application includes a description of the new tungsten-iron shot, a toxicological report, and results of a 30-day dosing study to assess the toxicity of this shot in game-farm mallards (*Anas platyrhynchos*). The toxicological report incorporates toxicity information (a synopsis of acute and chronic toxicity data for birds, acute effects on mammals, potential for environmental concern, toxicity to aquatic and terrestrial invertebrates, amphibians and reptiles), and information on environmental fate and transport (shot alteration, environmental half-life, and environmental concentration). The toxicity study is a 30-day dosing test to determine if the candidate shot poses any deleterious effects to game farm mallards. This meets the requirements of Tier 1 and Tier 2, 50 CFR 20.134(b)(2) and (b)(3)(B).

Toxicity Information

There is considerable difference in the toxicity of soluble and insoluble compounds of tungsten and iron. Elemental tungsten and iron are virtually insoluble and, therefore, are expected to be nontoxic. After completion of the literature review, there appears to be no known basis for concern of toxicity to wildlife for the candidate shot material (metallic tungsten and iron) via ingestion by fish, birds, or mammals (Bursian et al., 1996; Gigiena, 1983; Patty, 1981; Industrial Medicine, 1946; Karantassis, 1924). However, there is some concern that the absorption of tungsten into the femur, kidney, and liver could potentially affect certain endangered or threatened species such as the spectacled eider (*Somateria fischeri*) on the Y–K Delta, Alaska. Until a reproductive/chronic toxicity test has been completed and the Service has reviewed the results, tungsten-iron shot will not be approved for the Y–K Delta.

Environmental Fate and Transport

Tungsten is insoluble in water and, therefore, not mobile in hypergenic environments. Tungsten is very stable with acids and does not easily complex. Preferential uptake by plants in acid soil suggests uptake of tungsten in the anionic form associated with tungsten minerals rather than elemental tungsten (Kabata-Peddias, 1984).

Environmental Concentration

Calculation of the environmental concentration (EEC) for a terrestrial ecosystem is on 69,000 shot per hectare (Pain 1990), assuming complete erosion of material in 5 cm of soil. The EEC for tungsten in soil is 32.9 mg/kg for a shot composition of 62.9 percent tungsten-iron alloy, 11.87 percent tungsten, and 25.31 percent iron. Adverse effects on biota are not expected to occur for shot components, given the Hazard Quotients (HQs).

Environmental Concentration

Calculation of the environmental concentration (EEC) for an aquatic ecosystem assumes complete erosion of the shot in one cubic foot of water. The EEC in water for tungsten was 10.5 mg/L for a shot composition of 62.9 percent tungsten-iron alloy, 11.87 percent tungsten, and 25.31 percent iron. Given these HQs, adverse effects on biota are not expected to occur for shot components.

An extensive literature search and review provides information on the toxicity of elemental tungsten to waterfowl and other birds. In Ringelman et al. (1993) effects of ingested tungsten-bismuth-tin (TBT) shot on captive mallards saw no acute toxicity. Orally dosing 20 8-week-old game farm mallards with 12 to 17 pellets (1.03g) TBT and monitoring for 32 days for evidence of intoxication saw no effect. No birds died during the trial. Gross lesions were not observed during the postmortem examination. Histopathological examination did not reveal any evidence of toxicity or tissue damage. Tungsten was not detectable in kidney or liver samples. The author's conclusion is that TBT shot presents virtually no potential for acute intoxication in mallards.

A study by Kraabel et al. (1996) assesses the effects of embedded tungsten-bismuth-tin shot on mallards. The authors' conclusion was that TBT is not acutely toxic when implanted in

mallard muscle tissue. Inflammatory reactions to TBT shot were localized, and had no detectable systemic effects on mallard health.

Nell (1981) fed laying hens 0.4 or 1 g/kg tungsten in a commercial mash for five months to assess the reproductive performance. Weekly egg production was normal and hatchability of fertile eggs was not affected.

Large doses of tungsten given to chickens *(Gallus domesticus*) either through injection or by feeding saw an increase in tissue concentration of tungsten and a decreased tissue concentration of molybdenum (Nell, 1981). The loss rate of tungsten from the liver occurred in an exponential manner with a half-life of 27 hours. The alterations in molybdenum metabolism seem to identify with tungsten and not of molybdenum deficiency. Death due to tungsten occurred when tissue concentrations were increased to 25 mg/g liver. At this concentration, the activity of xanthine dehydrogenase was zero.

In Federal's 30-day dosing study 8 male and 8 female adult mallards given 8 No. 4 steel shot, 8 No. 4 lead shot or 8 BB's of tungsten-iron were observed over a 30-day period. An additional 8 males and 8 females were given no shot. All tungsten-iron birds survived the test with a slight increase in body weight. There were no changes in hematocrit, hemoglobin concentration, and ALAD activity, as well as 25 plasma chemistry parameters. Five of the 16 tungsten-iron birds had a mild hepatocellular biliary stasis, but the authors felt this was not remarkable. No other histopathological lesions were found. In general, no adverse effects were seen when mallards were given 8 BB size tungsten-iron shot and monitored over a 30-day period. Fifty percent of the lead-dosed birds (5 males and 3 females) died during the 30-day test while there were no mortalities in the other groups. Lead-dosed birds were the only ones to display green excreta, lethargy, and ataxia. Alteration of body weights is not significant in any of the treatments, although lead-dosed birds which died during the trial lost an average of 30 percent of their body weight. Hematocrit, hemoglobin concentrations, and aminolevulinic acid dehydratase (an enzyme important to hemoglobin synthesis) activity were significantly depressed at day 15 in the lead-dosed females, while lead-dosed males had significantly depressed hematocrit and hemoglobin concentration in comparison to the other three groups. There were no significant differences in these whole-blood parameters at day 30.

As a result of the toxicological report and toxicity test, the Service concludes at this time that the available information indicates that tungsten-iron shot, nominally 40–55 percent tungsten and 60–45 percent iron, by weight with <1 percent residual lead, does not impose significant danger to migratory birds and other wildlife and their habitats, but that reproductive/chronic toxicity data is lacking.

Lacking sufficient reproductive/chronic toxicity data on the candidate shot, the applicant was advised to conduct additional testing as described in Tier 2 and Tier 3 as outlined in 50 CFR 20.134(b)(3) and (4), and in consultation with the Service's Office of Migratory Bird Management and the U.S. Geological Survey's Division of Biological Resources (BRD). One test includes assessment of reproduction, fertility rates, and egg hatchability (egg weight, shell thickness, and content analysis). The test requires the applicant to demonstrate that tungsten-iron shot is nontoxic to waterfowl and their offspring.

The Service's maximum environmentally acceptable level of residual lead in shot is trace amounts of <1 percent (50 CFR 20.134(b)(5)). The Service will consider any tungsten-iron shot manufactured with lead levels equal to or exceeding 1 percent as toxic and, therefore, illegal. At this time, the tungsten-iron shot meets the acceptable specifications.

Before approval of any shot for use in migratory game bird hunting, a noninvasive field testing device must be available for enforcement officers to determine the shot material in a given shell in the field (50 CFR 20.134(b)(6)). Several noninvasive field testing devices are under development to separate tungsten-iron shot from lead shot. Tungsten-iron shot can be drawn to a magnet as a simple field detection method.

In summary, this rule amends 50 CFR 20.21(j) by extending temporary approval of tungsten-iron shot as nontoxic for the 1998–99 migratory bird hunting season, except in the Y–K Delta region, Alaska. It is based on the original request made to the Service by Federal Cartridge Company on August 20, 1996, the toxicological report, and acute toxicity study reviewed by the Service in its initial decision to grant temporary approval for the 1997–98 season (62 FR 43444), and comments received on the July 27, 1998 proposed rule (63 FR 40077). Results of the toxicological report and 30-day toxicity test undertaken for Federal Cartridge Company document the apparent absence of any deleterious effects of tungsten-iron shot when ingested by captive-reared mallards or to the ecosystem. However, there is some concern that the absorption of tungsten into the femur, kidney, and liver could potentially affect the spectacled eider (*Somateria fischeri*), a species already subject to adverse weather, predation, and lead poisoning on the Y–K Delta. Until a reproductive/chronic toxicity test has been completed and the Service has reviewed the results, tungsten-iron shot will not be conditionally approved for the Y–K Delta region. Information since the Service's initial decision last year has not changed or been supplemented to date. A reproductive/chronic toxicity test will be completed and the Service will review the results, prior to any final unconditional approval of tungsten-iron shot for migratory bird hunting.

Public Comments and Responses

The July 27, 1998 proposed rule published in the **Federal Register** (63 FR 40077) invited public comments from interested parties. The closing date for receipt of all comments was August 26, 1998. During this 30-day comment period, the Service received one comment.

The Wisconsin Department of Natural Resources (Wisconsin) supported the proposal to grant temporary approval of tungsten-iron as nontoxic shot. Wisconsin was concerned, however, with the timing of the proposed and final rules. Because of the lateness of the Service's proposed rule, relative to the establishing and beginning of the migratory bird hunting seasons, Wisconsin was not able to include information on the status of tungsten-iron shot in their annual hunting regulations pamphlet that went to press in late August. Wisconsin uses the pamphlet to inform their hunters as to the availability of different nontoxic shot materials and stated that because of the timing of the final rule they would not be able to adequately inform their hunters. Wisconsin encouraged that any subsequent rules on nontoxic shot be initiated earlier in the year so that any final rules would be published before August 1.

Service Response: The Service realizes the information dissemination problems caused by conditionally approving tungsten-iron shot at this time. However, we believe that the public benefits of conditionally approving the shot outweigh any potential timing issues and/or problems. We believe that it is in the best interest of the hunting public to provide them an additional legal option for hunting waterfowl and coots for the 1998–99

season and it is in the best interest of small retailers who have stocked tungsten-iron shot for the coming season. Additionally, we believe that another nontoxic shot option likely will improve hunter compliance, thereby reducing the amount of lead shot in the environment.

Effective Date

Under the APA (5 U.S.C. 553 (d)) the Service waives the 30-day period before the rule becomes effective and finds that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the APA, and this rule will, therefore, take effect immediately upon publication. This rule relieves a restriction and, in addition, it is not in the public interest to delay the effective date of this rule. During the two prior public comment periods for conditional approval the Service received six comments. Of these comment letters, three were from individuals, two from industry companies, and one from a State natural resource agency. As we indicated in our August 13, 1997 final rule, individuals expressed support for the temporary approval of tungsten-iron shot stating that they ''* * * would love the opportunity to try the new shot'' and believed that'' * * *. any nontoxic alternative that approaches the effectiveness of lead should be explored.'' All other objections have been remedied satisfactorily and were discussed in either the August 13, 1997 final rule or under the Public Comment and Responses section of this document. It is in the best interest of migratory birds and their habitats to extend the conditional approval on tungsten-iron shot as nontoxic for the 1998–99 migratory bird hunting season. It is in the best interest of the hunting public to provide them an additional legal option for hunting waterfowl and coots for the 1998–99 season, which began on September 1, 1998. It is in the best interest of small retailers who have stocked tungsten-iron shot for the coming season. The Services believes another nontoxic shot option likely will improve hunter compliance, thereby reducing the amount of lead shot in the environment.

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NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), the Service prepared a Draft Environmental Assessment (EA) in May, 1998 and a Final EA in September 1998. This EA is available to the public at the location indicated under the ADDRESSES caption. Based on review and evaluation of the information in the EA, the Service has determined that amending 50 CFR 20.21(j) to extend temporary approval of tungsten-iron shot as nontoxic for the 1998–99 migratory bird hunting season would not be a major Federal action that would significantly affect the quality of the human environment.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531, *et seq.*), provides that Federal agencies shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *'' The Service has completed a Section 7 consultation under the ESA for this rule and determined that granting temporary approval of tungsten-iron shot for the 1998–99 hunting season, except on the Yukon-Kuskokwin (Y–K) Delta, is not likely to affect any threatened, endangered, proposed or candidate species. The result of the Service's consultation under Section 7 of the ESA is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. The economic impacts of annual hunting on small business entities were analyzed in detail and a Small Entity Flexibility Analysis (Analysis), under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), was issued by the Service in 1998 (copies available upon request from the Office of Migratory Bird Management). The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1996 National Hunting and Fishing Survey which it was estimated that migratory bird hunters would spend between $429 and $1084 million nationwide at small businesses in 1998. The approval of tungsten-iron as an alternative shot to steel and bismuth-tin will have a minor positive impact on small businesses by allowing them to sell a third nontoxic shot to the hunting public. However, the overall effect to hunting expenditures in general would be minor. Therefore, the Service determined this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. The Service anticipates no dislocation or other local effects, with regard to hunters and others.

Executive Order 12866, and the Paperwork Reduction Act

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. The Service invites comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand?

Send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, N.W., Washington, D.C. 20240. Comments may also be e-mailed to: Exsec@ios.doi.gov.

Congressional Review

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress. Because this rule deals with the Service's migratory bird hunting program, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Paperwork Reduction Act

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. However, the Service does have OMB approval (1018–0067; expires 06/30/2000) for information collection relating to what manufacturers of shot are required to provide the Service for the nontoxic shot approval process. For further information see 50 CFR 20.134.

Unfunded Mandates Reform

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502, *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Service, in promulgating this rule, determines that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, for reasons set out in the preamble, title 50, Chapter 1, subchapter B, part 20 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; and 16 U.S.C. 742a–j.

2. Amend Section 20.21 by revising paragraph (j)(2) to read as follows:

§ 20.21 Hunting methods.

* * * * *

(j) * * *

(2) Tungsten-iron shot (nominally 40 parts tungsten: 60 parts iron with <1 percent residual lead) is legal as nontoxic shot for the 1998–99 migratory bird hunting season, except in the Yukon-Kuskokwim (Y–K) Delta region, Alaska.

Dated: October 1, 1998.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–26856 Filed 10–6–98; 8:45 am]

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Federal Register

Wednesday
October 7, 1998

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Temporary Approval of Tungsten-Polymer Shot as Nontoxic for the 1998–99 Season; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AE66

Migratory Bird Hunting; Temporary Approval of Tungsten-Polymer Shot as Nontoxic for the 1998–99 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) amends Section 20.21(j) to grant temporary approval of tungsten-polymer shot as nontoxic for the 1998–99 migratory bird hunting season, except in the Yukon-Kuskokwim (Y–K) Delta region, Alaska. The toxicological report, which is an extensive literature search and analysis of tungsten and Nylon 6 (the polymer), suggests that these compounds are nontoxic under assumed use and in the environment. Analysis of the toxicity study reveal no adverse effects over a 30-day period when dosing mallards (*Anas platyrhynchos*) with 8 BB size tungsten-polymer shot.

DATES: This rule takes effect on October 7, 1998.

ADDRESSES: Copies of the EA are available by writing to the Chief, Office of Migratory Bird Management (MBMO), U.S. Fish and Wildlife Service, 1849 C Street, NW., room 634–ARLSQ, Washington, DC 20240. The public may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert J. Blohm, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, (703) 358–1838.

SUPPLEMENTARY INFORMATION: Since the mid-1970s, the Service has sought to identify shot that, when spent, does not pose a significant toxic hazard to migratory birds and other wildlife. The Service established procedures and requirements for approval of shot and shot coatings as nontoxic in 1986 and published them in 50 CFR 20.134. The Service adopted new procedures in December 1997. These are published at 50 CFR 20.134. Currently, only steel shot and bismuth-tin shot are approved by the Service as nontoxic shot. The Service granted temporary approval of bismuth-tin as nontoxic on two separate actions for the hunting seasons of 1994–95 and 1995–96. Tungsten-iron shot was given temporary approval for the 1997–98 migratory bird hunting season (62 FR 43444 published August 18, 1997). The Service believes approval for other suitable candidate shot materials as nontoxic is feasible. Compliance with the use of nontoxic shot is increasing over the last few years. The Service believes that this level of compliance will continue to increase with the availability and approval of other nontoxic shot types.

Federal Cartridge Company's (Anoka, Minnesota) candidate shot is a matrix of Nylon 6 or 11 polymer surrounding particles of elemental tungsten. Shot made from this material has a density of approximately 11.2 g/cm^3 or approximately the density of lead. The shot will contain approximately 95.5 percent tungsten and 4.5 percent Nylon 6 or 11 by weight. At this time, only tungsten-polymer shot with Nylon 6 has been tested. TP shot with Nylon 11 is currently undergoing research and testing. Therefore, this final rule for temporary approval only deals with Nylon 6.

Federal's application includes a description of the new tungsten-polymer (TP) shot, a toxicological report (Barr, 1996), and the results of a 30-day dosing study of the toxicity of this shot in game-farm mallards (*Anas platyrhynchos*). The toxicological report incorporates toxicity information (a synopsis of acute and chronic toxicity data for mammals and birds, potential for environmental concern, and toxicity to aquatic and terrestrial invertebrates, amphibians and reptiles) and information on environmental fate and transport (shot alteration, environmental half-life, and environmental concentration). The toxicity study is a 30-day dosing test to determine if the candidate shot poses any deleterious effects to game-farm mallards. This will meet the requirements for Tier 2 consideration, as described in 50 CFR 20.134(b)(3).

Toxicity Information

There is considerable difference in the toxicity of soluble and insoluble compounds of tungsten. Elemental tungsten (the material submitted by Federal) is virtually insoluble and is, therefore, expected to be relatively nontoxic. The potential toxicity of nylon compounds due to degradation is primarily associated with the stabilizers, antioxidants, plasticizers, and unreacted prepolymers. Residual caprolactum has been found in some commercial Nylon 6 products, but little concern regarding this compound has been developed (Patty, 1981). Even though most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten (while the toxicity of Nylon 6 is negligible due to its insolubility), there appears to be no basis for concern of toxicity to wildlife for the TP shot (metallic tungsten and Nylon 6) via ingestion by fish, birds, or mammals (Bursian et al., 1996; Gigiena, 1983; Patty, 1981; Industrial Medicine, 1946; Karantassis, 1924).

Environmental Fate and Transport

Tungsten is insoluble in water and, therefore, not mobile in hypergenic environments. Tungsten is very stable in acids and does not easily complex. Preferential uptake by plants in acid soil suggests that uptake of tungsten in the anionic form is associated with tungsten minerals rather than elemental tungsten (Kabata-Pendias and Pendias, 1984).

Environmental Concentrations

Calculation of the estimated environmental concentration (EEC) of tungsten in a terrestrial ecosystem is based on 69,000 shot per hectare (Pain, 1990), assuming complete erosion of material in 5 cm of soil. The EECs for tungsten and Nylon 6 in soil are 58.3 mg/kg and 2.7 mg/kg, respectively. Calculation of the EEC in an aquatic ecosystem assumes complete erosion of the shot in one cubic foot of water. The EECs in water for tungsten and Nylon 6 are 18.7 mg/L and 0.9 mg/L, respectively. The Hazard Quotients assume that complete erosion of the shot components would occur; however, the TP shot is considered insoluble and is stable in basic, neutral, and mildly acidic environments. Therefore, erosion is expected to be minimal, and adverse effects on biota are not expected to occur.

Effects on Birds

An extensive literature review provided information on the toxicity of elemental tungsten to waterfowl and other birds. Ringelman et al. (1993) orally dosed 20 8-week-old game-farm mallards with 12–17 (1.03g) tungsten-bismuth-tin (TBT) pellets and monitored them for 32 days for evidence of intoxication. No birds died during the trial, gross lesions were not observed during the postmortem examination, histopathological examinations did not reveal any evidence of toxicity or tissue damage, and tungsten was not detectable in kidney or liver samples. The authors concluded that TBT shot presented virtually no potential for acute intoxication in mallards.

Kraabel et al. (1996) assessed the effects of embedded TBT shot on mallards and concluded that TBT was not acutely toxic when implanted in muscle tissue. Inflammatory reactions to TBT shot were localized and had no

detectable systemic effects on mallard health.

Nell (1981) fed laying hens (*Gallus domesticus*) 0.4 or 1 g/kg tungsten in a commercial mash for five months to assess reproductive performance. Weekly egg production was normal and hatchability of fertile eggs was not affected. Exposure of chickens to large doses of tungsten either through injection or by feeding, resulted in an increased tissue concentration of tungsten and a decreased concentration of molybdenum (Nell, 1981). The loss of tungsten from the liver occurred in an exponential manner with a half-life of 27 hours. The alterations in molybdenum metabolism seemed to be associated with tungsten intake rather than molybdenum deficiency. Death due to tungsten occurred when tissue concentrations increased to 25 mg/g liver. At that concentration, xanthine dehydrogenase activity was zero.

Nylon 6 is the commercially important homopolymer of caprolactum. Most completely polymerized nylon materials are physiologically inert, regardless of the toxicity of the monomer from which they are made (Peterson, 1977). Few data exist on the toxicity of Nylon 6 in animals. Most toxicity studies relate to thermal degradation products and so are not relevant to the exposure of wildlife to shot containing nylon. Montgomery (1982) reported that feeding Nylon 6 to rats at a level of 25 percent of the diet for 2 weeks caused a slower rate of weight gain, presumably due to a decrease in food consumption and feed efficiency. However, the rats suffered no anatomic injuries due to the consumption of nylon.

Federal's 30-day dosing study (Bursian et al., 1996) included four treatment groups of game-farm mallards (16 birds in each group, 8 males and 8 females) exposed to different types of shot: 8 No. 4 steel, 8 No. 4 lead, 8 BBs of tungsten-polymer, and none (control). All TP-dosed birds survived the test with no significant alteration in body weight. There were no changes in hematocrit, hemoglobin concentration, or aminolevulinic acid dehydratase (an enzyme important to hemoglobin synthesis) activity. The only significant difference between no-shot, steel, and TP males in any of the 25 plasma chemistry parameters at day 15 was an increase in the albumin/globulin ratio in the TP birds when compared to the other two groups, but the authors felt this was not remarkable. Three TP-dosed males developed mild biliary stasis. The authors attributed this to the intubating of mallards with 8 BBs of TP shot inducing a pathological condition, however, slight, that is not found in the control birds. No other histopathological lesions were found. In general, no adverse effects were seen in mallards given 8 BB-size TP shot and monitored over a 30-day period. Tungsten was detected in the femur of 2 TP-dosed females and the kidneys of 2 TP-dosed birds; in both tissues, concentrations were only slightly above detection limits.

Based on the results of the toxicological report and the toxicity test (Tier 1 and 2), the Service concludes that TP shot (95.5 percent tungsten and 4.5 percent Nylon 6, by weight with <1 percent residual lead), does not pose a significant danger to migratory birds or other wildlife and their habitats. However, the Service has some concern that the absorption of tungsten into the femur, kidney, and liver could potentially affect the spectacled eider (*Somateria fischeri*), a species already subject to adverse weather, predation, and lead poisoning on the Yukon-Kuskokwim (Y–K) Delta, Alaska. Until a reproductive/chronic toxicity test has been completed and the Service has reviewed the results, TP shot cannot be conditionally approved for the Y–K Delta region.

The first condition of approval is toxicity testing. Candidate materials not approved under Tier 1 and/or 2 testing are subjected to standards of Tier 3 testing. The scope of Tier 3 includes chronic exposure under adverse environmental conditions and effects on reproduction in game-farm mallards, as outlined in 50 CFR 20.134(b)(4)(A and B) (Tier 3) and in consultation with the Service's Office of Migratory Bird Management and the U.S. Geological Survey's Division of Biological Resources. This study includes assessment of long-term toxicity under depressed temperature conditions using a nutritionally-deficient diet, as well as a moderately long-term study that includes reproductive assessment. The tests require the applicant to demonstrate that TP shot is nontoxic to waterfowl and their offspring.

The second condition of approval is testing for residual lead levels. Any TP shot with lead levels equal to or exceeding 1 percent will be considered toxic and, therefore, illegal. In the August 18, 1995, **Federal Register** (60 FR 43314), the Service indicated that it would establish a maximum level for residual lead. The Service has determined that the maximum environmentally acceptable level of lead in any nontoxic shot is trace amounts of <1 percent, and has incorporated this requirement (50 CFR 20.134(b)(5)) in the December 1, 1997, final rule (62 FR 63608).

The third condition of approval involves enforcement. In the August 18, 1995, **Federal Register** (60 FR 43314), the Service indicated that final unconditional approval of any nontoxic shot would be contingent upon the development and availability of a noninvasive field testing device. This requirement was incorporated into regulations at 50 CFR 20.134(b)(6) in the December 1, 1997, final rule (62 FR 63608). Several noninvasive field testing devices are under development to separate TP shot from lead shot. Law enforcement officials can distinguish between shotshells containing lead pellets and those containing tungsten-polymer in two ways. First, the headstamp of the shell will clearly distinguish it as a shell containing tungsten-polymer shot. Second, electronic devices designed to distinguish between shotshells containing different shot materials will register tungsten-polymer shells as non-toxic, similar to bismuth-tin shells.

In summary, this rule amends 50 CFR 20.21(j) by granting temporary approval of tungsten-polymer shot as nontoxic for the 1998–99 migratory bird hunting season, except in the Y–K Delta region, Alaska. It is based on the original request made to the Service by Federal Cartridge Company on July 16, 1997, the toxicological report, and acute toxicity study reviewed by the Service, and comments received on the July 27, 1998 proposed rule (63 FR 40074). Results of the toxicological report and 30-day toxicity test undertaken for Federal Cartridge Company document the apparent absence of any deleterious effects of tungsten-polymer shot when ingested by captive-reared mallards or to the ecosystem. However, there is some concern that the absorption of tungsten into the femur, kidney, and liver could potentially affect the spectacled eider (*Somateria fischeri*), a species already subject to adverse weather, predation, and lead poisoning on the Y–K Delta. Until a reproductive/chronic toxicity test has been completed and the Service has reviewed the results, tungsten-polymer shot will not be conditionally approved for the Y–K Delta region. A reproductive/chronic toxicity test will be completed and the Service will review the results, prior to any final unconditional approval of tungsten-polymer shot for migratory bird hunting.

Public Comments and Responses

The July 27, 1998 proposed rule published in the **Federal Register** (63 FR 40077) invited public comments

from interested parties. The closing date for receipt of all comments was August 26, 1998. During this 30-day comment period, the Service received four comments.

Federal Cartridge Company pointed out a minor technical discrepancy in our description of tungsten-polymer shot. Federal indicated that tungsten-polymer shot contains no iron.

The California Waterfowl Association strongly supported the proposed temporary approval of tungsten-polymer shot for the 1998–99 season. They believed that the temporary approval of tungsten-polymer shot was an important step to address concerns relating to efforts to reduce the unnecessary crippling of waterfowl through the development of more effective nontoxic shot materials.

Kent Cartridge Company questioned the Service's stipulation on the requested reproductive testing as it relates to the Y–K Delta. Kent pointed out language in the July 27 **Federal Register** indicating that ''until a reproductive/chronic toxicity test has been completed and the Service has reviewed the results, the Service proposes not to approve the use of tungsten-polymer shot on the Y–K Delta.'' Kent believed that these references clearly indicate that the required reproductive tests relates only to tungsten shot use in the Y–K Delta and that use of tungsten shot elsewhere in the U.S. was not so conditioned.

The Wisconsin Department of Natural Resources (Wisconsin) supported the proposal to grant temporary approval of tungsten-polymer as nontoxic shot. Wisconsin was concerned, however, with the timing of the proposed and final rules. Because of the lateness of the Service's proposed rule, relative to the establishing and beginning of the migratory bird hunting seasons, Wisconsin was not able to include information on the status of tungsten-polymer shot in their annual hunting regulations pamphlet that went to press in late August. Wisconsin uses the pamphlet to inform their hunters as to the availability of different nontoxic shot materials and stated that because of the timing of the final rule they would not be able to adequately inform their hunters. Wisconsin encouraged that any subsequent rules on nontoxic shot be initiated earlier in the year so that any final rules would be published before August 1.

Service Response: The Service has corrected the description of tungsten-polymer shot to indicate that the shot contains no iron.

Regarding Kent Cartridge Company's assertions that the required reproductive testing relates only to the use of tungsten shots in the Y–K Delta, the Service would like to make clear that the required testing relates to the entire U.S., not just the Y–K Delta. Until a reproductive/chronic toxicity test has been completed and the Service has reviewed the results, tungsten shots will not be conditionally approved for the Y–K Delta region nor unconditionally approved elsewhere. A reproductive/chronic toxicity test will be completed and the Service will review the results, prior to any final unconditional approval of tungsten-polymer shot for migratory bird hunting.

Regarding the timing of the proposed and final rule, the Service realizes the information dissemination problems caused by conditionally approving tungsten-polymer shot at this time. However, we believe that the public benefits of conditionally approving the shot outweigh any potential timing issues and/or problems. We believe that it is in the best interest of the hunting public to provide them an additional legal option for hunting waterfowl and coots for the 1998–99 season and it is in the best interest of small retailers who have stocked tungsten-polymer shot for the coming season. Additionally, we believe that another nontoxic shot option likely will improve hunter compliance, thereby reducing the amount of lead shot in the environment.

Effective Date

Under the APA (5 U.S.C. 553(d)) the Service waives the 30-day period before the rule becomes effective and finds that ''good cause'' exists, within the terms of 5 U.S.C. 553(d)(3) of the APA, and this rule will, therefore, take effect immediately upon publication. This rule relieves a restriction and, in addition, it is not in the public interest to delay the effective date of this rule. During the public comment period for conditional approval the Service received four comments. Of these comment letters, one was from a conservation organization, two from industry companies/representatives, and one from a State natural resource agency. All objections/comments have been remedied satisfactorily and are discussed under the Public Comment and Responses section of this document. It is in the best interest of migratory birds and their habitats to grant conditional approval on tungsten-polymer shot as nontoxic for the 1998–99 migratory bird hunting season. It is in the best interest of the hunting public to provide them an additional legal option for hunting waterfowl and coots for the 1998–99 season, which began on September 1, 1998. It is in the best interest of small retailers who have stocked tungsten-polymer shot for the coming season. The Services believes another nontoxic shot option likely will improve hunter compliance, thereby reducing the amount of lead shot in the environment.

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NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), the Service prepared a Draft Environmental Assessment (EA) in May, 1998 and a Final EA in September 1998. This EA is available to the public at the location indicated under the **ADDRESSES** caption. Based on review and evaluation of the information in the EA, the Service has determined that amending 50 CFR 20.21(j) to grant temporary approval of tungsten-polymer shot as nontoxic for the 1998–99 migratory bird hunting season would not be a major Federal action that would significantly affect the quality of the human environment.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531, *et seq.*), provides that Federal agencies shall ''insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * *'' The Service has completed a Section 7 consultation under the ESA for this rule and determined that granting temporary approval of tungsten-polymer shot for the 1998–99 hunting season, except on the Yukon-Kuskokwin (Y–K) Delta, is not likely to affect any threatened, endangered, proposed or candidate species. The result of the Service's consultation under Section 7 of the ESA is available to the public at the location indicated under the **ADDRESSES** caption.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which includes small businesses, organizations or governmental jurisdictions. The economic impacts of annual hunting on small business entities were analyzed in detail and a Small Entity Flexibility Analysis (Analysis), under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), was issued by the Service in 1998 (copies available upon request from the Office of Migratory Bird Management). The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1996 National Hunting and Fishing Survey which it was estimated that migratory bird hunters would spend between $429 and $1084 million nationwide at small businesses in 1998. The approval of tungsten-polymer as an alternative shot to steel and bismuth-tin will have a minor positive impact on small businesses by allowing them to sell a third nontoxic shot to the hunting public. However, the overall effect to hunting expenditures in general would be minor. Therefore, the Service determined this rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. The Service anticipates no dislocation or other local effects, with regard to hunters and others.

Executive Order 12866, and the Paperwork Reduction Act

This rule was not subject to Office of Management and Budget (OMB) review under Executive Order 12866. E.O. 12866 requires each agency to write regulations that are easy to understand. The Service invites comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand? Send a copy of any comments that concern how this rule could be made easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, N.W., Washington, D.C. 20240. Comments may also be e-mailed to: Exsec@ios.doi.gov.

Congressional Review

In accordance with Section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 8), this rule has been submitted to Congress. Because this rule deals with the Service's migratory bird hunting program, this rule qualifies for an exemption under 5 U.S.C. 808(1); therefore, the Department determines that this rule shall take effect immediately.

Paperwork Reduction Act

The Service has examined this regulation under the Paperwork Reduction Act of 1995 and found it to contain no information collection requirements. However, the Service does have OMB approval (1018–0067; expires 06/30/2000) for information collection relating to what manufacturers of shot are required to provide the Service for the nontoxic shot approval process. For further information see 50 CFR 20.134.

Unfunded Mandates Reform

The Service has determined and certifies pursuant to the Unfunded Mandates Act, 2 U.S.C. 1502, *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Service, in promulgating this rule, determines that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, these rules, authorized by the Migratory Bird Treaty Act, do not have significant takings implications and do not affect any constitutionally protected property rights. These rules will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise privileges that would be otherwise unavailable; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State

governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American tribal Governments'' (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Accordingly, for reasons set out in the preamble, title 50, Chapter 1, subchapter B, part 20 of the Code of Federal Regulations is amended as follows:

PART 20—[AMENDED]

1. The authority citation for Part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; and 16 U.S.C. 742 a–j.

2. Amend Section 20.21 by revising paragraph (j) introductory text and adding paragraph (j)(3) to read as follows:

§ 20.21 Hunting methods.

* * * * *

(j) While possessing shot (either in shotshells or as loose shot for muzzleloading) other than steel shot, or bismuth-tin (97 parts bismuth: 3 parts tin with <1 percent residual lead) shot, or tungsten-iron ([nominally] 40 parts tungsten: 60 parts iron with <1 percent residual lead) shot, or tungsten-polymer (95.5 part tungsten: 4.5 parts Nylon 6 with <1 percent residual lead) shot, or such shot approved as nontoxic by the Director pursuant to procedures set forth in § 20.134, provided that:

* * * * *

(3) Tungsten-polymer shot (95.5 parts tungsten: 4.5 parts Nylon 6 with <1 percent residual lead) is legal as nontoxic shot for the 1998–99 migratory bird hunting season, except for the Yukon-Kuskokwim Delta region in Alaska.

Dated: October 1, 1998.

Donald Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 98–26857 Filed 10–6–98; 8:45 am]

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